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WORK PRODUCT OF THE 113TH INTERNATIONAL TRAINING COURSE

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INTRODUCTORY NOTE

It is with pride that the Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) offers to the international community the Resource Material Series No. 56.

This volume contains the work produced in two UNAFEI international training programmes: the 112th International Training Course (conducted from 12 April to 2 July 1999) and the 113th International Training Course (conducted from 30 August to 18 November 1999). The main themes of these courses were "Participation of the Public and Victims for More Fair and Effective Criminal Justice Administration", and "The Effective Administration of Criminal Justice for the Prevention of Corrupt Activities by Public Officials", respectively.

As an affiliated regional institute of the United Nations, UNAFEI has paid utmost attention to the priority themes identified by the UN Commission on Crime Prevention and Criminal Justice. Moreover, UNAFEI has been taking up these issues as the main themes and topics for its training courses and seminars. The above-mentioned themes of the 112th and 113th International Training Courses were decided under such a consideration. Community involvement in crime prevention, as well as accountability and fairness for offenders and victims in the criminal justice process, were substantive agenda items and workshop topics at the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, which was held in Vienna from 10 to 17 April 2000. The 112th UNAFEI Course explored measures to enhance the participation of the public and victims for more fair and effective criminal justice administration in the participating countries. Similarly, combating corruption was also one of the workshop topics at the Tenth United Nations Congress. In light of the fact that corruption is becoming transnational in character, and it is a primary tool of organized crime, participants of the 113th Course introduced their countries' experiences regarding corruption, analyzed the causes and dynamics of corruption, and sought concrete measures for its eradication.

In this issue, papers contributed by visiting experts, selected individual presentation papers from among Course participants, and reports of each

Course are published. I regret that not all the papers submitted by Course participants could be published. Also, I must request the understanding of the selected authors for not having sufficient time to refer the manuscripts back to them before publication.

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

Finally, I would like to express my heartfelt gratitude to all who so unselfishly assisted in the publication of this series, in particular, the editors of Resource Material Series No. 56, Mr. Hiroshi Iitsuka (Chief of Training Division) and Ms. Rebecca Findlay-Debeck (Linguistic Adviser), who so tirelessly dedicated themselves to this series.

March 2000

Mikinao Kitada
Director of UNAFEI

PART ONE

RESOURCE MATERIAL SERIES
No. 56

Work Product of the 112th International Training Course

"PARTICIPATION OF THE PUBLIC AND VICTIMS FOR MORE FAIR AND EFFECTIVE CRIMINAL JUSTICE"

UNAFEI

VISITING EXPERTS' PAPERS

PRIVATE PARTICIPATION IN THE TREATMENT OF OFFENDERS: CONTRACTING PRIVATE OPERATORS IN CRIMINAL JUSTICE

*John Brian Griffin**

ABSTRACT

Over the past decade, governments have been forced to critically review the way they manage their economies in the face of growing international competition. Debt reduction and taxation imperatives, coupled with raised community expectation of value of money from its public sector, has underscored profound changes in the form and nature of government worldwide.

In Victoria, the Kennett Government since 1992 has pursued a significant government reform agenda. Reforms within the criminal justice system have been an important part of this 'change' agenda. Contractualism and privatisation are now integral elements in the oparation of Victoria's justice system, especially the key aspects of policing and correctional management. While the signs are positive, the changes have required a fundamental policy rethink in such areas as contracting out, accountability, risk management, regulation and performance monitoring. There is no doubt these issues will be the subject of on-going debate well into the next millennium.

I. INTRODUCTION

Public administration worldwide has been the subject of revolutionary change over the past decade. Privatisation, corporatisation, outsourcing, outcome/output budgeting and accrual accounting are but some of the contemporary business concepts that are now the hallmark of modern government administration. Past practice no longer provides an adequate basis to ensure the future viability of the public sector.

A special edition of "The Economist" in September 1997 entitled "The Future of the State", succinctly summarised these changes in quite dramatic terms:

> *"... the State is in retreat. At the turn of the millennium, it is argued, governments are confronted by two old enemies, stronger now than ever before: technology and ideology. The State is proving unequal to the challenge. Its power to rule is fading.*
>
> *A new industrial revolution is under way. Advances in computing and telecommunications press relentlessly on, eroding national boundaries and enlarging the domain of the global economy. Increasingly, these changes render governments mere servants of international markets."*

In the face of international competition, governments have realised that a high debt burden and high taxing regimes undermine the country's level of competitiveness. Increasingly, governments are wrestling with the paradox that voters want lower taxes but want more public spending. This has required governments to examine the breadth of responsibilities they have accumulated over the years, to shed more peripheral functions and to ensure residual

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functions operate efficiently. Over the past decade, there has been a greater questioning of the efficacy of big government and critical comment about public monopolies which, being free from pressures to innovate or become more efficient, have been shown not to offer value for money to the communities they serve.

II. REFORM OF GOVERNMENT

In the 1980s, there was recognition in the UK and Europe that the high level of government spending could not be sustained. The Thatcher Government in the UK introduced radical reforms in a bid to reduce public spending, which in 1980 comprised 43% of GDP. Similar programs were pursued to a lesser extent in France (55%), Italy (52%) and Belgium (54%). Government's transferred the delivery of services to the private seczWr {B withdrew from service delivery altogether.

In the USA, where big government had not been a feature of the American political landscape, there was nevertheless ongoing voter pressure to minimise taxation and increase the responsiveness of the public sector. In 1992, the seminal work of David Osborne and Ted Gaebler titled "Reinventing Government" took the world by storm. Osborne and Gaebler identified ten principles around which entrepreneurial public organisations are built:

1. *Steering more than rowing.*
2. *Enpower communities rather than simply deliver services.*
3. *Encouraging competition rather than monopoly.*
4. *Being mission driven rather than rule driven.*
5. *Funding outcomes rather than inputs.*
6. *Meeting the needs of the customer not the bureaucracy.*
7. *Concentrating on earning not just spending.*
8. *Investing in prevention not just cure.*
9. *Decentralising authority.*
10. *Solving problems by leveraging the market place, rather than simply creating public programs.*

"Reinventing Government" became the required reading of politicians and bureaucrats alike following the book's publication. The sentiments of the book hit a chord with many in government and in communities around the world.

Within Australia, various Federal and State Commissions of Audit Report's recommendations echoed the book's major thrust. In 1995, the Council of Australia Governments (COAG) endorsed the National Competition Policy (NCP) Report of the Independent Committee of Inquiry (the Hilmer Committee) set up in 1993. The NCP established consistent principles governing pro-competitive reform of government enterprise and of government regulation. It was agreed that all Commonwealth and State legislation would be reviewed to ensure it did not unnecessarily restrict competition.

The NCP Independent Committee of Inquiry summarised the merits of competition in the following way:

> *"Competition provides the spur for businesses to improve their performance, develop new products and respond to changing circumstances. Competition offers the promise of lower prices and improved choice for consumers and greater efficiency, higher economic growth and increased employment opportunities for the economy as a whole".*

The Hilmer Committee was at pains to

stress, however, that it did not support totally unfettered competition and indicated there were *bona fide* reasons where governments would need to intervene in specific markets with the intention of protecting the public interest or for generating other benefits for the community as a whole or from particular sectors of the community. The committee commented:

> *"Competition policy is not about the pursuit of competition per se. Rather it seeks to facilitate effective competition to promote efficiency and economic growth while accommodating situations where competition does not achieve efficiency or conflicts with other social objectives. These accomodations are reflected in the content and breadth of application of pro-competitive policies, as well as the sanctioning of anti-competitive arrangements on public benefit grounds".*

Implementation of the NCP was underwritten by the Federal Government through the allocation of substantial funds to States/Territories to address transitional costs and negative revenue implications arising from the adoption of the NCP.

Following the Victorian State elections in October 1992, the Kennett Liberal/ National Coalition Government proceeded swiftly with major reform of the public sector. In the face of a $32billion State debt, significant budget cuts were made to government departments, programs were reduced or axed, services were outsourced, many statutory authorities were corporatised and there was a concerted effort to privatise electricity generation and supply, and gas retailing.

In 1993, the Victorian Commission of Audit set the tone for subsequent change through its identification of the key principles for public sector reform:

- a preference for market mechanisms;
- empowered consumers;
- minimised government regulation;
- clear accountability for results; and
- professional and buisiness-like management of public agencies.

The "steering not rowing" metaphor soon translated to a notion of "purchaser/ provider split" whereby the purchaser of the service would not also be the provider of the service. In a market context with multiple suppliers, governments were seen to be able to maximise public benefit in the purchase of services and avoid the downsides of departments as single service providers.

The privatisation of government services in Victoria over the last six years has been significant and has touched all Ministerial portfolios. Major changes have occurred in the following areas:

- utilities;
- communications;
- roads;
- trains, trams and buses;
- regulation and inspection;
- welfare services;
- educational and training services;
- health services.

In addition, there has been signficant privatisation and contracting out within the Justice portfolio in such areas as:

- corporate services (payroll, human services, audit, building maintenance, fleet management);
- the police airwing;
- computer aided dispatch of emergency vehicles;
- staff training;
- prisoner transportation;

- the operation of police traffic cameras and the administrarion of the enforcement of on-the-spot fines;
- the management of police custody centres;
- building, owning and operating three of the State's thirteen prisons;
- building, owning and operating the proposed new County Court complex.

The results of the overall Government reform program have been impressive. The State debt has been reduced from $32billion to $11billion, Victoria has moved from being the highest taxing State, unemployment has fallen below the national average and there is growing confidence in the business community (both locally and internationally) that Victoria is a good place in which to invest.

The Productivity Commission's 1999 report to COAG on the benchmarking of government services confirms the pre-eminence of Victoria in many of the key performance indicators (in relation to the benchmarking of a broad range of government services).

The reforms however have not been without their critics. The speed and breadth of change, the quantum of the budget cuts, the apparent primacy of economic imperatives driving so much change, and the extent of privatisation have been the subject of much community debate.

Perhaps one of the most controversial reforms has been the Kennett Government's prison privatisation program. It is a program worthy of further analysis, as in many ways the issues with private prisons resonate in character with other reforms within the Justice portfolio.

III. THE PRIVATISATION OF VICTORIAN PRISONS

Before the Kennett Government's election in 1992, the Victorian prison system was the responsibility of the Office of Corrections. The previous Cain/ Kirner Labour Government had made major investments in the construction of four new prisons at a total cost exceeding $170million. Notwithstanding this investment, the large bulk of prisoners still resided in accommodation built in the last century.

The general productivity of the prison system was poor. Sick leave rorting by prison officers was rampant (average 28 days annual sick leave per prison officer at Pentridge Prison in 1992). The level of prison staffing was the subject of on-going tension between management and the unions.

Interestingly, the concept of contracting out was not new to the prison system. Private contractors provided many of the prison support services; health services were provided by the Health Department; and education provided by the TAFE Division of the Education Department. A separate statutory body (VicPIC) was responsible for prison industries and the delivery of many prisoner programs involved both paid staff and volunteers drawn from the wider community.

A key element of the Liberal/National Coalition party policy platform was the privatisation of elements of the prison system. It was envisaged that privatisation would reduce the annual unit cost per prisoner, provide comparative benchmarks against which to evaluate the performance of public prisons and, no doubt, break the stranglehold of union influence on the system. In addition, through the adoption of a build, own, operate (BOO) philosophy,

the Government was able to construct three new prisons which, given the size of the debt burden, would be unlikely to have been built for a considerable time. The BOO approach enabled the Government to transfer the construction and ownership risk onto the private sector. The issue of inadequate asset maintenance provision has long been a sore point with public sector managers. BOO projects eliminated these difficulties, as well as avoidnig any increase in State borrowings which was a key priority of the new Government.

So how does the new Victorian prisons system now work?

The amended *Corrections Act* 1986 gives the State direct authority for the security, safety and welfare of prisoners; and for the maintenance of standards, in both public and private correctional services. In 1995 the Office of the Correctional Services Commissioner (OCSC) was established to oversee the corrections system. The Commissioner is responsible for:

- strategic planning;
- developing and setting state-wide policy and standards;
- the management of prisoner sentences, including prisoner assessment, classification and placement;
- monitoring the delivery of correctional services by both public and private providers;
- advising the Minister (the purchaser) about each provider's performance and level of compliance with contractual obligations;
- providing overall leadership to the Victorian corrections system.

Specific prisoner health and welfare standards developed by the Commissioner's Offive include:

- prisoner access to programs which address issues related to their offending behaviour;
- prisoner access to personal development and life skills programs;
- provision of health care services which meet community standards;
- prisoner access to adequate fitness, sport and recreational activities;
- prisoners being given opportunities to develop the skills for employment after their release through access to both work experience in prison industries and education and training programs.

The Commissioner enforces a rigorous monitoring regime built around:

- clear specification of requirements of providers;
- monitoring providers from on-site observation and the analysis of performance date;
- validation of provider reports;
- provision of formal feedback to providers.

The Minister for Corrections, as the purchaser of services, has assigned the task of Contract Administrator to the Deputy Secretary, Justice Operations within the Department of Justice. This position is supported by a separate Corrections Contracts Branch. The role of the Contract Administrator is to:

- identify the correctional services to be purchased by the State;
- establish appropriate contractual arrangements;
- administer the contracts on behalf of the Minister for Corrections.

The Contract Administrator regularly reviews reports from the Correctional Services Commissioner concerning service providers' performance and levels of

compliance with their contracts.

The correctional providers within the Victorian correctional system are a mix of public and private providers. The public provider - the public Correctional Enterprise (CORE) - operates ten prisons and manages the State's community correctional services.

In addition, there are three private providers of prisons:

- Metropolitan Women's Correctional Centre (125 beds) - Corrections Corporation of Australia (opened August 1996);
- Fulham Correctional Centre (600 beds) - Australasian Correctional Management (opened April 1997);
- Port Phillip Correctional Centre (600beds) - Group 4 Correction Services (opened September 1997).

A preliminary observation of the multi-provider system relates to the impact that privatisation has had on CORE - The Public Correctional Enterprise. It is a great credit to the management and staff of CORE that they have responded to the challenge (or threat) in a very constructive and effective way. Many would not have anticipated how effective this response would be.

Institutionalised work and staffing practices have been reformed, facilities and services improved, staff attitudes and motivation improved and costs have been reduced substantially. These reforms could hardly have been contemplated in the traditionl monopoly system. These reforms give confidence to the notion that the public provision of prison services can continue in a multi-provider environment, where performance in terms of service quality and cost will be the bottom line.

The Victorian correctional model has been very deliberately designed to separate the roles of the purchaser and providers, with the OCSC playing the key system leadership role of policy, standard setting, performance monitoring and sentence management. The key responsibilities of the Commissioner (as outlined in Section 8A of the *Corrections Act* 1986), requires the Commissioner to exercise these responsibilities impartially between all providers. In allocating to the Contract Administrator the responsibility for managing the commercial and financial interests of the Government in the contracts, the integrity of the Commissioner's role in addressing the safe custody and welfare of prisoners is effectively preserved.

While there have been many calls for independent monitoring of prison performance, no other jurisdiction had implemented a model as definitive as that in Victoria, separating responsibility for safe prisoner custody and welfare from the responsibility for financial or budgetary targets for the system.

The contracts with the private correctional providers are built around a number of commercial principles:

- the Government purchases a comprehensive package of accommodation and correctional services from the provider over set contract periods for a defined prisoner population;
- the private provider owns the prison through an equity investment in the facility and the acceptance of design, construction, ownership and management risks;
- the private provider supplies new prison facilities and is responsible for their on-going maintenance;
- the private provider provides

correctional services, as well as health and prisoner programs, which maintain or enhance the standard of those available in public prisons;
- the private provider assumes the risks related to the development, ownership and operation of the physical plant and service delivery.

Each successful private provider consortium therefore owns the prison which has been built on crown land, leased to the provider by the Government. In these cases, the Government has contracted with the provider to supply both facilities and services. The provider is required to develop, maintain and operate the prison, including providing sevices and programs, which meet the Government's corrections policy objectives in relation to prison safety and security, accommodation, and rehabilitation of prisoner standards.

Contract payments to private correctional providers are divided into three categories:

- Accommodation Service Charge (ASC) is a monthly payment for the provision of correctional facilities to a Government specified standard - it is in effect a debt servicing and facility charge;
- Correctional Service Fee (CSF) is a monthly payment for the operation of the prison and the provision of correctional services, education, traning, health, and other programs;
- Performance Linked Fee (PLF) is an annual payment based on the achievement of specified outcomes for both prison facilities and services - it is in effect a return on investment payment.

A fundamental feature of the contracts is the focus on outputs and outcomes rather than the traditional focus on inputs and processes. Specific service delivery outcomes are specified which must be achieved to justify, for instance, the payment of the performance linked fee.

Both the ASC and CSF payments are affected by sub-standard provider performance. For example, non-availability of part of the accommodation could result in ASC and PLF payment reductions. While failure to comply with any of the forty-two prison management specifications for correctional services could result in CSF payment reductions.

To achieve full payment of the PLF, providers must achieve specified outcomes for accommodation and correctional services, as well as meet specified benchmarks in five key correctional services:

- prison operations;
- education and training;
- prison industries;
- health;
- other prisoner programs (e.g, drug education programs).

As a last resort, where the payment regime to a provider has apparently not worked, the prison contracts provide a default regime. The default process is most appropriately applied where there are significant and continuing issues that need to be remedied by the provider within a pre-determined timeframe. If the provider fails to address the issues within the stipulated period, a range of legal remedies are available to the Minister, including seeking damages, "step-in" provisions and contract termination.

In addition to the Minister's ability to reduce payments, a wide range of incentives and safeguards have been put in place to ensure private providers deliver the appropriate standard of correctional

facilities and services:

- the Government retains the right to re-tender the contract for correctional services after the initial 5 year period of the contract and every 3 years thereafter;
- overall responsibility for prisoners remains with the State;
- Government representatives have unfettered access to all aspects of the operation of a prison;
- all prisons are open to public scrutiny through the Official Visitors Scheme, FOI, the Ombudsman and visits by prisoner visitors, clergy, TAFE teachers, medical staff and various other community representatives;
- rigorous probity processes ensures that high standards apply to prison contractors, sub-contractors and all staff employed in prisons;
- the Minister has clear "step-in right" to maintain the security of the system, and can, in the event of a serious breakdown, take over the management of a prison;
- in defined adverse circumstances, the Minister can require the contracting consortium to remove the operator and appoint a new operator.

A number of commentators and academics have challenged the efficacy of the private prisons "social experiment" in Victoria. This is often done, it seems, without any appreciation of the safeguards of the Victorian Model, in particular the powers and status of the Commissioner in relation to the safe custody and welfare of prisoners.

Linda Hancock, University of Melbourne, in her paper "Contractualism, Privatisation and Justice : Citizenship, the State and Managing Risk" (Australian Journal of Public Aadministration - December 1998) provides a useful summary of the key issues of debate on privatisation. At the start of her paper she states:

> "*Much of the debate in Australia around contractualism has concerned human services. However, those opposing privatisation in justice argue that justice is different from other policy areas in that part of the work of justice departments involves the use of delegated sovereign power with the potential to discipline, punish and use force. They object to the principal (sic) of delegating the State's power to punish to private for - profit corporations*".

Hancock subsequently outlines the counter-argument:

> "*Others adopt the view that delegating the State's powers to private interests is acceptable, provided adequate accountability and regulatory structures are put in place. This view would dismiss arguments about an integral role for the State and actions of non-delegatable powers (i.e, to punish) as unfounded.*"

In concluding her article, Hancock gives the impression she believes that the jury is still out on the privatisation reforms in justice, especially in relation to key issues of "*accountability, quality of service delivery, service gaps, balancing civil rights and budget efficiencies, ethical issues and issues of democratic governance*".

It is worth briefly pondering these issues, as they tend to recur through many of the contemporary writings about private prisons.

A. Accountability

Prior to the advent of private prisons, the accountability for the prison system

was vested with the Minister for Corrections and the Director-General of Corrections. The Director-General issued Director-General Rules which operationalised elements of the Corrections Act and set guidelines for the general operation of prisons. They were procedural in nature and contained few quantifiable performance measures.

A separate inspectorial unit would conduct an intensive inspection of each prison over a two to three year cycle. Prisons were required to report incidents as they occurred but there was no requirement for monthly performance reports. Prisoner regimes were left largely to the discretion of the Governor and out of cell hours were very much determined by the prevailing staff levels.

The onset of private prisons introduced a discipline that had previously not been present. Because of the contractual nature of the relationship between the State and private prison providers, greater specificity was needed in relation to all aspects relating to prison design, facilities and prisoner services. No longer could the correctional system rely on informal and ill-defined prison specific arrangements. Contractors wanted to know what outputs and standards were required before they would commit on price.

A much tougher and specific prison monitoring framework was established requiring detailed monthly reporting by contractors, on-site monitoring and service validation audits by both the Commissioner and the health authorities in relation to health services.

It is interesting to note that the private prison providers comment that the breadth and depth of reporting and monitoring in Victoria are more intense and demanding than in other States or in overseas prison systems.

The various other accountability processes that existed previously in the public prison system have also been retained. One suspects the Government understood the potential political risks of privatising prison management and developed a "belt and braces" approach to the issue of accountability. It would be difficult to conceive how prisons could have been subjected to more accountabiliy.

There appears to be a misconception that Government has abrogated its responsibility for prisoners once they are placed in a privately operated prison. This is clearly not the case. The Commissioner's responsibility for the sentence management function encompasses ongoing responsibility for the classification and placement review, as well as monitoring prisoner welfare through on-site monitoring and other review processes outlined earlier. The Commissioner maintains an ongoing oversight and interest in the progress of every prisoner throughout the sentence to ensure proper placements are made in each case and outcomes delivered.

A good deal has been written and said in the Victorian media about the performance of the three private prisons in Victoria. It is necessary to make a number of observations about this media coverage.

The first observation is that the progressive commissioning of three private prisons, representing 45% of the prison system, over the period from August 1996 to December 1997 was always going to be a significant challenge. The fact that it was done quite deliberately, with staff that were new to prison work in order to minimise the transfer of the "old culture", did not make the task any easier.

Secondly, the media and interest groups pre-occupation with private prisons certainly highlighted the incidents that did occur. It is apparent that the first year or so of commissioning new prisons was clealy a difficult time, as was illustrated by the commissioning of the Silverwater publicly operated facility in New South Wales. The final judgement about public versus private prison performance cannot be realistically made on the basis of the performance in the year of commissioning, but rather on the sustained performance over at least two to five years. Those claiming otherwise are either exposing an ideological bias or are unwilling to accept change.

Thirdly, the evidence in Victoria is that a multi-provider environment is now delivering real and sustainable benefits in service and cost terms.

B. Quality of Service Delivery

The quality of service delivery in prisons is monitored by both individual prison management and by the Correctional Services Commissioner. Health service quality is scrutinised by the Department of Human Services.

The experience in dealing with private operators in Victoria belies this fear that many have. A well developed contract, combined with thorough and well structured monitoring, has shown that the focus now being made on quality far exceeds the assurance that was ever available in this regard under traditional monopoly provider systems. Monitoring needs to be well targeted to key issues and based on an open approach that rewards sustained good performance. The incentive for providers to maintain quality services is a multi-provider business environment that is subject to thorough monitoring are self evident, and the cynical view that the first priority of private providers is to cut costs is not well founded.

A visit to any prison in Victoria, public or private, would challenge the objective observer to discern material differences in the quality of the services between the two categories of providers.

C. Service Gaps

The Government made a major investment in planning and policy development to underpin the privatisation of nearly half of its prison system. Every aspect of a prison's operations were identified, analysed, specified and standards defined. Forty-two prison management specifications were defined and standards set. Each private prison was required to develop an Operating Manual around these management specifications and this Manual is, in part, the basis for the evaluation of each prison's performance.

The prison operator specifies the "how to" in terms of inputs and processes, whereas the Government specifies the outputs and outcomes required. The operator has 'ownership' of the inputs and processes and carries the related risks.

D. Balancing Civil Rights and Budget Efficiencies

The Corrections Act specifies not only the legislative parameters for the Victorian prison system but also defines prisoner rights (Victoria was the first State to legislate prisoner rights in the mid-1980s).

The Corrections Act makes no distinction between public and private prisons on the issue of prisoner treatment. In agreeing on a contract price for a private prison, the Government has needed to satisfy itself that the provider had the appropriate capability to deliver the services required. The capacity of the bidder to provide a service at the price quoted was an important consideration in contract evaluation.

Again, the argument that the profit motive will result in a diminution of prisoner rights in private prisons has not proven to be the case. There is considerable evidence that the quality of prison environments, for instance, in terms of hours out of cells and access to training programs has considerably improved. The consequences of non-compliance with legislative requirements would simply not be risked by the operator. Empirical evidence would suggest that the profit motive is acting as a key focus on private prison operators to pay close attention to causal factors of tensions within the prison and to adopt management and early intervention regimes to prevent more untoward prisoner behaviour that impact on prison operations.

E. Ethical Issues

The issue of ethics may arise in two significant ways in relation to private prisons.

Firstly, the ethical standards that apply in the management of contact dealings when tenders are let for private prison consortiums. In Victoria, a rigorous probity process saw a high quality approach to the letting, evaluation and selection of successful tenderers. This probity review is ongoing and any change in ownership or key personnel is subjected to critical review. Failing to notify such changes has serious contractual consequences.

Secondly, there is the ethics that operators of prison of bring to the way prisons are managed. Neither the Commissioner's Office, Official Visitors, the Ombudsman nor Chaplains have reported ethical breaches in the conduct of any of the State's private prisons. Contrary to the perception created by interest groups and the media, a wide range of groups visit prisons on a regular basis. In addition, there is a constant movement of prisoners between prisons, as well as visitors to prisoners. There is no evidence that ethical standards are being compromised. The ethical standards of the operators is something in which they place great emphasis given their active ongoing involvement in tending for new business around the world. Unfavourable publicity about their ethical standards would, without doubt, hamper their chances in any future bidding process.

F. Democratic Governance

In large part the issue of democratic governance relates to the issue raised by Hancock in her paper over the capacity of the State to delegate its power to punish private for-profit organisations.

This is a fundamental issue. This is why in the Victorian model the role of the Commissioner in managing the sentence given to the prisoner by the Court is critical. It is the Commissioner who acts to ensure that the sentence of the Court is properly implemented, not the prison operator. It is also the Commissioner who decides the placement of the prisoner and periodically reviews this placement. The "delegation" to the operator of the prison is defined by the provisions of the Corrections Act, publicly available service standards and operating manuals, and is the subject of substantial accountability and monitoring regimes.

Perhaps the most controversial issue that arises with privatising in government relates to the conflicting ideals of the people's right to know, the public interest, and "commercial confidentiality" of the private prison contacts. In Victoria, the bulk of the private contact details and related documents have been released to the public, however, provisions dealing with security matters and specific commercial details have not been released. There is no answer to this conundrum that

will be acceptable to everyone. Commercial contractors when bidding for government services do so in the full expectation that certain details of their bid remain confidential. The community equally needs to be assured that the Government is achieving value for money when entering into contracts with the private sector.

There has been no complaint that the "product" specified in the project briefs for Victoria's private prisons was inadequate. Indeed, there is more information in the public arena about what prisoner services should be provided then has ever previously been the case.

The issue seems to be how to engender public confidence that what should be done is, in fact, being done. This is not a new issue, as it has also existed in relation to the traditional monopoly provision of prison services. The introduction of private providers has, it seems, brought a heightened level of suspicion, at least in some quarters.

Perhaps there is a middle path where an independent broker, such as the Auditor-General, can validate the overall efficacy of private prison contracts, without revealing the commercial details of the contract. It is important that the community has confidence in the privatising of services while private contractors can confidently bid for government work on the understanding that competitors are not privy to their pricing details.

IV. SUMMARY

Public administration has been the subject of rapid and substantial change over the past decade. Governments have been confronted with the full force of globalisation. To remain competitive, Governments worldwide have taken difficult decisions to reduce debt and minimise taxes. As a result, the role of the public sector has changed remarkably.

In Victoria, the public sector has been at the cutting edge of reform over the last six years. The Government has pursued a significant program aimed at increasing the productivity of the public sector. A major part of the reform program has been to privatise significant aspects of government services, including a range of services within the Justice portfolio.

The privatisation of around 45% of the State's adult prisoner capacity has been the focus of many debates. The advent of three new private prison operators since 1996 has required the development of more rigorous and transparent design and operational standards for prisons, introduced new and additional accountability mechanisms, and provided an imperative for the public prison system to become more efficient, responsive and innovative.

While the transition to a new multi-provider system has not been without its problems, overall results to date would indicate that the prison privatisation "social experiment" in Victoria is bringing substantial benefits in terms of service quality, innovation, responsiveness and reduced costs.

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INNOVATIONS IN CORRECTIONAL SERVICES AN EXCURSION THROUGH THE CHANGING PRISONS CULTURE OF VICTORIA

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ABSTRACT

Victorian prisons have witnessed significant changes over the past decade: from 1988 when there were a multitude of inquiries into prisoner incidents, deaths and corruption, through the turbulent beginnings of unit and individual prisoner management, to the creation of statewide Drug, Violence and Sex Offender Strategies and the contracting out of key services- culminating in the privitisation of 45% of the prisoner population and the closure of old prison stock.

For CORE- the Public Correctional Enterprise, Victoria's public corrections agency, the journey has been one of significant organisational and cultural change, and progression to a learning organisation. This is clearly reflected in the way we manage prisoners. "Just gaols" have at their foundation, professional staff-prisoner relationships and the empowerment of staff and prisoners. They welcome scrutiny and challenges to old practices.

Marked changes in culture and prisoner management mean that prisoners have a greater opportunity to return to the community with more skills. The challenge ahead however is to achieve the rhetoric of rehabilitation and demonstrate to the community that we have a system that 'works'.

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"Pain is an enduring feature of the correctional enterprise. We must accept this hard reality, and quite explicitly attempt to promote growth through adversity. This is a genuine correctional agenda. For men who cope maturely with prison, I will argue, are men who have grown as human beings and been rehabilitated in the process."

(Johnson, 1996, p.97)

I. INTRODUCTION

The tendency to use imprisonment as a punishment for crime has risen and fallen over the years, depending on the attitude of the courts, and the public's tolerance of crime. Despite the differing views and opinions people hold of imprisonment, it will remain an important feature of sentencing in the foreseeable future. Rightly or wrongly, in Australia, the community still sees imprisonment as the most effective way of protecting itself from fears. Nevertheless, to the community, imprisonment is a double edge sword: on the one side it offers protection, through deterrence and incapacitation; and on the other, it is expensive and damaging to the community, possibly causing an escalation in crime among many individuals who are eventually released.

Imprisonment emerged as a major form of punishment for crimes during the late eighteenth and early nineteenth centuries, coinciding with the period of "Enlightenment" in Europe and the

industrial revolution, replaced earlier forms of punishment that took their toll upon physical pain and social embarrassment.

The early aim of imprisonment was to achieve the "moral salvation" of the offender through the provision of harsh, deterrent and retributive justice. Prison programs, such as they were, facilitated this aim by providing hard labour and religious indoctrination.

By the mid 20th century, the aims of reformation and rehabilitation had come to be given equal status to those of deterrence and retribution. In the 1950s and 1960s the belief that the purpose of imprisonment included the "treatment and training" of prisoners had become fully established and accepted by the wider community.

Under this "treatment model", programs in the State of Victoria multiplied and there was a general feeling that prisons could succeed in rehabilitating offenders. Psychiatric services were introduced in the early 1950s. Parole was introduced in 1955 in order to allow "rehabilitated" prisoners the benefit of early (conditional) release. Training prisons were identified based on the theory that a strong work ethic in the prison system would produce rehabilitated offenders. The classification system was adopted by Victoria as a means of differentiating prisoners according to their different treatment needs.

In the mid 1970s the feeling of optimism began to change for two reasons. Firstly, the publication of a report by Lipton, Martinson and Wilkes (1975) which seriously questioned the efficacy of the treatment models. After examining the evaluation reports of 231 correctional programs in the US, dating from 1945 to 1967, the researchers concluded that "*with few and isolated exceptions, the rehabilitative efforts that have been reported so far have no appreciable effect on recidivism*".

Secondly, after a series of incidents and enquiries (such as the Jenkinson Inquiry in 1972) there was a general recognition that prisoners were citizens with legally enforceable rights. There was a time when a prison conviction often meant "civil death", a cruel form of punishment expressly acknowledging a prisoner's permanent removal from free society. It is now argued that prisoners should be entitled to the same rights as a free citizen, except where the nature of the confinement necessarily requires modification.

These two developments led to the "justice model" of punishment and to the notion of the purpose of imprisonment as being "humane containment". This view has been sustained since the 1980s and is still current today. There was during this "justice model" era an increasing emphasis on physical security and a growing concentration on prisoners' rights, rather than their needs. The rhetoric of treatment and training had had its day. Programs were provided for prisoners to access only if they wished. Correctional agencies did not perceive that they had any responsibility for encouraging prisoners to undertake programs. The belief was that only properly motivated prisoners would benefit from participation in prion programs.

It is clear that prison programs in an historical sense through the "justice model" have focused on the "rehabilitation" of the offender; ensuring the prisoner does not reoffend after release. Even during the humane containment era, prison programs were conceived of as being related to the prisoner's capacity to cease reoffending. They were viewed cynically by the majority

of correctional practitioners for this very reason. The evidence suggested that programs could not succeed in rehabilitating offenders. Prison programs were offered only if prisoners sought them out and expressed a desire to participate. The rhetoric of the time identified it as the prisoner's responsibility to rehabilitate themselves.

Another purpose of prison programs is only just now emerging. Rather than focussing solely on the goal of rehabilitation and therefore "outwards" and into the future, prison programs are increasingly focussing "inwards" and upon the present and upon the goal of providing positive and effective custodial management. This is what is termed as "positive custody".

Building upon the humane containment era, the "positive custody" model recognises that imprisonment can be "criminogenic" or can increase the likelihood of future crime and can promote immature coping behaviours by prisoners. Prison programs as part of the "positive custody" can enhance the safe and secure management of prisons and promote the development of mature coping skills which are equally relevant within and on release from prison.

Achieving Positive Custody-Prison systems can intensify the social conditions that lead to offending behaviour. For instance prisons have the potential to:

- *Alienate* prisoners by failing to give them any say in the management of their lives and by removing them from their normal environment;
- *disempower* prisoners by failing to provide adequate and accessible information about the system and the way that it works;
- *bore prisoners* by failing to provide activities that effectively occupy their time;
- provide *opportunities* for crime by failing to provide adequate supervision or the means for prisoners to be safe or to protect their personal belongings;
- promote *sub-cultural norms* by failing to provide adequate supervision or the means for prisoners to be safe or to protect their personal belongings;
- promote continued *poverty* by failing to provide prosocial leadership and by allowing gangs to be maintained in prisons;
- reinforce *patriarchal social norms* by having a majority of male staff and prisoners with no active consideration of the needs of female staff or prisoners; and
- promote undesirable outcomes of *deinstitutionalisation* by failing to involve relevant agencies in the supervision of the psychiatrically ill or intellectually disabled.

In order to achieve positive custody, prisons should emulate within their walls the society that is not "criminogenic". To do so, prisons must adopt community standards as a base but at the same time be less alienating, more empowering, more constructive and more egalitarian.

Managing people within prisons is a complex affair. Complex, because invariably it involves the need to balance a number of conflicting needs and aims. Stakeholder analysis has shown my organisation, CORE-the Public Correctional Enterprise, that these needs and aims are described as:

> *"custody, safety, crime prevention, deterrence, reform, containment, control, incapacitation, punishment, retribution, restraint, rehabilitation, constructive activity, justness, therapy and training".*

Johnson (1996) argues strongly that a traditional hierarchal system of prison

management "conditions" those associated with it, that includes both staff and prisoners, to cope "immaturely". He goes on to say that modern prison systems should be re-structured in such a way as to encourage what he calls "mature coping".

Certainly to become more effective, imprisonment must continue to offer the protection of incapacitation and deterrence but at the same time it must lessen the harmful effects of the experience. Biles (1992) argues that the totality of the experience of the prisoner must be considered when developing a regime to manage the offender whilst challenging (and changing) antisocial or criminal behaviour. I strongly believe that good management and leadership can only achieve this.

In terms of management, this means that prison staff must provide prisoners with the opportunity to develop or maintain skills that will enhance their chances of leading a law-abiding lifestyle after their release. Skills that lead the individual to accept greater responsibility, self reliance and self discipline. In terms of leadership it means that prison staff- all prison staff - must serve as strong examples of honesty, fairness, tolerance, patience and understanding. In essence, good management and leadership are the essential features of prison work and are our prime collective responsibility. To fail that responsibility is to fail ourselves and to fail to provide the community with protection beyond the prisoner's term of imprisonment and prisons remain "just gaols".

How does CORE- the Public Correctional Enterprise respond to this challenge? The greatest single endeavour of public corrections in Victoria over the past decade has been to change the culture of our prisons and CORE as a whole. I would like to take you on a brief journey through the significant events in Victorian prisons over the past 10 years that have shaped the management of prisons to go beyond "just gaols". I believe we now have to talk about the challenges ahead and deliver on rehabilitation and harm minimisation strategies.

Probably the blackest day in Victoria's prison history was the death of five prisoners in October 1987 in a fire at Jika Jika, a high security, management unit in Pentridge Prison. On the heels of this tragedy were numerous internal and external inquiries into incidents, deaths, drugs, accountability, corruption and mal-administration within the then Office of Corrections. It was a demanding time for me to take on the responsibilities as the then Director of Prisons, because it was at this time that changes to the way we manage prisoners in Victoria really began in earnest. We are entering the era of humane containment going beyond the concept of "just gaols". In the early 1990s CORE (the then Office of Corrections) developed a framework to encompass all aspects of the prison environment, including regimes, programs and prison "culture" and worked to establish, develop and exploit the synergistic links between each in order to maximise the potential for successful rehabilitation of Victorian prisoners.

What is "rehabilitation"? Complete loss of freedom is the maximum punishment our law permits. The length of time that freedom is lost depends on many factors; the crime, the circumstances, the intention of the offender, prior history, displays of remorse and the plea. The court will also weigh the need for: retribution; specific deterrence; general deterrence; rehabilitation and parsimony. In balancing these considerations, no two cases are exactly the same.

Whilst rehabilitation often implies the restoration of a previous level of functioning, for example learning to walk again after a physical injury, this is not a useful definition when talking about the "rehabilitation" of offenders. Their level of functioning before entering the prison system may not have been conducive to the ultimate goal of prosocial and lawful behaviour. For example, a prisoner may have had poor living and vocational skills prior to incarceration. Thus rehabilitation in the first instance must refer to equipping prisoners for making a living or integrating into the community in a prosocial and lawful manner, and will in many instances involve a gradual process of acquiring new skills and challenging offence related behaviours.

Successful rehabilitation is generally taken to mean that a prisoner will not re-offend after release. This may not always be a realistic goal given that most offenders will need to make substantial attitudinal personality and behavioural changes and develop educational, vocational, social and living skills in order to increase the likelihood that they can successfully maintain themselves in the community. It may therefore be more useful to measure the effectiveness of rehabilitation in terms of altered offending patterns, such as reduced seriousness of offending, or increased time periods of re-offending.

A. The Purpose of Prison Programs

A rehabilitative environment encompasses all aspects of the prison environment, including regimes, programs and prison "culture", and synergistic links between these different facets must be established and exploited in order to maximise the potential for successful rehabilitation. Thus, while programs can make a strong contribution to the achievement of a rehabilitative environment, a broader strategy including: promoting humane and effective management strategies; the successful adoption of unit management, and promoting the input of the programs team into management approaches is crucial to achieving the goal of "positive custody".

The potential contribution of prison programs to achieving these objectives can be summarised under the following headings:

(i) programs which create an environment conductive to rehabilitation:
   - programs which provide basic standards of care;
   - programs which seek to create a rehabilitative environment;

(ii) programs which prepare prisoners to re-enter society:
   - programs which provide prisoners with integration skills;
   - programs which seek to reduce offending behaviour.

Programs which provide basic standards of care and which seek to create a rehabilitative environment should receive the highest priority. Both contribute to the goal of developing a prosocial prison environment, which is conductive to change and to the development of mature coping skills. Programs which prepare prisoners to re-enter society, including those directed towards reducing specific offending behaviour, tend to be more successful within a rehabilitative environment.

These program categories apply equally to male and female prisoners, as well as to special groups within the prison population (such as Aboriginal prisoners and young adults). The different needs of groups of prisoners will be relevant to the design of programs rather than modifying their overall purpose.

II. PROGRAMS WHICH CREATE AN ENVIRONMENT CONDUCTIVE TO REHABILITATION

Rehabilitation and education of offenders is a priority. However, programs targeted towards reducing offending behaviour are best provided in an environment that actively encourages prisoners to use their time constructively, and provides basic standards of care.

A. Programs Which Provide Basic Standards of Care

The first and most important duty of prison administrators must be to provide basic standards of care for prisoners, and such programs must receive the highest priority.

Programs, which fit into this category, include:

- Primary medical and psychiatric care (addressing the physical and mental problems of prisoners).
- Crisis intervention (addressing the immediate needs of distressed or suicidal prisoners).
- Classification programs (achieving safety and security for all prisoners by differentiating between groups of prisoners based on their risk and needs).
- Legal aid (providing prisoners with adequate access to legal representation).

B. Programs Which Seek to Create a Rehabilitative Environment

Creating a positive, rehabilitative environment within the prison system is essential if prisons are to cease being criminogenic in nature, and if the prison conditions are to be conducive to rehabilitation. Prisons should not intensify the social conditions that have lead to criminal behaviour in the first place, but must provide a pro-social environment which:

- is conducive to change;
- challenges rather than supports or accepts offending behaviour;
- provides pro-social modelling;
- minimises harm;
- promotes self-esteem;
- maximises prisoners' self-control and sense of control over their environment and their future;
- encourages prisoners to take responsibility for their actions;
- promotes mature coping skills.

Programs which seek to contribute to a rehabilitative environment can reduce the opportunity for crime to occur within a prison, and can provide a forum in which staff can provide pro-social leadership. Such programs seek to occupy the time of prisoners and so reduce the boredom that may lead to management problems within the prison. These programs may also provide the potential for the acquisition of basic skills and interests that may assist prisoners to undertake more constructive activities and leisure pursuits on their release from prison.

Programs which assist to create a rehabilitative environment include:

- Reception and orientation programs-reception into custody (providing prisoners with information about the prison system and allowing them to learn how to deal positively with the here and now of their imprisonment).
- Reception and orientation programs-transfer between prisons (providing prisoners with information about the prison system, and options for program participation).
- Drug and infectious disease education programs (providing prisoners with information about

drug and alcohol use and infectious diseases).
- Recreation (reducing boredom and promoting productive use of leisure time by providing interesting and pleasurable sporting and hobby activities).
- Contact visits (promoting the maintenance of essential links with family and friends).
- Spirituality (allowing prisoners to receive the support of their faith).
- General welfare and counselling (addressing the welfare needs and problems of prisoners).

III. PROGRAMS WHICH PREPARE PRISONERS TO RE-ENTER SOCIETY

Rehabilitation, education and reform are an integral part of the prison system, and preparing prisoners for constructive and non-violent participation in community life upon their release must be a priority. The prison system must provide opportunities for prisoners to participate in programs, which reduce offending behaviours and encourage citizenship, and must actively support and encourage such participation. Programs which prepare prisoners to re-enter society include programs which provide prisoners with basic skills to facilitate integration, and programs targeted at offending behaviour.

A. Programs Which Provide Prisoners with Integration Skills

Programs targeted at assisting prisoners' reintegration into the community provide the potential for the acquisition of skills that may assist prisoners to pursue education, find employment or use their time in a more constructive manner on their release from prison. Such programs may include;

- Prison industries (promoting work skills and habits through the provision of rewarding and useful work).
- Education and Training (promoting skills acquisition relevant to the labour market by providing accredited training and basic education for prisoners).
- Release preparation (providing a range of life skills programs that assist the prisoner's return to the community).
- Custodial Community Permit Program (allowing long-term prisoners the opportunity to gradually re-establish family ties and readjust to life in the community prior to their release).
- Community Integration Program (providing prisoners due for release with practical and essential information to assist their reintegration into the community).
- Integration Programs (increasing prisoners' practical living skills necessary to re-enter the community).
- Personal development programs (increasing prisoners' personal and social skills through programs including adventure-based challenge programs, communication skills, social skills, etc).

B. Programs Which Seek to Reduce Offending Behaviour

Programs which seek to reduce offending behaviour will either be related directly to offence types or to underlying problems within the individual that have caused the offending behaviour. Treatment programs and programs targeted at offence-related behaviour include;

- Drug and alcohol treatment programs.
- Sex offender treatment or management programs.
- Violent offender Treatment

Programs.
- Drink-drive programs.

In 1988 F Division, previously a prisoner accommodation unit at Pentridge prison in Melbourne, was developed into a state-wide reception and assessment program centre for all newly received male prisoners entering the Victorian prison system. For the first time, remandees and sentenced prisoners were given a comprehensive induction into the prison system that included medical assessments, screening for risk and providing information about the prison system and options for program participation. In the five years prior to the creation of the reception and assessment program, there had been twenty-six suicides in Victorian prisons. In the five years following the introduction of this program, six prisoners committed suicide.

In 1989 and 1990 three new 250 bed prisons were commissioned in Victoria to replace old facilities. They were the Melbourne Remand Centre, Barwon and Loddon, each with single self-contained cell accommodation. CORE, the Public Correctional Enterprise, manages each of these prisons. Moves to change the infrastructure of our other facilities also began and our large, old divisions where we previously 'warehoused' prisoners were re-furbished into smaller, more manageable and livable units. Sanitation was provided to all prisons, cells re-furbished and large dormitories were replaced by smaller rooms with a maximum of four prisoners.

This was also the time that unit management was borne in Victoria, wherein prisoners were managed in smaller groups, with high levels of interaction between staff and prisoners and the requirement for prisoners to take greater accountability for their lives in prison (Griffin, 1995).

Unit management provided the framework for achieving a positive custodial environment. In a unit managed prison, prisoners have the opportunity to have a say in the management and organisation of their lives through the development of individual management plans in tandem with their supervising prison officer and through unit meetings. They are therefore potentially less alienated by the justice system.

The opportunity to have input into the development of individual management plans and the capacity for prisoners to get to know their supervising prison officers also provides a means for prisoners to have access to information about the way a prison system works.

Under unit management, prisoners are managed in small groups by staff who know them. They receive closer scrutiny and surveillance which leads to increased security, feelings of safety, less opportunity for crime and lessened potential for gang formation and maintenance. Barriers between staff and prisoners are broken down in unit managed prisons so that staff have the capacity to provide prosocial leadership to prisoners.

The Individual Management Plan (IMP) was also created as part of Unit Management. This is a file in which all information pertaining to the prisoner's sentence, management and participation in industry, education and programs was detailed. Prison officers are trained to broaden their traditional roles to include prisoner assessment and orientation, individual management planning, general welfare and counseling, and recreational planning.

All of these initiatives helped tremendously in our endeavour to work

towards a safe, secure, humane and just environment for both prisoners and staff. Prisoners began to feel more empowered. They could make decisions affecting their own lives. They could choose when to shower, they had a greater choice of canteen items, in many locations they could cook their own meals, they could apply for positions in industry, they were educated through the external educational TAFE campuses at each location, rather than by primary school teachers, they could commence and complete programs regardless of which prison they were housed in, and they had a choice of a range of programs and activities directed at integration and rehabilitation. They began to talk to officers about what they wanted and expected from the prison system to ensure that the Individual Management Plan recorded their working toward their release.

The use of Individual Management Plans (IMPS) meant prisoners were required to be more accountable for their actions and were required to take greater personal responsibility than they had under previous regimes.

In the mid 1990s, CORE developed Strategies relating to Drugs, Violence and Sex Offenders, which provided clear direction for the management of such offenders within the prison and methods of addressing their offending behaviour. For example, in regard to drugs, from the outset the results of the Drug Strategy were promising. Results indicated decreased drug use and a reduction in the number of violent incidents and standovers. However one of the unfortunate paradoxes of this detection, deterrence and treatment paradigm is that those who elect to continue to use drugs in prison tend to do so now more unsafely because our ability to find injecting equipment and associated paraphernalia is much improved and they resort to unsafe injecting practices.

The way CORE has re-developed Bendigo prison in country Victoria is exemplary as far as progressive prisoner management is concerned. Bendigo prison accommodates up to 80 medium security male prisoners for whom drugs and related harmful behaviours have contributed to their incarceration. The prison offers a range of treatment options to substance abusers within a "community prison" environment. CORE has contracted with a provider of specialist offender psychological services and a well-respected community drug and alcohol agency. Prisoners are assessed and matched to programs of varying intensity and duration. An essential element of the success of the program is the positive environment; created by prisoners and prison and treatment staff that reinforces personal accountability, mutual respect and a commitment to model community values.

However these approaches only went part way to dealing with the problem. Breaking open the 'closed rank mentality' and challenging the way prison officers related to prisoners brought about the real difference to prisoner management in Victoria. In the words of Vivien Stern:

> *"The prison officer is at the centre of the system. And the prison officer's job is crucial to a humane and civilised system. This is where reform has to start"*
>
> (Stern, 1975, p.94)

In 1991, in a move unprecedented in Victorian prison history, six officers were charged with assault for the violence that was perpetrated on a prisoner who was being transferred between divisions. To be brutalised by the relationships one has in

prison is a most damaging experience for persons whose histories are typically marked by pain and abuse, for whom this pain and abuse is a factor in their offending behaviour and who will one day be released from prison into the community.

In 1996, CORE implemented one of the most important elements of its *Strategy for Violence Prevention*, namely conflict resolution training of all prison staff. This training, rolled out by trained prison officers, further empowered staff by offering them skills to manage themselves and their relationships with prisoners. An interesting outcome of the training was that staff feedback also told us that the training impacted on their home lives in a positive way.

Lateral entry across all levels in Corrections and new paradigms of correctional management challenged the decade-old mentality that the only way one could be appointed as a prison governor was by coming up through the ranks. We now recognise that to manage a prison, one needs to be a good general manager, a leader and an enabler, not necessarily a good custodian. CORE has invested a great deal of resources in ensuring our senior managers receive diverse leadership and management training. We have also invested heavily in succession planning.

One example of CORE's commitment to staff training is its strong support and leadership role in developing National Competency Standards for all Officers working in Corrections. Under unit management the base grade officer has been empowered to make decisions in a significant number of areas; a marked departure from the traditional hierarchical structure where even the most mundane of decisions required the manager's action. (Griffin, 1995). To enable these changes to occur, we attempted to work differently, less antagonistically with the unions and have been successful in pushing through many changes as a result.

In a move that in hindsight advanced the public corrections reform agenda by creating a sense of urgency, the Victorian Government called for expressions of interest from the private sector to build, own and operate two X 600 bed facilities for males and one X 125 bed female facility. These prisons were to replace existing public sector prisons and lead to the decommissioning of five old Victorian era public prisons and the retrenchment of just over 600 staff. CORE then had the opportunity to assist staff moves who either did not have the skill mix or the wish to enter into a new era in corrections.

Through these changes CORE-the Public Correctional Enterprise has accepted the challenge of a competitive business environment and is developing into a learning organisation. We have adopted the Business Excellence framework of the Australian Quality Council; we're surveying offenders, prisoners, staff, and other stakeholders on their expectations of our performance. We have developed our own identity and clearly articulated our mission, vision, values and behaviours to our staff.

We are moving from being "just gaols" in the sense of "simply" or "only" prisons, to "just gaols" or "fair" prisons and beyond that of a correctional organisation that strives to offer a range of products (placement options, services and programs for prisoners) in a competitive environment in an attempt to match the individual needs of the prisoner.

I believe we have come a long way, and from structured feedback mechanisms know that the majority of prisoners perceive the prison system as fair and

generally safe. It no longer offers the excesses it did previously. In the event of disciplinary action and sanctions being necessary, they are anticipated and do not constitute a flagrant abuse of power and position. In a system that is fair and without excesses, and where prisoners can question why things are done a certain way - where there is fundamentally a sense of justice, then prisoners are less damaged by their experience and more easy to manage.

But the bar needs to be set even higher. All prisons have the capacity to challenge the immature and destructive ways prisoners deal with their imprisonment experience and the other elements of their lives. Robert Johnson's concept of "mature coping" has application here. It means:

- dealing with life's problems like a responsive and responsible human being;
- seeking autonomy without violating the rights of others (the premise here being that prisoners with a sense of control over their lives adjust better to prison and to life on the outside);
- security without resort to deception or violence and relatedness to others as the fullest expression of human identity (wherein trust replaces power as a mode of problem solving).

Mature problem solving builds self-esteem, which in turn produces confidence and resilience in the individual and often makes failure manageable. Our challenge as providers of correctional services is to offer prisoners an environment in which this growth can occur, wherein mature coping is modelled by our staff.

We must continue to offer high quality programs to assist prisoners' maturation and skill development, but also start asking the hard questions about "what works" and being prepared to have our program development influenced by the outcomes of controlled evaluation studies. We must continue to promote professional staff-prisoner interactions - wherein prison staff serve as strong examples of honesty, fairness, tolerance, patience and understanding (Griffin, 1995). From this will develop a prison experience that is empowering for both prisoners and prison staff, rather than defeating.

Programs in the late 1990's are integral to the purposes of imprisonment. Where once the purpose of imprisonment was nothing more than humane containment (and the priority task related to security and custody), the purpose of imprisonment now includes a requirement that there be active attempts to rehabilitate prisoners, and it is acknowledged that this can only occur within an environment that is conducive to such rehabilitation. This must be achieved through a combining of unit management and effective prison programs and prison security. In the past, prison security has been used as an excuse for not providing effective prison programs. Prison security will be maintained in such a system through closer surveillance, staff personal knowledge of prisoners and through effective occupation of prisoners' time. Security is part of the process of creating a rehabilitative environment, not excluded from it. This new humane containment model, will be achieved through a combining of the many facets of the prison system such as programs, management approach and security in order to achieve a meaningful environment for prisoners which promotes pro-social behaviour and prepares prisoners to effectively reintegrate into society.

And, remembering the words of Johnson that I started with, that pain is the harsh reality of imprisonment, we must make concerted efforts to establish a greater range of diversion programs that offer

reparative value to the community whilst allowing the offender to maintain family and social supports and access to community treatment resources.

> *The notion that staff and inmates can share a constructive agenda- that they might work together in service of a prison community that promotes mature coping and responsible citizenship- looms as a distinct possibility for perhaps the first time in prison history*
>
> Johnson, 1996, p.89

> *Prisoners must cope maturely with the demands of prison life; if they do not, the prison experience will simply add to their catalogue of failure and defeat. Mature coping, in fact, does more than prevent one's prison life from becoming yet another series of personal setbacks. It is at the core of what we mean by correction or rehabilitation, and thus creates the possibility of a more constructive life after release from prison*
>
> Johnson, 1996, p.98

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PARTICIPATION OF THE PUBLIC AND VICTIMS IN CRIMINAL JUSTICE ADMINISTRATION

*John Brian Griffin**

I. COMMUNITY SAFETY AND CRIME PREVENTION - EVERYONE'S RESPONSIBILITY

Developing and maintaining a safe community is vital to improving the living conditions of all citizens. It makes our communities a better place in which to live, raise a family, to invest and do business. Achieving a safe community is more than solving and reducing crime, it is reducing the public's fear of crime. It is about encouraging all sections of the community that they can participate in a diverse range of business and recreational activities at all times of the day and night, and be safe.

In the past, crime prevention strategies, throughout the world, have tended to be:

- Narrowly focused
- Fragmented
- Program driven
- Funding dependent; and
- Short term

Economically and socially, new crime prevention strategies are required which:

- Are innovative
- Are outcome orientated
- Provide a more coordinated government and community approach
- Build on local and international experiences
- Involve the wider community and private sector

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In order to place Australia's crime prevention and community safety approaches into context, it is useful to examine the broader international environment.

II. UNITED KINGDOM

A. Crime and Disorder Act: Placing Crime Prevention Within a Statutory Framework

In 1998 the United Kingdom introduced the *Crime and Disorder Act*. This Act places a legal obligation upon the police and local authorities (eg, housing, health, and educational authorities), to work together to develop and implement a strategy for reducing crime and disorder in their communities.

The overall aim of the *Crime and Disorder Act* is to empower local communities to address crime problems. In formulating and implementing a strategy, police and local authorities have to:

(i) Conduct and publish an audit of local crime and disorder problems:
(ii) Consult locally in conducting a crime audit, seeking the views of community groups;
(iii) Set and publish objectives and targets of their strategy arising from the auditing process (short and long-term performance targets have to be formulated).
(iv) Identify and stipulate the various responsibilities of the agencies that will be involved in implementing the strategy.
(v) Monitor outcomes and outputs.

The *Crime and Disorder Act* aims to ensure that a partnership, multi-agency approach is adopted in addressing local crime and disorder problems. The Act does not prescribe what the agenda for local partnerships should be, nor the structures that will be needed to deliver that agenda. Rather these have to be tailored to local community contexts.

B. Safer Cities Program: The Need to Combine Situational and Social Approaches

Also in the United Kingdom is the Safer Cities program, which aims to reduce crime and fear of crime. It forms part of the Government's Regeneration Program, that aims to address the social, physical and economic problems of disadvantaged urban areas - particularly council housing estates.

The program provides funding for individual projects, with the UK Home Office and Audit Commission responsible for monitoring and evaluating Safer Cities. The program takes a partnership or multi-agency approach. Elements include:

- Voluntary bodies and the private sector have been important in the design and delivery of Safer Cities initiatives.

- Projects have tackled a range of crime problems (eg, domestic and commercial burglary, domestic violence, vehicle crime, shop theft, crime against small business) and disorder issues (eg, graffiti and vandalism).

- Decreased fear of crime has been regarded as a consequence of successfully reducing crime *per se*.

- The dominant focus of Safer Cities has been upon the reduction of burglary, both in domestic and commercial settings. Hence situational approaches like physical security measures have dominated.

- A number of successful "demonstration projects" have shown that while situational measures may work independently, a comprehensive approach involving socially orientated initiatives (eg, educational and publicity campaigns, support for "at risk" families and young people) ensures that all possible predictors of crime and disorder are addressed.

C. Repeat Victimisation: Focusing Crime Prevention where it is Most Needed

The United Kingdom Home Office Research and the Safer Cities program illustrated there are some places and people that are prone to multiple criminal victimisations, by the same or different crime over time. This is termed 'repeat victimisation'.

Research shows that places and people, who are revictimised, account for a large percentage of criminal victimisations. Repeat victimisation has become a key focus of UK crime prevention initiatives. Programs to prevent repeat victimisation have addressed residential and commercial burglary, car theft, domestic violence and racial attacks.

Reducing repeat victimisation is increasingly used by UK police as a key performance indicator. Experts argue that focusing on repeat victimisation as a crime prevention strategy ensures:

(i) Crime prevention is focused upon those people and places in highest need of intervention.
(ii) Scarce crime prevention resources are more strategically focused.

D. Social Exclusion: The Interdependency of Crime, Social and Economic Issues

In 1998, the Blair government made a commitment to address the problem of social exclusion by establishing the Social Exclusion Unit. The United Kingdom government regards social exclusion as a combination of linked problems that individuals or areas can suffer. These include unemployment, poor skills, low incomes, poor housing, high crime environments, bad health and family breakdown.

A variety of strategies have emerged under the banner of addressing social exclusion. These include work and training programs, reform to welfare benefits and entitlements, family tax credits, income support, improving numeracy and literacy skills of the young, capital support for housing improvement, a national drugs strategy and local crime reduction partnerships, economic regeneration of poor neighbourhoods, and initiatives to address physical and mental health.

Due to the multi-faceted and interdependent nature of the problem, one of the central roles of the Social Exclusion Unit is to promote cooperation between government departments, local authorities and community agencies, and to improve mechanisms to integrate their work in addressing social exclusion.

III. UNITED STATES OF AMERICA

A. The US Crime Control Model: A Dual Track System

The US approach to crime control is working, because crime rates overall have been decreasing. Despite this, its juvenile crime rate has not followed a similar trend.

America adopts two contrasting approaches - a dual track system:

(i) "Get tough" retributive measures, exemplified by "three strikes" legislation, boot camps, and zero tolerance policing.
(ii) Measures concerned with early childhood development, opportunities for young people, improving residential neighbourhoods and proactive problem orientated policing.

B. Developmental Prevention: Addressing Risk and Protective Factors

A key concern of US initiatives has been with reducing risk factors associated with juvenile delinquency (eg, availability of drugs and firearms, economic deprivation, family dysfunction and conflict, poor school performance, early problem behaviour, and gang membership) and strengthening protective factors (eg, family attachment and stability, consistent parenting, economic opportunity, high academic achievement and pro-social role models).

The US Congress has recently legislated for the development and funding of delinquency prevention programs (eg, juvenile mentoring). A "Comunities That Cares" model has guided US initiatives that address risk and protective factors at the local level. This model involves:

(i) Mobilisation of key authorities (eg, educational officials, political and business leaders and police) to agree to a program and pledge their commitment.
(ii) Establishment of a Community Board consisting of various agencies (eg, schools, police, health, probation, parents, youth groups, business, churches and the media), who conduct a community assessment, with technical assistance, to identify the main local risk factors that need to be addressed.

(iii) A number of high priority risk factors arising from the community assessment are identified (ie, factors that are typically above the national average).
(iv) Empirical evidence about effective methods that tackle these priority risk factors is collected.
(v) The Community Board develops a preventative plan based upon addressing identified risk and protective factors, and stipulating how the plan will be implemented.

C. Place Specific Crime Prevention: Neighbourhood Environments and Crime

Place specific crime prevention focuses upon changing the physical environment and improving property management. This approach addresses the connection between the physical features of neighbourhoods (eg, signs of crime like vandalism or poorly designed housing), crime and fear of crime. It entails five approaches:

(i) Improved housing design to address security features.
(ii) Changing land use and circulation patterns to reduce exposure to potential crime targets.
(iii) Develop "territoriality" so residents become more vigilant against crime and disorder.
(iv) Address physical deterioration to reduce signs of crime and improve residential perceptions.
(v) Improve formal and informal management practices within neighbourhoods to ensure changes are sustained over the long term.

This approach has been mainly implemented in highly disadvantaged and deprived US neighbourhoods.

D. Problem Orientated Policing: Improving Police Crime Prevention Efforts

The New York approach of zero tolerance policing is not indicative of reforms to police practices in the rest of the US. The most significant national reform has been the adoption of Problem Orientated Policing (POP).

The idea of Problem Orientated Policing (POP) is that police should be solving the underlying problems that come to their attention in the communities they serve, rather than simply reacting to them. Problem Orientated Policing (POP) involves police attempting to understand local crime patterns, and address their proximate causes through pro-active measures.

One method by which crime patterns have been understood is through crime mapping and analysis, identifying where crime and disorder is clustered in time and space. Addressing crime "hot spots" (ie, locations that continue to demand police attention) has shown to maximise the effect of a problem orientated approach.

Problem Orientated Policing (POP) has been used to address illicit drug markets, gang and handgun violence. Establishing partnerships with community groups and local agencies is a key focus of Problem Orientated Policing (POP). In order for Problem Orientated Policing (POP) to work, US police departments have devolved increasing authority to beat officers, empowering them with the autonomy to address local crime problems.

E. Civil Remedies: The Legal Enforcement of Crime Prevention

Civil remedies involve legal action to prevent behaviours or situations from becoming a problem, or to reduce or

eliminate problems that already exist.

Community groups and police in the US, utilise civil remedies to address local crime and disorder problems. Civil remedy approaches to crime prevention include such measures as enforced clean-up and up-keep of deteriorated housing, eviction of problem tenants, youth curfews, injunctions against gangs and the carrying of weapons, enforcement of health and safety violations, and restrictions on the selling of alcohol, cigarettes or spray paint to youths.

IV. CANADA

A. The Canadian National Strategy: Strengthening Community Institutions

The Canadian National Strategy comprises of two phases.

(i) Phase One: the establishment of the Canadian Crime Prevention Council, whose role is to provide the federal framework for national crime prevention initiatives.
(ii) Phase Two: launched in 1998, provides a $32 million investment to develop community-based responses to crime.

The Canadian National Strategy adopts a social developmental framework, addressing crime and safety issues involving children, youth, women, aboriginal people, and families. Canada's national strategy incorporates the following key initiatives:

(i) Safer Communities Initiative: assists local communities in developing and sustaining programs, funds demonstration projects, and provides support to non-government and voluntary organisations.
(ii) Promotion and Public Education Program: aims to increase awareness of, and provide information on, community crime prevention.
(iii) Partnerships with the Private Sector: facilitates and encourages the private sector to support and implement crime prevention activities.

Programs have involved the following measures:

(i) Providing stress management, parenting skills, and support to young parents.
(ii) Supporting "at risk" youth eg, those of single parents, or children living in poverty.
(iii) Improving the literacy skills of disadvantaged youth.
(iv) Addressing child maltreatment.
(v) Providing knowledge about aspects of the law to aboriginal youth.
(vi) Assisting in the integration of refugees and migrants into Canadian neighbourhoods.

B. Problem Orientated Analysis: A Systematic Approach to Preventing Crime

The Canadian strategy stipulates communities should utilise a problem-orientated approach in addressing crime and safety problems. This involves the following steps:

1. Identifying and analysing local community problems using appropriate data sources.
2. Identifying from this auditing process key priority problems.
3. Investigating these key priority problems in greater detail (eg, identifying victim or offender characteristics, patterns and trends, methods of offending, location of the problem, involvement of alcohol or drugs).
4. Develop an action plan and

determine the level of intervention (eg, at the neighbourhood or individual level).
5. Identify those who need to be involved in planning and implementation.
6. Identify avenues for resources, particularly in poor areas or communities.
7. Identify and select appropriate strategies.
8. Set goals and objectives to be met.
9. Prepare an action plan stipulating the duties and tasks of agencies and groups to be involved.
10. Design an implementation timetable.
11. Obtain community and agency support for the action plan.
12. Implement and monitor the strategy to ensure it is sustained over time.
13. Evaluate the impact of the interventions by referring to the data sources used in step one to three.

V. AUSTRALIA

A. The National Anti-Crime Strategy

The National Anti-Crime Strategy was established by the Premiers and Chief Ministers from all Australian States and Territories in November, 1994. The Strategy recognised the value of cross-jurisdictional cooperation and a multi-disciplinary approach to of crime prevention.

Crime prevention in Australia is primarily the responsibility of the six States and two Territories. On 28 June 1995, the Commonwealth, State and Territory Ministers endorsed a National Anti-Crime Strategy paper containing the agreed principles of crime prevention and community safety within jurisdictions, principles and a structure for cooperation between jurisdictions.

B. Crime Prevention Initiatives across the Commonwealth Government

The Government has recognised a whole government approach to preventing crime is needed. An indication of some of the initiatives and programs is set out below.

C. Attorney- General's Department

(i) Firearms Control-coordinating the national implementation of the firearms control and firearms buy-back program.
(ii) Fraud Control - work is currently being undertaken to revise the Government's Fraud Control Policy, which will form the basis of fraud management programs across all Commonwealth agencies and organisations.
(iii) National Crime Authority - has received additional money for initiatives which target complex money laundering and tax evasion schemes.
(iv) National Register of Convicted Paedophiles - Police Ministers from all Australian States and Territories have agreed to the establishment of a national register which can be used by education and community service agencies to carry out checks for prospective employees.
(v) Aboriginal Deaths in Custody - in conjunction with the Aboriginal and Torres Strait Islander Commission (ATSIC), the Attorney General's Department has organised a Ministerial summit.
(vi) Classification Guidelines for Films and Video Tapes - were reviewed and amended to restrict films containing excessive high level violence from public release or sale in Australia.
(vii) Family Violence and Intervention Projects - being conducted by Legal Aid and Family Services, examining

models for effective intervention in family domestic violence situations.

(viii) Marriage and Relationship Education Programs - to develop best practice approaches and early identification of risks and prevention of violence in relationships involving young women.

(ix) Domestic Violence Database - agreement has been obtained between States and Territories to develop a database to better facilitate the sharing of data from family law, firearms registry and domestic violence protection order sources.

(x) Model of Domestic Violence Legislation - the Standing Committee of Attorney-Generals has agreed to a model of domestic violence legislation to ensure a uniform approach across all States and Territories.

(xi) Changes to the Family Law Act - in 1996, to ensure family violence is taken into account by the Court when considering arrangements for children following parental separation.

D. Department of Communication and the Arts

(i) Report of the Committee of Ministers on the Portrayal of Violence in the Electronic Media.

(ii) Government response to the report on the Select Committee on Community Standards Relevant to the Supply of Services Utilising Electronic Technologies - Portrayal of Violence.

E. Office of the Status of Women

(i) National Forum on Domestic Violence (1996).

(ii) A National Women's Safety Survey was undertaken by the Bureau of Statistics - providing confirmation that violence against women is still a significant crime and social issue.

(iii) National Ministerial Summit on Domestic Violence.

F. Department of Health and Family Services

(i) Strengthening Families Strategy - incorporating a range of family support programs including parenting education, child abuse prevention and emergency relief programs.

(ii) "Good Beginnings" National Parenting Project - home visiting projects focusing on child abuse prevention and parenting education.

(iii) National Youth Suicide Prevention Strategy - supporting research, education and training for professionals, and increased access to counselling and telephone support services.

(iv) Youth Homelessness Pilot Program - piloting a program to test innovative early intervention strategies to assist young people at risk of homelessness to re-engage in family, work, education and training and life in the community.

(v) Supported Accommodation and Assistance Program - providing better monitoring of transitional supported accommodation and associated services provided to youth, homeless persons, domestic violence victims and children.

(vi) Rural and Remote Domestic Violence Initiative - trialing a number of different information and referral models, including services for Aboriginal women and women from non-English speaking backgrounds in remote and rural areas of Australia.

G. Department of Employment, Education, Training and Youth Affairs

(i) Research Initiatives - together with the States and Territories research has been completed on Transitional Arrangements for Post Release Young Offenders; Early School Leaving; and Youth Homelessness.

H. Department of Immigration and Multicultural Affairs

(i) Work is being undertaken, in cooperation with the law enforcement agencies, to improve the systems for ensuring that there is effective exchange of information on undesirable persons entering Australia.

I. Primary Industries and Energy

(i) Firearms Safety - training materials to primary users (farmers, graziers and rural workers) on how to use firearms safely.

(ii) Integrated Rural Strategy - general support for rural communities.

(iii) First National Rural Public Health Forum - to address particular concerns in relation to domestic violence, firearms, and men's health issues (particularly in relation to road and work accidents and alcohol abuse) in the rural sector.

J. Sport, Territories and Local Government - Australian Sports Commission

(i) Young Persons Sport and Recreation Development Program - provides funding to States and Territories to facilitate the involvement of indigenous young people in sport as a means of providing structured recreational activities to relieve boredom.

(ii) Aussie Sport - a program to promote the involvement of children in junior sport which, among other things, constantly promotes the importance on non-violence in sport.

(iii) Give Racism the Boot - an initiative which is being developed to combat racist behaviour and attitudes at all levels of sport involvement.

K. Aboriginal and Torres Strait Islander Commissioner (ATSIC)

(i) Aboriginal Legal Services Program - includes a component of counselling, assistance and referral of young indigenous people who are at risk of coming into contact with the criminal justice system.

(ii) ATSIC is piloting a program for young offenders, initiated by the Prime Minister, called the Improved Integration of Young Offenders into Employment, Education, Training and Community Life.

(iii) Funding for Night Patrols - where members of the local indigenous communities provide transport home to young people in an attempt to divert them from anti-social activity when they congregate in groups.

VI. THE STATE OF VICTORIA

A. Crime Prevention Initiatives Across The State of Victoria - VicSafe - Partnerships Against Crime

Promotes highly focused community consultation on community safety and crime prevention concerns and proposals. The Safer Cities and Shires program will help develop and maintain a safer community. Creating a safer community includes:

(i) Addressing the safety and crime issues of most concern to the local community.

(ii) Focussing on cost-effective outcomes.

(iii) Improving social and physical environments.
(iv) Minimising the public's fear of crime and violence.
(v) Achieving a high level of public order that enables all people to go safely about their lawful pursuits, and to participate fully in community and public life, anywhere, anytime.

Many, if not most, community safety and crime prevention problems call for local community solutions:

(i) These solutions need the support and participation of the whole community working in partnership with police, corrections and other agencies.
(ii) A safer community is thus a community responsibility and not the sole responsibility of police, corrections nor any other criminal justice agency.
(iii) Local community safety work brings police closer to the community they serve, and includes greater accountability to local communities.

Local Governments are being asked to take the lead in coordinating initiatives to address the safety and crime issues of most concern to their local communities. The State Government, through the Department of Justice, is offering seeding funding to cities and shires over the next three years to put strategies in place that will address these concerns.

Safer Cities and Shires will emphasise:

(i) Addressing community safety and crime prevention issues through a strategic, planned whole of government approach.
(ii) Preventing problems before they emerge.
(iii) Setting realistic, achievable targets to gain significant and sustainable reductions in particular forms of crime and violence.
(iv) Using performance indicators and measures to accurately and objectively assess the outputs and outcomes of this work.
(v) Developing and implementing innovative, best practice strategies to tackle safety and crime issues in local communities.
(vi) Creating partnerships and project teams at the local level to implement these strategies.

1. Strategies

Innovative and outcome oriented strategies are required to provide a more coordinated and integrated government and community approach to safety and crime issues. New approaches need to build on local and international experience, and involve the wider community and private sector.

Safety and crime issues are complex, interdependent, and embrace the activities of all government agencies at national, state and local levels, and the private sector. These activities are most likely to be effective if they are focussed on outcomes rather than inputs, guided by best practice benchmarks, and have the capacity to be mainstreamed into core government, business and community responsibilities.

2. Why Local Government?

Local councils are well placed to engage government and non- government agencies, the private sector, educational institutions, and community groups in partnerships to improve community safety.

Local government is best placed to audit the vast input of resources. It can bring a blend of services to meet local communities safety needs. Resources can be aligned with

those practical initiatives that produce the best outcomes for the least costs. Local governments provide the setting, infrastructure, and policy framework to develop, implement and sustain community-based programs that address community safety and crime issues. It is best placed to develop a real sense of community ownership of strategies to improve community safety and involvement in determining which safety and crime issues have priority.

The role of local government now encompasses social and community planning, urban design, the provision of human services, environmental management, education and training, and economic development. These changes, which have taken local government beyond its historical and traditional role of providing physical infrastructure and services to property, have significant implications for community safety and crime prevention.

3. Community Safety and Crime Prevention Board

The Victorian State Government established the Community Safety and Crime Prevention Board with the Heads of Government Departments (Premiers, Education, Health, Justice and Local Government) together with significant community leaders and representatives of Local Government to coordinate the implementation of the VicSafe Strategy. The functions of the Board are to:

(i) Actively promote and champion the concept of crime prevention as a community initiative, and provide advice to the Minister for Police and Emergency Services on community safety and crime prevention policy, strategies and issues of concern to the community.
(ii) Provide strategic leadership in the planning and delivery of major components of the statewide, community safety and crime prevention framework.
(iii) Oversee the multi-agency collaboration necessary to ensure that State and Local Government agencies effectively incorporate and achieve appropriate community safety and crime prevention outcomes within their business planning processes.
(iv) Ensure ongoing evaluation of the community safety and crime prevention framework, and ensure that it achieves visible and tangible outputs and outcomes of direct benefit to the Victorian community.
(v) Establish, foster and maintain strategic links with private, not for profit agencies, religious and academic sectors in identifying, promoting integrating and resourcing community safety and crime prevention best practice throughout the Victorian community.

B. Safer Cities and Shires - Strategic Directions:

Implementing Safer Cities and Shires involves Local Government performing a strategic leadership role in developing comprehensive local community safety and crime prevention policies and actions. Safer Cities and Shires identifies five strategic directions:

(i) Direction 1: Build on Local Government's strength as a catalyst in creating comprehensive, local community safety plans conducive to the sustainable, long term development of safer cities and shires.
(ii) Direction 2: Build on the local government's strength as a facilitator to bring about a blend of

services to meet a local community's safety needs and to ensure the cost-effective and coordinated use of resources to produce the best outcomes for the least costs.

(iii) Direction 3: Develop a whole of government and whole of council approach to community safety and enable local Government to obtain added value from existing programs and expenditure by building community safety and crime prevention strategies into their mainstream operations.

(iv) Direction 4: Develop comprehensive needs analyses to create sophisticated, integrated and objective safety, crime and health profiles in local communities.

(v) Direction 5: Create a Safer Cities and Shires performance measurement framework, consisting of precise performance measures and indicators and State benchmarks for best practice that can be publicised and emulated in other areas.

C. Three Principal Outputs of Safer Cities and Shires are:

1. A comprehensive local community safety plan in each municipality that can:

   (i) Identify clear, short and long-term outcomes within specified key results areas that are formulated around agreed local priorities.

   (ii) Detailed strategies to achieve these outcomes based on sustainable resource input available to and within the local community through the government and private sectors.

   (iii) Complement and support municipal public health plans, municipal emergency management plans, environment improvement plans, and other business plans that impact on community wellbeing.

   (iv) Identify end detail locally based community safety and crime prevention initiatives that address the needs of the local community.

   (v) Be based upon shared information between agencies, interagency protocols and compatible data systems.

   (vi) Use integrated safety, crime, health, and quality of life profiles in the local communities.

   (vii) Develop baseline information and performance indicators against which future progress can be measured.

   (viii) Be revised annually to ensure its relevance.

2. A senior management team in each municipality that can:

   (i) Guide and coordinate the development and implementation of the community safety plan and its regular review.

   (ii) Include high level representatives from the community, Local Government, police, corrections, private sector, non-government agencies and Commonwealth and State Government Departments.

3. A process of community consultation and involvement through, for example, customer surveys, needs analysis of local community safety and crime issues, and the circulation of the draft community safety and crime prevention plan to the community for comment to encourage community ownership of the issues and the solutions.

4. A whole of government approach involving the Department of Premier and Cabinet, Victoria Police, and the Government Responsibilities for

Education, Health and Human Services, Justice, Corrections, Infrastructure, Local Government, Treasury, State Development, and Natural Resources and Environment:

(i) Core business approach.
(ii) Strategic partnerships with the community.
(iii) A clear focus on outcomes.
(iv) Development of quality data.
(v) Identifying and mainstreaming best practice.
(vi) Achieving cost effectiveness.

VII. WHO IS A VICTIM OF CRIME?

A victim of crime is a person who has suffered harm because of a criminal act. That harm can be physical injury, emotional trauma or financial loss. For example, a person who is injured in a violent attack, or someone who has experience a sexual assault or robbery is a victim of crime. Family members of a person killed or injured because of a crime may also be victims. It is common for people to witness a crime to suffer emotional trauma. These are victims even though they may not have been physically harmed.

Being a victim of crime effects people in different ways. It is not unusual for people who have experienced serious crime, such as robbery or assault, to feel immediately shocked, fearful or angry. Later it is quite normal for some victims to experience depression or even to feel guilty. These reactions are natural and part of the process of dealing with a traumatic event. In the majority of cases they are also temporary. With support from family, friends, and colleagues, most people recover from the effects of the incident within a few months. For other people the recovery process is more difficult. The harm may have occurred over a long period of time, or a crime may have been especially traumatic.

VIII. GROUPS WITH SPECIAL NEEDS

A. Women - Sexual Assault and Domestic Violence

Many women in our society suffer violence; both from strangers and from people they know, including family members, friends or workmates. This violence includes sexual assault such as rape, physical abuse (including hitting or beating), verbal abuse and threats. Because this violence occurs often within the home, many women suffer in silence because they feel isolated and ashamed.

B. Child Abuse

Child abuse is not usually a single incident, but takes place over time, often at the hands of parents, their friends or other members of the family, rather than at the hands of a stranger. Child abuse can take many forms. It includes physical abuse such as hitting or shoving, sexual abuse including unwanted fondling or incest; emotional abuse such as regularly threatening or frightening a child; and neglect, which is failing to properly provide such basic needs as food and shelter.

C. Men - Violent Crime

Crime statistics show that men aged 17-25 years form the largest victim group in the community. Men also need support and assistance in coping with the effects of crime.

D. Aboriginal Victims

It is important for Aboriginal Australians to recognise that there are support services available to help Aboriginal people affected by violent crime.

E. Elderly Victims

The likelihood of an elderly person becoming a victim of a crime in Australia is extremely low. However, when a crime does occur it usually has a greater effect on an older person. An elderly person is

physically less able to fight back or flee, and can find it harder to recover physically or emotionally if injured. The elderly are often alone and may not have the support to help them through the personal suffering caused by violence. Programs funded recognise these issues and can help elderly victims to recover their independence and confidence.

F. People with Disability

People with disability, whether it be an intellectual disability, psychiatric illness or physical disability, may find communication difficult. This can be a disadvantage when seeking help. If someone suspects that a person with a disability is being harmed in any way they should contact the police or the Office of the Public Advocate.

G. Ethnic Communities

People from different cultural or ethnic backgrounds who become victims of crime may need to contact someone they know and trust for support. However, they may be afraid of contacting anyone in their own community because of fear of embarrassment or gossip. They may also be isolated from their community and need to find out how to make the first contact. Many migrants and refugees may not understand or trust the Australian legal system or the police.

H. Families of Homicide Victims

The death of a loved one at the hands of another person is not easily overcome. It is especially hard if families are faced with lengthy trials or unwelcome publicity. Special services, including the Victorian Police Victims Advisory Unit and the Homicide Victims Support Group of Victoria, offer support to the families of victims of homicide.

IX. RIGHTS OF VICTIMS OF CRIME

Victims of crime have rights and responsibilities in the criminal justice system. Victims have the right to be treated with courtesy, compassion and with respect for their dignity and privacy. They have the right to receive information about their case, the progress of the investigation and details of any court proceedings. Victims also have a right to welfare, counseling and medical assistance. They have a responsibility to assist police in their investigations and to participate in any court case that may follow.

The main steps in the criminal justice system are when:

(i) A victim reports a crime to the police;
(ii) The police investigates the crime;
(iii) The police charge a person with a crime;
(iv) A court decides whether the person is innocent or guilty;
(v) The Court sentences a person who is found guilty, which may include a goal sentence.

A. Background

The establishment of the Victims Referral Assistance Scheme (VRAS) was announced by the Attorney General in November 1996 following an inquiry undertaken in 1994/ 95 by the Victims Task Force of the Victorian Community Council Against Violence into services available for victims of crime.

The terms of reference for the inquiry were wide, and the VCCAV reported on the current circumstances of assistance for victims of crime. The VCCAV found that Victorian services for victims of crime had developed in an *ad hoc* manner. There was a lack of co-ordination between services and the absence of a co-ordinated strategy to respond to the needs of victims.

The inquiry identified the needs of victims of crime, services, currently available, gaps in services provided, funding criteria, and presented a model for a co-ordinated and integrated strategy to restore victims of crime.

The inquiry found that although some victims were able to access a variety of important services, gaps and overlaps existed in service delivery. There was a lack of knowledge amongst professionals and victim support agencies about services available and needed. A lack of co-ordination existed between central and local services throughout Victoria. The overwhelming view expressed by the VCCAV was that there was a real need for victim assistance to be grounded within the context of a strategic approach and based on a number of guiding principles, which would provide a framework within which practical, comprehensive and efficient reform could be undertaken.

An integrated victim assistance regime was needed with professional and community interfaces developed between the wide variety of people who can impact upon victims of crime. Such an integrated strategy would focus upon:

(i) A central referral service;
(ii) The information needs and rights of victims, service providers and policy makers;
(iii) A responsiveness and sensitivity of the criminal justice system;
(iv) Real service and rehabilitation needs and rights of victims of crime; and
(v) The accountability of services funded by Government to provide these Services.

The guiding principles in an integrated victim support strategy would include:

(i) Victims rights;
(ii) Complete rehabilitation; and
(iii) Community responsibility.

B. Victims Referral and Assistance Service

The Victim Referral and Assistance Service is the primary focus of the Government's new Victim Assistance Strategy introduced in July, 1997. The service focus is upon an integrated and co-ordinated system, which is restorative in its approach and assists victims of crime in a holistic, responsive and caring manner.

A victim of crime is a person who has suffered harm because of a criminal act. Harm can mean physical injury, emotional trauma or financial loss. The crime may be reported to the police or not. The mission of the VRAS is to "assist victims of crime to overcome the negative effects of their experiences resulting from crime." Its functions are to:

(i) Refer victims to appropriate support agencies in an attempt to restore them, in so far as it is possible, to their former state;
(ii) Administer the Victim's Counseling Scheme which will enable victims to access immediate short term counselling;
(iii) Manage researching of funding of additional assistance to victims through the Victims Assistance Program working with community agencies.

Where required, VRAS will assist eligible victims access the Victims of Crime Assistance Tribunal.

These functions are delivered through the central referral and advice systems, which enables the most appropriate and relevant assistance to be provided immediately upon contact with the VRAS.

Local community assistance is provided throughout Victoria by a funded community network, which can meet needs locally and in a specialised way. Special research and other projects assist the VRAS to develop policies and practices which continue to meet needs as they are identified.

The establishment of these new services within the Department of Justice is providing for the first time a systematic and integrated approach to meeting the needs of victims of crime. It provides an acknowledgment of victim needs and rights, a pathway to rehabilitation and an involvement of Government and community in responsibility for assisting victims of crime. In this way, victims are treated with respect and dignity, so important for their well being and restoration.

C. The Help Line

VRAS operates a centralised referral service to provide victims of crime with referral to appropriate counsellors and/or government and community based networks and agencies.

VRAS operates a Helpline staffed by trained professional advisers who can inform callers about the steps they can take to manage the effects of a crime. The crime may be reported or unreported, and may have occurred in the past or very recently. The crime may range from a burglary to "bag snatching", sexual assault or homicide. It may be regarded by some as a minor incident but may have a significant impact upon an individual caller. Callers sometimes ring on behalf of others.

The VRAS Helpline is available for all those who wish to call and seek assistance. The Helpline can refer victims to community organisations for help, explain how to access counselling and provide information about a wide range of other assistance which is available. Sometimes a caller simply needs to talk through an issue and needs no further referral. Each case is individual and is given individual attention.

The needs of each particular caller are assessed and a large and extensive data base provides access to suitable referrals including Government agencies, service providers and community agencies. The database contains over 11,000 entries describing services which may be relevant to a particular circumstance. More than 33,000 people have called the hotline since it opened in July 1997. Around 11 percent of those are victims of homicide; families of the dead or witnesses to the killing.

In addition to the psychologists who provide counselling though the Victims Counselling Scheme, VRAS staff can assess and refer a caller to agencies which provide information and assistance about housing, financial, legal, community health and support services and groups. VRAS staff speak a number of community languages and an interpreter service is available. A comprehensive and detailed listing of support services and counsellors from non-English speaking backgrounds is readily available. Assistance for those with a disability can be arranged through carers or facilitators, as requested.

D. Administering the Victims Counseling Scheme

VRAS administers a Victims Counseling Scheme which provides immediate access to short term counselling. Counselling can help victims of crime manage the effects of crime on their lives. Counselling is provided by trained professionals and involves assisting or guiding a person to resolve some of the personal, social or psychological effects of a crime.

Those eligible for five free counselling sessions with a registered psychologists or an approved counsellor include:

(i) Primary and secondary victims of a violent crime which occurred in Victoria and has been reported to the police;
(ii) Families of homicide victims; and
(iii) Victims of domestic violence, stalking or assault who have applied for an intervention order.

About 20 percent of the 33,000 callers take up the offer of five free counselling sessions with psychologists of their choice, to the cost of $110 per session. An additional 5 sessions are granted if the victims say that they need it. The scheme has paid out $3,630,000 to psychologists. Claim forms for the scheme are available at the time the crime is reported to police, or from Registrars of Courts when an intervention order is applied for.

1. How the Scheme Works

1. The police officer attending the scene of a crime (at the crime scene or at the police station when a report is made) gives a Notice to Victim Form to the victim.
2. The police officer will indicate (by ticking a 'yes or no box') whether or not the person named in the form has reported a crime against the person. The reverse side contains the Counselling Claim Form.
3. Some victims who do not receive a claim form may obtain one from the VRAS.
4. A victim who applies for an intervention order will receive the form from the Registrar of the Court, who will validate it.
5. The victim seeking counselling from a registered psychologist in private practice of his or her choice (either directly or with the assistance of a referral from the VRAS), a doctor or community agency or other person.

Where counselling is required beyond the tenth session, the victim may be eligible for financial assistance from the Victims of Crime Assistance Tribunal.

E. Regional Agencies Funded by the VRAS

To meet the needs of victims throughout Victoria, VRAS provides funding to a network of services to operate in country regions and the metropolitan area. This is called the Victims Assistance Program. Qualified professional staff in these agencies have the knowledge and skills to deliver services and to recruit, train and co-ordinate a network of volunteers able to provide an immediate response to victims of crime in their particular regions.

These agencies provide the following range of services to victims:

(i) Immediate crisis response to victims of crime, both by telephone counselling and outreach services;
(ii) Where appropriate, refer victims to other services which may be best able to meet their specific needs;
(iii) Practical support of victims of crime (eg shopping, arranging improved security, contacting relatives, friends or an employer, writing letters or assisting to complete forms).
(iv) Establishment and conduct of specialist support groups for victims of crime and/or people suffering through a crime committed against a close relative or friend.
(v) Where no such service is available, provide support to victims or witnesses to a crime who are required to attend court;
(vi) Develop the mechanisms through

which the views of clients are elicited and considered in the planning and delivery of future services, including the development of a grievance or complaints procedure.

The agencies undertake community education activities to promote community awareness of issues facing victims of crime and the availability of the funded service. They also have networks with other agencies and professionals providing services to victims of crime including police, lawyers, court staff, medical and human service providers to enhance the effectiveness of the service and ensure that it complements, rather than duplicates, those services.

F. Victims of Crime Assistance Tribunal

A major avenue for victims is through the Victims of Crime Tribunal, whose function is to consider applications for financial assistance by victims of violent crime. A primary, secondary or related victim of crime can make a claim for financial assistance. In summary, people who are injured or die as a direct result of a crime are regarded as primary victims. People who witness a crime but are not directly involved are secondary victims. Related victims may be a dependent, close family member or a person who had a close personal relationship with a primary victim who has died.

People may not be paid financial assistance if they are assisted from other sources. These could include a successful civil suit against the offender, insurance policies or other schemes such as workcover or TAC.

The crimes where assistance can be sought from the Tribunal include:

(i) Armed robbery
(ii) Aggravated burglary;
(iii) Sexual assault;
(iv) Homicides;
(v) Assaults;
(vi) Threat to kill;
(vii) Culpable driving;
(viii) Assault and robbery.

For the Tribunal to consider a victim's application, the crime must have been committed in Victoria. Claim forms may be obtained from the Victims of Crime Assistance Tribunal, through the Magistrates' Courts, a police station or through a solicitor. The claim form has a Statutory Declaration and should be carefully completed. If unsure, the applicants are encouraged to see a solicitor for assistance.

The amount of financial assistance depends on the circumstances of each case. The maximum total financial assistance awarded by the Tribunal is $60,000 for a primary victim; $50,000 for a secondary victim or related victim. These totals may include medical, counselling or funeral expenses and in exceptional circumstances, some other expenses, or a combination of each. It is important to note that the maximum cumulative amount available to all related victims of any one primary victim is $100,000, less any amount awarded for funeral expenses.

The Tribunal will give priority to requests for payment for counselling. It can grant these requests without a hearing. However an application should be made as quickly as possible. The Tribunal may still assist an applicant even if no person is found guilty, or if the offender is not found. All payments of financial assistance are made by the Victorian Government.

In most cases the Tribunal will require an applicant to provide evidence from their

treating doctor or hospital to prove that they had been injured. The applicant is also expected to provide proof of loss of earnings and any expenses incurred as a result of the crime. The Tribunal will collect the evidence, including evidence from the police, to make a decision about the victim's application.

Hearings usually take about half an hour, before specially appointed Magistrates who hear applications throughout Victoria. Applicants can attend alone or with a lawyer or a friend. In some cases, decisions can be made about compensation without a hearing. After the hearing the Tribunal may decide any of the following:

(i) To give assistance;
(ii) Not to give assistance;
(iii) To put off the hearing until another date (this could happen if the Tribunal needs more evidence, or if its decision depends on the outcome of another court case).

If a victim believes that the award is too small, or if their claim is refused, they can appeal the Tribunal's decision to the Administrative Appeals Tribunal.

G. Restitution

By law, people can seek damages for any harm another person or organisation has caused them. This means a victim of crime can hire a lawyer and sue an offender. In Victoria, the State Government can sue offenders for damages on behalf of the victim. If the Government agrees to do so, victims will usually receive any money recovered additional to the assistance the Government has already provided. This could include compensation for pain and suffering.

TheVictorian Government will only sue on a victim's behalf if the victim or another person can provide details to the Government indicating that the offender has assets or income which he or she can pay to the court, and that it is likely that the amount the offender may have to pay is more than the legal costs of taking the action.

A criminal court may make a compensation order for pain and suffering and for damage to property where an offender is found guilty and the court has appropriate evidence before it to make an order if the victim requests that this be done.

H. Support Program for the Families of Persons Charges with a Major Crime and VACRO Support Program for the Families of Persons Charged with Sex Offences

These programs offer counselling and support to family members of persons charged with major crimes including homicide, and to those persons charged with sex offences. Contact can be short or long term, with face to face and telephone counselling and home visits. The major crime program assists families to work through trauma, grief and coming to terms with the enforced changes to their lives.

The program assisting families of persons charged with sex offences has a similar emphasis, with an educative component reinforcing the principles of the specific programs offered to sex offenders in prisons. It offers support to sex offenders' families without colluding with either the offenders' behaviour or their denial of it. The social worker is involved in co-facilitating with CORE, one of the management and intervention programs, which is a twenty-six week, offence-specific program for sex offenders in the community.

X. CONCLUSION

From this review of crime prevention practices in the United Kingdom, America, Canada and Australia, and particular reference to the State of Victoria, a number of general trends can be identified:

(i) Communities and agencies need to be empowered in their efforts to address crime and safety problems.
(ii) Strategies to reduce crime and improve community safety should be based upon researched evidence of what works.
(iii) Strategies to reduce crime and improve community safety must be tailored to local conditions and problems.
(iv) A problem-orientated approach to crime prevention ensures that key crime problems are addressed, and appropriate strategies implemented.
(v) Communities, families, schools, labour markets, welfare groups, voluntary organisations, businesses, government departments, police and agencies of the criminal justice system all have a role to play in crime prevention and community safety.
(vi) Crime prevention strategies must be comprehensive and multi-faceted, addressing social, developmental, and situational issues.
(vii) No single agency can reduce or is expected to reduce crime, or improve community safety.
(viii) For crime prevention to work, governments must show political commitment, eg, giving it a statutory footing.
(ix) Strategies to reduce crime and improve community safety should be based upon research of what works;
(x) Programs need to have in-built evaluation measures that monitor outputs and outcomes.

I strongly believe that people who live and work in communities are best placed to solve local crime and safety issues. As a consequence, all criminal justice agencies must work in partnership with each other and their local communities, in their efforts to reduce crime and improve community safety.

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VICTIM ASSISTANCE IN CANADA

*Ezzat A. Fattah**

I. INTRODUCTION

Canada is a beautiful and lovely country. It is consistently rated as one of the best places in the world to live. Canada is a confederation of ten provinces and two territories. As a confederation, Canada has a complex political and government system. There are actually three levels of government in Canada: federal, provincial, and municipal. The federal government has sole jurisdiction in some areas, for example, the criminal code. This is why, in contrast to the United States where each state in the union has its own criminal code, in Canada there is one federal criminal code that applies to the entire land. The provinces and the territories have sole jurisdiction in some matters, for example, education.

The administration of justice is a mixed jurisdiction. There are federal courts and provincial courts. Some judges are appointed by the federal government and others by the provincial government. There are provincial prisons and federal prisons called penitentiaries. To some extent, policing is a shared responsibility. There are three main types of police forces in Canada. I say main types, because in addition to these three, there are specialized or localized police forces such as harbour police which operate in ports such as the Port of Vancouver.

The three main types of police forces are federal, provincial, and municipal. The largest police force in Canada is obviously the federal police, known as the Royal Canadian Mounted Police or the RCMP. The two largest provinces in Canada; Ontario and Quebec, each has its own provincial police force in addition to many municipal police forces. But they are the only ones that have such a provincial force. Each city or municipality in Canada could have its own municipal police force and large cities usually do. But even smaller municipalities can have their own police force consisting of seven, eight or ten constables. In the greater Vancouver area, this is the case of municipalities such as West Vancouver or Port Moody. In Montreal, many years ago, all municipal police forces were amalgamated into one force called the "Montreal Urban Community" police force.

Through a contract signed between the federal government and the provinces, municipalities that do not want, or cannot afford, to have their own police forces could have their territory policed by the RCMP. They can have an RCMP detachment servicing the municipality.

This division of jurisdiction has an enormous bearing on victim assistance in Canada. This is because there are no truly national standards or unified sets of rules that govern victim services. As a result, these services are more developed in certain areas than in others, and in some places they are virtually non-existent. Even in an area such as government compensation to victims of crime, because each province has its own Compensation Act or law, the rules and amounts of compensation can show substantial variation. Naturally, this is a far from ideal situation, though it is not very different from what exists in other federalist states,

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such as the United States, Switzerland or Australia. These difference make it impossible to offer a general picture of victim assistance in Canada or to present a general synopsis of the state of victim services in such a huge and diverse country.

II. VICTIM ASSISTANCE IN CANADA: A BRIEF HISTORY

Until the 1960's, the situation of crime victims in Canada was no different from their situation in other western countries. Not only were they the forgotten persons in the criminal justice system, but they were also the orphans of social justice. They had no legal status, no rights, and no one seemed to pay any attention to their plight. They were a disenfranchised group with few supporters and even fewer defenders! Until now I can hardly understand how or why it is that in well-developed welfare states, in the aftermath of the second world war, where the state came to the help and rescue of the weak, the poor, the unemployed, the underprivileged, the dispossessed, nothing was done to improve the victims' lot or to alleviate their plight. It is simply incomprehensible that at a time when social solidarity and social assistance were buzz words, the cause of crime victims was totally ignored.

Things began to change in the early 1960's. Thanks to the laudable efforts of a British magistrate, Margery Fry, and others, voices were heard on both sides of the Atlantic calling for state compensation to victims of crime. But it was New Zealand which was to become, in 1963, the first country to establish a state compensation program for crime victims, only to be followed the year after by Great Britain. In the United States, the first initiative was that of the State of California, which began a compensation scheme in 1966, to be followed a year later by New York and Hawaii.

In Canada, the lead was taken by the Province of Saskatchewan in 1967, followed by Ontario (1968), Alberta and New Foundland (1969), Manitoba and New Brunswick (1971), British Columbia and Quebec (1972). Today, all Canadian provinces have compensation programs for the victims of certain offences. Although crime victims compensation is administered exclusively by each province or territory, it is financed on a cost-share basis with the federal government. Later on, we will see to what extent these programs have been successful in financially assisting crime victims.

Financial assistance was thus the first sign of society assuming some responsibility for crime victims. Victim services were yet to wait for some more years before being offered to the victims. And this was not even a government initiative but a grass roots one. The feminist movement should be given credit for recognizing the suffering of female victims of sexual assault and of domestic violence, and for setting up privately run rape crisis centres and shelters for battered women, where victims not only could seek refuge, but also could get counselling and assistance of varying kinds.

The ideological roots of rape crisis centres and shelters for victims of domestic violence have remained largely unchanged and explain why it is that their clientele is exclusively women (and in some cases their children). This is so, although research in the US suggests that men are as often victims of family violence as women are (Steinmetz, 1978; Straus, Gelles and Steinmetz, 1980) and it is by now a well-known fact that rape and sexual assaults are not exclusively a male/female phenomenon. In fact, in one of the early shelters in Vancouver (Ridington, 1978)

there were only three rules: no liquor, no drugs, no men. One of the reasons why male companions of the residents are not allowed is the fear that they might cause trouble, and this is why the locations of the shelters are kept secret and strict precautions are taken to keep them that way (Peltoniemi, 1989, p335).

The creation of rape crisis centres and battered women shelters highlighted the lack of services available to crime victims and their dire need for some help and assistance to find their way through the maze of the criminal justice system, to cope with the traumatic effects of victimization, and to avoid future victimization.

The police, ever anxious to improve their image and to strengthen their contacts and relationships with the community they serve, quickly realized that there were several administrative benefits to be gained from establishing victim assistance programs. It is sad to say, but in Canada at least, the impetus for victim assistance programs was not a genuine concern for the plight of crime victims but the administrative goals of the police agencies. Compensation programs were actually designed to encourage victim reporting to the police and to improve victim cooperation with the criminal justice system. The primary benefits were seen as enhancing victim participation and collaboration, thus increasing the efficiency and effectiveness of the system.

The same can be said of victim assistance programmes. The major guiding influence was not compassionate or humanitarian consideration for victims, but the administrative goals of the agency. The Calgary Victim Services Programme, one of the first of its kind in Canada (started in 1977), is just one example of many. The programme is described in a document published by the Solicitor General's Department in Ottawa. The document makes no secret of the fact that the objective of the programme "*is to develop a good working relationship with victims of crime in order to encourage their future cooperation with the police in crime prevention*". This statement tells a great deal about the victim service programmes which were set up by various police departments in Canada, as in other countries. It explains the distinct preference for having these programmes housed in police departments or public prosecutors' offices, rather than in the community.

III. MODELS OF VICTIM ASSISTANCE

Victim assistance programs do not follow the same model. The choice of one model rather than another is dependent upon a large number of variables. Since evaluative research analysing and comparing the different models is lacking, it is impossible to tell whether a certain model is better and more effective than the others, or to judge which model works best for which victims. The setting for the program, that is, whether it is housed in a police station, the prosecutor's office, or the community; the program's personnel, whether professionals, para-professionals, or volunteers; the type of assistance the programme offers: referrals, counselling, emotional support, etc; the type and length of follow up on program's clients; are all factors that are bound to affect the program's performance and its effectiveness. As does the ideology underlying the program or the service.

Studying women shelters, Peltoniemi (1989, p334) identified two shelter ideologies: the feminisit shelter ideology and the family-oriented shelter ideology. According to Peltoniemi, the most important feature of the feminist shelter

ideology is its emphasis on a non-hierarchial system. He points out that in such shelters there are no specified work roles and those staying at the shelter are called women, not clients or anything else. The whole ideology is based on one explanatory theory of family violence: the structual theory saying that family violence is caused by a patriarchal society. The feminist ideology also emphasizes the criminal nature of family violence and the preponderant role of the court system in controlling and preventing it. Peltoniemi explains that the family-oriented shelter ideology is the exact opposite of the feminist ideology. Family violence is seen as violence that is not directed exclusively at women but towards many different victims within the family. He adds:

> *Several reasons for violence are suggested, and it is considered that the entire family needs help, not only women. The shelters are organized in a more traditional way and cooperate closely with social care agencies (1989, p335).*

In Canada, victim assistance programs housed in police departments and operated by the police agencies are generally organized according to popular models. There is usually one coordinator, in most cases a civilian (not a member of the force) who is hired and paid by the police. The major responsibility for this coordinator is to recruit, train, and supervise a number of volunteers, to assign their duties, determine their case load, and to coordinate their activities. The coordinator is also expected to liaise with the community, to publicize the existence of the program and to ensure its acceptance and support by the community.

IV. PROGRAM SETTING AND PERSONNEL

The most appropriate setting for victim assistance programs, as well as the most appropriate background for victim helpers, have been the subject of many heated debates. Should victim assistance programs be housed in police departments and be run directly, or under close supervision by the police? There is no clear-cut answer to this question, and there are valid arguments on both sides of the issue. The major argument in favour of this model is rather a practical one. It is claimed that placing the program in the police station is the surest way of having the largest number of victims take advantage of the service. The first encounter of crime victims with the criminal justice system, in the vast majority of cases, is their contact with the police. Once a complaint is filed, the police get the victim's address (and telephone number), and refer the victim immediately to the victim service, or provide the program with the necessary infomation to get in touch with her/him. It is argued that programs located in the community will be much less successful in knowing who the victims are and in locating them.

Those who argue in favour of placing victim assistance programs within the community are generally apprehensive because of the strong temptation to use the services for victims as a means to ensure victims' continued cooperation with the police. They also point to the great reluctance of many victim groups: minorities, immigrants, deviants, homosexuals, prostitutes, etc, to take advantage of a service offered and controlled by the police. They insist that rape-crisis centres and battered women shelters would have had little chance of getting clients if they were located in and operated by the police. They also argue

that community programs are likely to be more neutral, more impartial, to take a more objective approach to the needs and wishes of the victims, and not to subscribe to police stereotypes of certain unconventional victims. Should victim assistance programs use volunteers as their main service providers or should the delivery of services be done, as in corrections, by professionals and para-professionals?

The practical considerations that dictated that victim assistance programs be housed in police stations or police departments are similar to those that resulted in victims assistance being delivered mainly by volunteers. The decision to use volunteers was not based on valid, scientific evidence that they can perform this task better than paid professionals or para-professionals. It was not based on a sound judgement showing that volunteers are better service providers than others. Financial considerations were the primary reason for the adoption of the volunteer model.

Governments, as reluctant as they were, to provide decent budgets to state compensation schemes for crime victims, were even more reluctant to allocate financial resources to victim services. They wanted the programs because they were popular with the general public, and thus politically beneficial, but they wanted to commit only token amounts to their operation. It should also be kept in mind that victim assistance is a very new field and to my knowledge there are no college or university programs offering training, courses, diplomas and degrees in victim services. In fact, our knowledge of this field remains so rudimentary that no viable programs could be mounted at present to train professionals in this area.

Like other models, the volunteer model of victim assistance has some advantages but also significant drawbacks. The overwhelming advantage is obviously economical. Programs using volunteers are naturally much less costly than those using professionals, be it psychologists, criminologists, social workers, or others. It is also suggested that volunteers, particularly those with similar victimization experiences, can relate better to the victims and can better understand their pain and suffering, the traumatic effects of the crime, and the impact it has on their lives, than do professionals. Volunteers therefore might have more sympathy and empathy than those whose daily activities over the years are meeting victims and listening to their tragic or sad stories. Volunteers also tend to treat the victims they are dealing with as human beings, as fellow citizens, rather than 'clients' or 'recipients of services'.

Be this as it may, the most important dimension on which the models should be assessed and judged is the quality of services to crime victims. Do volunteers provide better and more effective services to the victims than professionals or para-professionals? This is questionable. In Canada, the training that recruited volunteers receive before working in victim services is very crude and very elementary. There is therefore a danger that the service they provide might not be effective, and a real danger that the intervention, though done with the best of intentions, will in some cases do the victims more harm than good (that is, prolonging or even magnifying the trauma, delaying the natural healing process and so forth). Volunteers tend to be more emotional than professional, they tend to side with the person they are trying help. And while this might provide temporary comfort to a number of victims, it might not be in their best interest in the long run. This is particularly true in cases where the most

appropriate advice the victim needs is sound, objective, candid and non-partisan advice.

In the field of corrections, the rehabilitation of offenders, the issue of professionalization and of specialized training for those who deliver the services, that is, the treatment and rehabilitation programs, was settled several decades ago. It would be unthinkable at the present time in the industrialized world to return to the volunteer model of corrections that was spearheaded last century in the US by the Quakers, and in the State of Massachusetts by John Augustus, who initiated the practice of probation.

In Canada, the delivery of victim assistance is done predominantly by volunteers. As the volunteers have no training or expertise in psychology or counselling, they are instructed to refrain from acting as psychologists or counsellors. They might be able to provide some practical assistance to the victim: driving, cleaning, shopping, baby-sitting, helping with the children and so forth, but in most cases the only thing they do provide is emotional support.

This should not be interpreted as an endorsement of counselling for crime victims, as there is no evidence showing that counselling is effective. Davis and Henley (1990) reviewed research findings and found little indication that counselling of any sort is effective in reducing post-crime trauma. They regretted the fact that much money is being spent on crisis intervention services for victims in the absence of knowledge as to which forms of treatment work and which do not. There are also reasons to believe that intervention, if not done properly, can delay rather than accelerate the natural healing process and can prolong rather than shorten the trauma of victimization.

V. THE NEEDS OF CRIME VICTIMS

Victims of crime constitute a very heterogeneous population. And while certain needs might be common to all those who suffer some form of criminal victimization or another, there are several groups of victims who might have special and rather specific needs and therefore might have to receive special and individualized services. In the field of corrections, the principle of individualized penal measures and of individualized treatment, has been recognized for many decades. There is a long-held view that offenders respond differently to rehabilitation and treatment programs, that certain programs are totally ineffective for certain types of offenders, while other programs are more effective for some than for others.

The diversity of the victim population and the enormous variety of the types of criminal victimization from which they could suffer, suggests that the principle of individualization is as important and as valid in interventions with victims as it is with offenders. Few examples could illustrate well what is meant by individualized intervention. The needs of victims of sexual offences are different from those of victims of property crimes, or even victims of common assault. But even for those who are sexually victimized, the needs may vary greatly from one group of victims to another, and even from one victim to another. The needs will vary not only in the function of socio-demographic variables such as age, gender, social class, level of education, race, etc, but will also vary according to the type of offence committed (rape, sexual touching, molestation, indecent exposure, anal penetration, and so forth), the amount of violence or coercion used, the relationship between the offender and the victim (total stranger, acquaintance, close friend, pro-

genitor, etc), the age and race differentials between the offender and victim, and so forth.

Lurigio and Resick (1990) insist that because reactions to crime and other deleterious experiences are often quite varied, it is essential to study individual differences in response to criminal victimization. They state that variability in victim recovery can be a function of victim characteristics and predispositions, the nature of the incident, victims' perceptions and interpretation of the occurrence, and events that occur in the aftermath of the crime. Lurigio and Resick (1990) place a high emphasis on the individual correlates of post-crime distress and recovery. But socio-cultural factors and attitudes can be of great importance as well, and plays a significant role in speeding up or delaying the recovery process. In our society, there is a tendency to stress, even overblow, the negative effects of victimization, whereas in others only the positive effects are emphasized.

Even physical injuries resulting from victimization do not carry the same weight everywhere, and their impact, therefore, is bound to be greater or lesser according to a host of variables. It is undeniable that psychological wounds heal faster and better in some cultures than in others. All this is to say that victim assistance is a lot more than just a charitable or humanitarian endeavour. If done properly and effectively, victim assistance is not a simple, easy or a mere common sense task. In other words, it is not something that could be delivered in a hasty or *ad hoc* manner unless it consists of nothing more than moral support, tea and sympathy.

To my knowledge, no victim assistance program in Canada, or for that matter, elsewhere, is able at the present time to provide the kind of individualized services that would satisfy the specific needs of each crime victim, or of a specific victim group.

VI. THE TYPES OF SERVICES

Crime victims, regardless of the type of victimization they suffer, need different types of support and varying kinds of assistance. They need practical services such as fixing the lock, replacing the window, or driving the kids to school. They need information and advice, particularly advice on how to avoid future victimization. They might need referral to other services or legal assistance. They need a great deal of emotional support. All these types of services are not problematic and the more of them available to the victim after the event, the better it is. It is the other kind of well-intentioned support: counselling, therapy, and treatment that can pose real problems.

One common need, spelled out by the vast majority of victims, is the need for information about the progress of their case. They felt frustrated that nobody cared to tell them what is happening, whether the case will proceed or not, and if so, on what date. Once the case is before the court, they want to be informed of the outcome, whether the Crown will launch an appeal, and the final disposition in any appeal by the defendant or the Crown. If the offender is sentenced to a prison term, they want to know the eligibility dates for the various types of early release, the dates of the hearings, the decision by the parole board. They want to be notified when the offender is released. In response to this expressed need for information, guidelines have been developed in many provinces in Canada in order to ensure that the victims are not kept in the dark, that they are being kept informed of the progress of the case at the various stages of the justice process. This simple and rather inexpensive service has gone a long way towards alleviating

victims' dissatisfaction with the justice system.

Another need that many victims have is the need for some legal assistance and legal advice. They are frustrated that free legal aid is usually available for those offenders who do not have the means to hire private legal counsel, but the victims have to pay if they needed to consult a lawyer. In many provinces in Canada and elsewhere, there are now provisions that make it possible for victims to get some basic legal advice without pay. Sometimes it is the prosecutor who provides this advice, other times it is by a paralegal. But everywhere this remains a process separate and independent from the office of the public defender or that of legal aid.

VII. FINANCIAL ASSISTANCE TO CRIME VICTIMS IN CANADA

Although crime victim compensation, or criminal injuries compensation, as it is usually called, is administered exclusively by each province (or territory), it is financed on a cost-share basis with the federal government. The federal government assists in program funding to ensure the establishment of uniform, minimum standards. There are approximately forty crimes of violence that are covered by these federal/provincial agreements.

While provincial (and territorial) compensation schemes in Canada share many similarities and have several common characteristics, there are still some notable differences. For example, the nature and structure of the compensating agency vary from one province to the other. In Ontario, Saskatchewan, Newfoundland, and Alberta, it is a separately established board. In Quebec, Manitoba and British Columbia, it is part of the already existing Workman's Compensation apparatus, still in others it may be a provincial judge. Schemes also differ in terms of the upper (and lower) limits the set for lump sum awards and for periodic payments.

Financial assistance to crime victims in Canada, as in most other countries that have created similar schemes, is largely inadequate and is subject to various restrictions and limitations. This has led many researchers to claim that state compensation is essentially a symbolic act by governments to show their concern for victims, but with little real intention of following it through with hard cash (Miers, 1983, p19990; Maguire and Shapland, 1997, p218). As if to add insult to injury, many governments, including the Canadian government, decided in recent years to transfer the financial burden of victim compensation to offenders through a levy called 'a victim fine surcharge' imposed on those who are sentenced to a penal fine, even if the sentence is for a so-called 'victimless crime' (section 727.9 of the Canadian Criminal Code).

The major problem with Canadian compensation schemes, as with others, is that they exclude the vast majority of victims from the realm of compensation. For the very few who are eligible for compensation and who ultimately get it, it is, for budgetary reasons, too little, and because of bureaucratic procedures, too late.

In Canadian schemes, as in others, victims of non-violent property crimes who constitute the bulk of crime victims, are totally excluded from compensation. Sadly, most of these victims do not have and cannot afford private insurance. In four out of five of these property crimes, the culprit is neither identified nor caught. And the few who are arrested, charged and convicted are, more often than not, poor or insolvent and nothing could be obtained from them through a civil judgement even

if the victim had the means to obtain one.

Victims of violence for whom the schemes are designed do not fare much better. The conditions of eligibility for state compensation are such that only a small fraction do qualify. In almost all systems, eligibility is contingent upon reporting the offence to the police and the victim's willingness to cooperate with the criminal justice system. Many have a means test ensuring that compensation is given only to the poorest of the poor. Most exclude violence among family members, whereas a good part of all violence occurs in domestic settings. Most also exclude (or drastically reduce the awards to) victims who provoked or otherwise contributed to their own victimization. One sure way of making the majority of victims of violence ineligible for state compensation is to set a high minimum limit for compensation below which victims do not qualify. (In the UK, for example, the lower limit was set at £1,000 despite the recommendations made by victims groups to remove it). The burden of proof is upon the victim and it is easy to imagine how difficult it can be to prove that the injury resulted from a criminal attack when the attacker has run away and there were no witnesses. With the exception of sexual victimization, most schemes do not provide funds to compensate the victim's emotional pain and suffering.

It is not surprising that many victims are deterred from applying by the lengthy bureaucratic procedures and the investigative process. More distressing still is that many victims are simply unaware of the existence of the schemes. As in many jurisdictions, the budget is determined in advance and cannot be exceeded, the more applications the program receives, the lower are the awards. And as the schemes are poorly funded in the first place, successful applicants usually end up receiving ridiculously low amounts as compensation for their victimization. It is easy to understand, therefore, why it is that in some countries there is a deliberate attempt not to publicize these state compensation schemes.

VIII. OFFENDER RESTITUTION

Restitution by the offender to the victim is one of the earliest forms of redress to those who suffer injury or harm through the actions or negligence of another. This was the composition or *wergeld* paid to the victim or the victim's kin.

Since state compensation programs are often strictly limited to victims of violence, restitution by the offender has re-emerged as a means of redress in property offences as well as in violent crimes. The problem is that the vast majority of offenders are either unemployed or do not have the financial means that would make it possible for victims to collect restitution. Added to this problem is the fact that in many countries the collection of the penal fine takes priority over restitution orders.

Provisions on restitution by the offender to the victim are a relatively recent addition to the Canadian Criminal Code (CCC). Thus section 725 of the CCC stipulates that:

> *Where an offender is convicted or discharged under section 736 of an offence, the court imposing sentence on or discharging the offender shall, on application of the Attorney General or on its own motion, in addition to any other punishment imposed on the offender, if it is applicable and appropriate in the circumstances, order that the offender shall, on such terms and conditions as the court may fix, make restitution to another person.....*

Section 737 pertaining to the placement of offenders on probation, cites a number of conditions that could be attached to a probation order. One of the conditions (737/2/e) is to '*make restitution or reparation to any person aggrieved or injured by the commission of the offence for the actual loss or damage sustained by that person as a result thereof*'.

Section 737.8 contains various provisions on how payment of restitution or part of it could result in a reduction of imprisonment.

IX. VICTIM-OFFENDER RECONCILIATION AND VICTIM-OFFENDER MEDIATION PROGRAMS

Another important development in recent years has been the rediscovery of restorative justice. Restorative justice, which is widely practised in small, agrarian, rural societies, has a long and rich history in the aboriginal communities in Australia, among Canada's First Nation and the Inuit communities of the Canadian North. The quasi-universal disenchantment with the punitive/retributive justice system was bound to force those calling for justice reform to seek alternatives to the current system of punishment. A turning point was the publication of a seminal article by Nils Christie in 1977 entitled "Conflicts as Property". In it, Christie explained that the root problem of the system is that conflicts were stolen from their legitimate owners, the victims, and became the property of professionals rather than people. Christie's ideas provided a strong impetus to those who were calling for the replacement of the destructive, unproductive and ineffective system of punishment with the constructive practices of dispute settlement, conflict resolution, mediation, reconciliation and reparation. Advocates of restorative justice pointed out that in addition to its devastating effects on offenders, their families and the larger society, the system of punishment acts to intensify the conflict rather than solving it. Instead of bringing the feuding parties closer to one another, it widens the gap that separares them (Fattah, 1997, p259).

Spearheaded by the Mennonite Church, victim-offender reconciliation programs were set up in Canada and the United States in the mid 1970s and then spread to many other countries. Writing in 1983, Dittenhoffer and Ericson (1983, 1992) noted that the notion of VORP rapidly grew in popularity. They pointed out that at the time, in Ontario alone, there were 24 VORP centres operating, as were other centres across Canada with similar programs. The early programs have now been in existence for over twenty years and the restorative justice movement is expanding at a fast pace. Outside of North America it has established strongholds in Germany, the United Kingdom, Belgium, and France among others. Three years ago, the Council of Europe in Strasbourg set up the Expert Committee on Mediation in Penal Matters. The Committee has been meeting twice a year and is due to release its report and make its recommendations by the end of this year.

Despite the appeal and popularity of the notion of victim-offender reconciliation, the goal of 'reconciliation' proved to be difficult to achieve in practice. In many programs, the foremost objective is to ensure restitution by the offender to the victim and to see to it that the offender fulfills the obligations agreed upon in the mediation agreement. The programs were thus inclined to changed their names from victim-offender reconciliation to mediation programs.

Attempts to exploit the cause of crime

victims for political ends and to sell the policies of law and order, under the pretext of doing justice to victims, often required the portrayal of victims as vengeful, vindictive, retributive and even bloodthirsty. Those claiming to represent and speak on behalf of victims gave the impression that concern for crime victims invariably requires a harsh, punitive justice policy. While the distress of some victims might be so overwhelming that they will demand the harshest possible penalty for their victimizer, this could hardly be said of the majority of victims. Healing, recovery, redress, and prevention of future victimization are the primary objectives of most crime victims.

If the primary purpose of social intervention is to restore the peace, redress the harm, heal the injury, and stop the repetiton of the offence, then it is easy to understand how and why the restorative system (based on mediation, reconciliation, restitution, and compensation) succeeds where the punishment system fails. Mediation and reconciliation bring the two parties together, face-to-face, and ensure that they see each other as human beings in a state of distress. When faced with the victim, it becomes impossible for the victimizer to deny the victim's existence or the injury or harms s/he has caused. S/he can no longer de-personalize, de-individuate, objectify or reify the victim. S/he can no longer avoid post-victimization cognitive dissonance. The confrontation between the offender and the victim in a mediation situation is the surest and most effective means of sensitizing him/her to the victim's plight, of countering and reversing the mental process of de-sensitization that s/he has gone through in order to avoid guilt feelings or bad conscience (Fattah,1991a).

The mediation process, when done properly, can be very effective in awakening and activating any positive emotions the offender might have lying beneath a cruel and indifferent fecade. Emotions such as pity, sympathy, empathy, compassion, commiseration, can all be brought to the surface and reinforced.

On the side of the victim, the mediation situation can also have salutary effects. The feared, stong, cruel and unemotional victimizer is bared to a weak and often helpless being, a being that evokes more pity than fear, more compassion than anger. Distorted but long held stereotypes disappear when checked against the real offender. Both parties end up by gaining a realistic view of one another and reconciliation becomes possible (Fattah, 1995, p312).

Thus in the long run, the interests of crime victims and of society at large are best served by humanity, empathy and compassion, by tolerance and forgiveness, by the development of conciliatory and forgiving communities rather than hostile and vengeful ones (Fattah, 1986, p13). Constructive healing, not destructive punishment, should be the primary and foremost goal of both victim policy and victim services.

X. CONCLUSION

Hopefully, this bird's eye view of victim services and victim assistance programs in Canada has provided you with some idea of recent developments in this field. Naturally, it is rather difficult to adequately present such a varied, multifaceted and broad sector in a brief and rather hasty overview. As mentioned at the outset, the task is made more difficult by the complexity of the Canadian system of government, and the enormous diversity of the Canadian provinces and territories. As you probably have noticed, it was not my intention nor is it my habit to present

a rosy picture of the services or the programs involved. I tried to present things the way they are, and might have been overly critical at times. But whatever criticism I have made is meant to be constructive, and is intended to highlight the problems, the weaknesses, the inadequacies, the shortcomings, so that something may be done to correct them. After all, the plight of crime victims has been ignored for far too long. They surely deserve much more and much better than what they got in the past or are getting at present. Their cause is dear to my heart and it has pained me greatly over the years to see their cause being exploited by unscrupulous right wing politicians, and to witness their use as pawns in law and order campaigns. The time has come in Canada and elsewhere to hold politicians to task and to require them to live up to their promises and their rhetoric by matching commitments in financial and human resources. Although the situation of crime victims now is undoubtedly better than it was twenty years ago, the road is still long and a great deal remains to be done to help and assist those who are forced to suffer as a result of unfair social structures and failing social institutions.

VICTIMOLOGY TODAY
RECENT THEORETICAL AND APPLIED DEVELOPMENTS

*Ezzat A. Fattah**

I. INTRODUCTION

Criminology today is very different from criminology at the end of the 19th century or the first half of the 20th century. And victimology is very different from victimology in the 1950's or the 1960's. Scientific disciplines undergo constant evolution, though the pace of change may vary from one discipline to the other. Victimology has undergone not only a rapid, but also rather fundamental, evolution in the last two decades.

Twenty years ago, in 1978 at the International Congress of Criminology held in Lisbon, Portugal, I presented a paper entitled "*Some Recent Theoretical Developments in Victimology*". The paper was published in the only victimological journal available at the time (*Victimology: An International Journal*, Vol.4, no.2, pp.198-213). In the paper, I pointed to the discipline's transformation from a 'victimology of the act' to a 'victimology of action'. I explained how in its beginning, victimology was essentially the victimology of specific crimes: victimology of violent crimes, i.e, homicide; victimology of sexual offences, i.e, rape; victimology of property crimes, i.e, burglary and fraud. These pioneer theoretical studies of early victimology were soon overshadowed by major developments in the applied field, well-intentioned and persistent endeavours aimed at alleviating the plight of crime victims, and at providing them with the services, aid and assistance that would help them cope with, and recover from, the harmful and traumatic effects of victimization. The paper also made an attempt to explain the reasons for this transformation and the forces that played a vital role in bringing about the change.

So what has happened in victimology since that scientific meeting twenty years ago? The decades of the 1980's and 1990's could easily be described as a period of consolidation, data gathering theorization, new legislation, victim compensation, redress and mediation, assistance and support.

II. CONSOLIDATION

In the last few years, the discipline of victimology firmly established itself on the academic scene. There was a substantial increase in the number of universities and colleges offering courses in victimology and related subjects. A large number of books and articles were published in different languages, and in addition to several periodicals published in local languages, an International Review of Victimology, in English, was put out by AB Academic Publishers in Britain. A number of national and regional societies of victimology were established. Japan has been one of the leaders in this respect, thanks to the tireless efforts of Professor Koichi Miyazawa, the world renowned victimologist, and a dynamic group of his students and followers.

The World Society of Victimology continued to hold its international symposia once every three years. The last one, the ninth in the series, was held in

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Amsterdam in August 1997, and drew a record number of participants. All in all, victimology is no longer a subject of bewilderment or curiosity but is slowly becoming a household name. This is being facilitated by the extensive coverage crime news and victim issues are receiving in the mass media; by the wide publicity victims' programs are getting and by the proliferation of victim services and victim assistance programs in many countries.

The last twenty years saw the creation and extremely rapid expansion of victim services. Victim assistance programs, totally non-existent a couple of decades ago, have mushroomed all over the globe from Australia to Europe, from South America to Asia, and from the large Islands of Japan to the relatively small Canary Islands.

One of the most important developments in the field of victimology in the last twenty years was the formal approval by the General Assembly of the United Nations on November 11, 1985 of the "UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power". In adopting it, the General Assembly stated that it was "*Cognizant that millions of people throughout the world suffer harm as a result of crime and abuse of power, and that the rights of these victims have not been adequately recognized*".

III. DATA GATHERING AND THEORY FORMULATION

One of the primary tasks of theoretical victimology is to collect empirical data on crime victims. The main instrument used at present to collect this information is victimization surveys. They are conducted at the local, regional, national and international level. Notable among these surveys are the ones that are carried out on a regular basis, at regular intervals, in England and the US: the British Crime Survey and the National Crime Survey in the United States. Each of these surveys yields a wealth of information on crime victims. Both of them allow a thorough analysis of the temporal and spatial patterns and trends in various types of victimization. The original goal of these surveys, namely counting victimization, has been largely expanded and several new questions were added in recent years to the instrument to explore various areas such as the levels of fear of crime, the levels of satisfaction with police action, the reasons for not reporting the incident to the police, the consequences of victimization, etc.

Another area that was examined was the measures taken by the respondents to prevent certain types of offences, or to minimize the chances of future victimization. Some surveys tried to establish whatever link may exist between offending and victimization by including questions requesting respondents to self-report acts of delinquency they might have committed. These latter questions led to some very interesting findings.

In their London (England) survey, Sparks, Genn, and Dodd (1977) found victims of violent crime to be significantly more likely than non-victims to self-report the commission of violent crimes. Gottfredson (1984) analysed the 1982 British Crime Survey data and was struck by the relatively strong inter-relationship between offending and victimization. For persons with at least one self-reported violence offence, the likelihood of victimization was 42 percent, or seven times the likelihood of personal victimization for persons reporting no self-reported violent offences. The British Crime Survey of Scotland (Chambers and Tombs, 1984), revealed that 40 percent of respondents admitting an assault were themselves assault victims during that period.

Despite the methodological and practical problems of victimization surveys and despite their limitations, they have allowed researchers to collect a huge amount of data on victims of crime that is extremely rich in variety and detail. Thanks to victimization surveys we now know that criminality and victimization are clustered within certain groups and certain areas, and that there is much greater affinity between offenders and victims than is commonly believed. This is not to say that all victims of crime share the attributes of their victimizers. It is only to stress that the two populations have several common characteristics. Whether in Europe, the US, Canada or Australia, research showed that offenders involved in the types of crimes covered by victimization surveys are disproportionately male, young, urban residents, of lower socio-economic status, unemployed (and not in school), unmarried, and in the US, black. Victimization surveys revealed that victims disproportionately share these characteristics and that the demographic profiles of crime victims and of convicted criminals are strikingly similar (Gottfredson, 1984).

Several researchers (Hindelang et al., 1978; Singer, 1981) discovered that, particularly in crimes of assault, victims and offenders were related in their demographic characteristics and in terms of certain shared responses to perceived situations of physical or psychological threat. It is understandable that the frequency with which some individuals become involved in violence-prone situations will affect both their chances of using violence and of being recipients of violence, of attacking and being attacked, of injuring and being injured, of killing and being killed. Who will end up being the victim and who will be legally considered the offender depends quite often on chance factors rather than deliberate action, planning, or intent. Thus, victim/offender roles are not necessarily antagonistic but are frequently complementary and interchangeable (Fattah, 1994d).

This situation is particularly true of brawls, quarrels, disputes, and altercations. In many instances, dangerousness and vulnerability may be regarded as the two sides of the same coin. They often coexist since many of the factors that contribute to dangerousness may create or enhance a state of vulnerability. One such factor is alcohol consumption, which may act simultaneously as a criminogenic and as a victimogenic factor, enhancing the potentiality of violent behaviour in one party and of violent victimization in the other (see Fattah and Raic, 1970).

An important step on the road to comparative victimology was achieved with the conducting of International Crime Surveys. The surveys are a useful attempt to collect standardized victimization data from a number of countries using the same questionnaire in each country. The main purpose was to avoid the problems of comparing data collected by means of different instruments, using different methodologies. Field data for this international crime survey were gathered in January 1989 and published in 1990 (Van Dijk, Mayhew and Killias, 1990) . The size of each nationally representative sample varied between 1000 and 2000, though most participating countries opted for the larger size sample; the Federal Republic of Germany even chose 5000 interviews.

Telephone interviewing was chosen because of its relatively modest costs, and it was decided to use the computer-assisted telephone interviewing method (CATI method), which allows for much tighter standardization of questionnaire administration. Respondents were asked

about their victimization experience with nine types of crimes over the previous five years, though victimization in 1988 was highlighted to give up-to-date annual risks. The nine crimes covered were theft of motor vehicles (cars, motorcycles and mopeds); theft from motor vehicles; vandalism to motor vehicles; burglary and attempted burglary; robbery and attempted robbery; other thefts of personal property; sexual assault (women only); and assault. Victims were then asked short questions about the nature and material consequences of crime; whether the police were involved (and if not, why not?) ; and their satisfaction with the police response and any victim assistance given.

A second round of the International Crime Survey was carried out in 1992. Some of the countries that participated in the first survey such as Switzerland, Norway and Northern Ireland did not take part in the second one. But the survey included some countries from Eastern Europe which did not participate in the first one, such as Poland and the former Czechoslovakia (see Del Frate et al., 1993).

Despite the proliferation of victimization surveys and their unquestionable utility, it is not yet clear what exactly they do measure and what are their long term objectives. Victimization is a personal subjective and relative experience. The feeling of being victimized does not always coincide with the legal definition of victimization. So what exactly are victimization surveys trying to measure? It is far from clear whether their objective is to measure those criminal victimizations that meet the criteria set by the criminal code, or whether they are meant to measure the subjective victimizations experienced by the respondents. These, needless to say, are two different realities. Or to put it bluntly, are the surveys designed to measure crime or victimization? The titles 'crime survey' and 'victimization survey' continue to be used interchangeably (Fattah, 1997).

Rape is good case in point because of the enormous gap that may exist between the legal definition and the subjective experience of the female. Also because the sexual act can be experienced in very different ways by different women.

A. Theoretical Models

The wealth of data collected mainly through victimization surveys has led to various theoretical formulations. Models were developed to offer plausible explanations for the variations in victimization risks, for the clustering of victimization in certain areas and certain groups, and to unravel the intriguing phenomenon of repeat victimization. The different models are presented and summarized in my introductory victimology book entitled '*Understanding Criminal Victimization*' (Prentice Hall, 1991).

One of the first and more important models explaining the differential risks of victimization is the *Lifestyle Model* developed by Hindelang, Gottfredson and Garofalo (1978). To develop this explanatory model, the authors used empirical data gathered from an eight-city survey conducted by the United States Bureau of Census in the cities of Atlanta, Baltimore, Cleveland, Dallas, Denver, Newark, Portland (Oregon) and St. Louis in 1972. Hindelang et al. (1978) synthesized the findings and put forth some propositions to account for variations in risk and consequences of personal victimization. Their model posits that the likelihood an individual will suffer a personal victimization depends heavily on the concept of lifestyle.

Using lifestyle to explain variations in risk is neither a novel nor a unique approach. It has been known for a long time that the probability of accidental death or injury is, in many respects, related to people's lifestyle and the kind of activities in which they are involved. Physicians have repeatedly stressed the close link between lifestyle and routine activities, and the risk of suffering certain diseases such as cancer, high blood pressure, and cardiovascular ailments. As a matter of fact, the lifestyle concept permeates the explanations of a higher or lower susceptibility to a wide variety of diseases. We refer to lifestyle when we maintain that those who smoke have a higher risk of lung cancer than those who do not; that those who expose themselves, unprotected, to the sun have a greater probability of skin cancer; that those who drink heavily have a greater susceptibility to liver disease. Lifestyle is also the central concept in explanations linking dietary habits, the lack of exercise and a sedentary way of life, to heart disease. More recently, lifestyle has been identified as a major risk factor in contracting Aids. The belief that lifestyle can influence the probability of victimization by increasing or decreasing people's chances of becoming victims of certain crimes may be seen as a simple, and in many ways logical, extension of the concept to the social sphere.

Another explanatory model is the *Routine Activity Approach* developed by Cohen and Felson (1979). The focus in Cohen and Felson's approach is on " *direct-contact predatory violations*," which are those "*involving direct physical contact between at least one offender and at least one person or object which that offender attempts to take or damage*" (Cohen and Felson, 1979, p.589).

Cohen and Felson (1979) argue that the occurrence of these types of victimization is the outcome of the conference in space and time of three minimal elements: motivated offenders, suitable targets, and absence of capable guardians. The central factors underlying the routine activity approach are opportunity, proximity/ exposure, and facilitating factors. For example, the abundance of goods that can be stolen leads to higher rates of property victimization (opportunity). The dispersion of routine activities in the United States since the end of World War II has led to a substantial increase in predatory crime. This shift of routine activities away from the home, and the greater interaction between people who are not members of the same household results in greater exposure of people to potential offenders outside the home, and thus, increases the risk of direct-contact predatory crime (proximity/ exposure). Concomitantly, the increasing absence from home leaves the residences insufficiently protected and renders them suitable and easy targets for common types of household victimization (facilitating factors : the absence of capable guardians).

These are by no means the only models. There is also the *Opportunity Model* (Cohen, Kluegel and Land, 1981) and the *Dutch Model* (Steinmetz). The opportunity model incorporates elements from both the lifestyle and routine activity perspectives and posits that the risk of criminal victimization depends largely on people's lifestyle and routine activities that bring them and/or their property into direct contact with potential offenders in the absence of capable guardians. The Dutch model was developed by Van Dijk and Steinmetz who identified three main factors: proximity, attractiveness and exposure, as important determinants of differential victimization risks.

In an attempt to integrate the various models into a comprehensive scheme I used ten different components. There are :

(1) *Opportunities*: which are closely linked to the characteristics of potential targets (persons, households, businesses) and to the activities and behavior of those targets.

(2) *Risk factors*: particularly those related to socio-demographic characteristics such as age and gender, area of residence, absence of guardianship. Presence of alcohol and so forth.

(3) *Motivated offenders*: this is because offenders, even non-professional ones, do not choose their victim/targets at random but select their victims/targets according to specific criteria.

(4) *Exposure*: this is because exposure to potential offenders and to high-risk situations and environments enhances the risk of criminal victimization.

(5) *Associations*: the homogeneity of the victim and offender populations suggests that differential association is as important to criminal victimization as it is to crime and delinquency. Thus individuals who are in close personal, social or professional contact with potential delinquents and criminals run a greater chance of being victimized than those who are not.

(6) *Dangerous times and dangerous places*: the risks of criminal victimization are not evenly distributed in time or space - there are dangerous times such as evenings, early night hours and on weekends. There are also dangerous places such as places of public entertainment where the risks of becoming a victim are higher than at work or at home.

(7) *Dangerous behaviors*: this is because certain behaviors, such as provocation, increase the risk of violent victimization while other behaviors such as negligence and carelessness enhance the chances of property victimization. There are other dangerous behaviors that place those engaging in them in dangerous situations where their ability to defend and protect themselves against attacks is greatly reduced.

(8) *High-risk activities:* also increase the potential for victimization. Among such activities is the mutual pursuit of fun, as well as deviant and illegal activities. It is also well known that certain occupations such as prostitution carry with them a higher than average potential for criminal victimization.

(9) *Defensive/avoidance behaviors*: as many risks of criminal victimization could be easily avoided, people's attitudes to those risks can influence their chance of being victimized. It goes without saying that risk-takers are bound to be victimized more often than risk-avoiders. It also means that fear of crime is an important factor in reducing victimization, since those who are fearful take more precautions against crime, even curtailing their day and night time activities, thus reducing their exposure and vulnerability to victimization.

(10) *Structural/cultural proneness*: there is a positive correlation between powerlessness, deprivation and the frequency of

criminal victimization. Cultural stigmatization and marginalization also enhances the risk of criminal victimization by designating certain groups as 'fair game' or as culturally legitimate victims.

IV. NEW LEGISLATION

There has been a flurry of victim legislation in recent years in a large number of countries. Following the adoption of the UN Declaration of Basic Principles of Justice for Victims, so-called Victims' Charter of Rights or Victims' Bills of Rights were passed by the legislative bodies in various societies.

In the United States there was an attempt by the victim lobby to bring about a change to the Sixth Amendment of the US Constitution to provide a legal basis for protecting the rights of crime victims, but it did not succeed. However, as Karmen (1995, p339) reports, since 1980, in almost every American state, legislatures passed various statutes acknowledging basic rights for victims: to be notified about and to participate in judicial proceedings, to promptly get back stolen property that was recovered, to be protected from intimidation and harassment, and to receive restitution or compensation.

Similar legislation was passed in Canada, Australia, Britain and some other European countries. Also in Europe, victims received a considerable boost from a number of important initiatives in the mid-1980s, including a Convention and two important Recommendations by the Council of Europe in 1983, 1985 and 1987 (on, respectively, state compensation, the position of the victim in the criminal justice system, and assistance to victims) (Maguire and Shapland, 1997, p212).

While legislative initiatives and/or changes acknowledging victims rights were generally well received and encountered little or no opposition in parliaments and legislative assemblies, they are not without critics. In a seminal article entitled 'The Wrongs of Victim's Rights' Lynn Henderson (1985, 1992) outlined many of the weaknesses inherent in the notion of victim's rights and many of the dangers of victim's rights legislation.

One particular initiative that has received a great deal of criticism is 'victim impact statements'. VIS, designed to allow victims some input in the court's decision in their case (by providing a statement of the impact the victimization has had on their lives and their families), was singled out for particular criticism and encountered a lot of resistance from some quarters. In Australia, for example, after reviewing the arguments for and against victim impact statements, and after noting that many victims do not wish to be involved by giving evidence on the impact of offences on their lives, the Victorian Sentencing Committee concluded that the case against the introduction of VIS was more compelling than the case for them. Consequently, the Committee (1988) recommended that VIS not be adopted in Victoria (p.545) (Fattah, 1992, p416; see also Kelly and Erez, 1997, p236-7).

In the US, the Supreme Court barred victim impact testimony in capital cases as violating the Eight Amendment of the American Constitution (*Booth v. Maryland*, 1987, and *South Carolina v. Gathers*, 1989) and then in *Payne v. Tennessee* (1991) the court upheld the use of victim impact testimony at the sentencing stage of a capital case (Kelly and Erez, 1997, p235-6).

V. VICTIM COMPENSATION

Redress to crime victims in the form of monetary compensation by the state is the first attempt in recent history to alleviate the plight of victims and to improve their lot. In the 1960s, a British magistrate, Margery Fry, and others called for State compensation to crime victims, and their pleas led to the creation of government indemnification programs in New Zealand, the United Kingdom, North America, Europe and elsewhere. These programs have been operating for more than a quarter of a century and many have been the subject of varying kinds of assessments and evaluation (Burns, 1980; Miers, 1978; Doerner, 1978; Elias, 1983).

This is without doubt an area where action has not matched the political rhetoric. Economic hardships and budgetary restraints have greatly limited the scope of compensation and the number of victims who receive it. The evaluations suggest that the amounts victims get from the schemes are, for the most part, token amounts, and that the programs in reality fulfill no more than a symbolic function. A very tiny proportion of victims end up receiving any compensation, and for those who do, it is, more often than not, too little and too late. Ironically, researchers (Elias, 1983a, 1983b) found that victims who apply for and go through the process of compensation, even those who end up receiving some funds, are less satisfied than those who do not apply. In England, David Miers (1983, 1990), quoted by Maguire and Shapland (1997, p218) argued that state compensation is essentially a symbolic act by governments to show their concern for victims, but with little real intention of following it through with hard cash.

Most victims of property crime, who are excluded from state compensation schemes, do not have and cannot afford private insurance. In four out of five cases in these property crimes, the culprit is neither identified nor caught. And the few who are arrested, charged and convicted are, more often than not, poor or insolvent, so that nothing could be obtained from them through a civil judgement. And to add insult to injury, in most countries the collection of criminal fines continues to have priority over the payment of civil damages or of restitution/compensation orders.

In recent years, several governments decided to transfer the financial burden of victim compensation to offenders through a levy called 'a victim fine surcharge' imposed on those who are sentenced to a fine even if the sentence is for so-called victimless crime (Fattah, 1997).

VI. OFFENDER RESTITUTION

Restitution by the offender to the victim is one of the earliest forms of redress to those who suffer injury or harm through the actions or negligence of another. This was the composition or *wergeld* paid to the victim or the victim's kin. Parker (1977, p28) describes the historical development that led to the emergence of the criminal law:

> *At this stage of legal development there was no differentiation between what we know as crime or criminal law and tort or civil liability for damage inflicted. All injuries to persons or property were considered as 'wrongs'. The seriousness of the wrong depended upon the disruption caused to the community or the actual or perceived affront to the injured parties. Slowly, a distinction emerged between wrongs which were private disputes and required payment to the injured party or his kin and wrongs*

which had a public quality and required compensation to the whole group.

Since state compensation programs are often strictly limited to victims of violence, restitution by the offender has reemerged as a means of redress in property offences as well as in violent crimes. The problem is that the vast majority of offenders are either unemployed or do not have the financial means that would make it possible for victims to collect restitution. Added to this problem is the fact that in many countries the collection of the penal fine takes priority over restitution orders.

There are different models of restitution. Maguire and Shapland (1997, p219) outline three models that are common in Europe:

> *The 'partie civile' procedure, the award of a compensation order as part of a sentence against the offender, and restitution made informally or as part of a diversion arrangement by the prosecution. The first two models have tended to be seen as mutually exclusive in jurisprudential terms, so that one country has favoured one and another, though the Netherlands is currently considering introducing compensation orders while retaining the possibility of using 'partie civil'.*

Citing the results of evaluation of a number of local schemes conducted in different countries, Maguire and Shapland (1997, p221) write:

> *The conclusions seem universal. Financial restitution figures in only a small proportion of the cases sent for mediation (the majority ending with an apology or in some contract concerning the offender's behavior). Mediation cases themselves remain very much a minority disposal in terms of the flow of criminal justice cases overall. The dominant model is still prosecution, or some form of discontinuance (such as a formal caution in England and Wales), sometimes accompanied by work with the offender - but rarely involving the victim.*

VII. VICTIM SERVICES

The last twenty years have witnessed an unprecedented development in the field of victim services. Victim services have been called the growth industry of the decade. The expansion of service programs for victims of crime in the United States, Canada, the United Kingdom and many other countries has been nothing short of phenomenal. During the 1980s and the 1990s, legislation was passed, services were created, and programs were set up, all aimed at helping crime victims and improving their often unhappy lot (Fattah, 1992, p260). In the UK, it is considered the fastest developing voluntary movement (see National Association of Victims Support Schemes, 1984). In 1990, Davis and Henley estimated the number of victim service programs in the United States to be in excess of 5,000, whereas 20 years earlier there had been none (p157).

Most assistance programs, particularly those housed in police departments, refer victims, according to their needs, to existing services within the community. Some, in addition, provide victims with urgently needed help: replacing the broken window, the damaged lock, fixing the vandalised car, driving, cleaning, shopping, helping with the children and so forth. There are also various programs that provide special assistance to certain categories of victims, for example, victims of rape, child victims of sexual assault, victims of family violence, etc. Rape crisis centres and shelters for battered women

are currently operating in many places. Overall, however, the two most important services provided to crime victims by victims assistance programs are information and moral support.

Despite enormous strides, a great deal remains to be done. Maguire and Pointing (1988, p37) note that victim support remains essentially a 'grassroots', low budget enterprise which relies upon the good will and hard work of volunteers. Shapland, Willmore and Duff (1985, p178) maintain that the major projects aimed at fulfilling victims' needs were set up without regard to, or even investigation of, victims' expressed needs. Rock (1990, p408) insists that victims' interests were never the motivating or mobilizing force behind the new initiatives to help victims. Mawby and Gill (1987, p228) detected a right wing, law and order focus among victim support scheme volunteers. They expressed concerns that crime victims might become 'the victims of political expediency'. While Elias (1993, p120) affirms that victims' services really serve official needs, not victims' needs.

IX. CONCLUSION

I have tried to present a bird's eye view of recent developments in victimology, both theoretical and applied. Victimology has made enormous strides in the past twenty years. As a result of ongoing studies and research, we now possess a better knowledge than ever before of the phenomenon of victimization and of those who are occasionally, frequently or repeatedly victimized. We have adequate knowledge of the distribution of victimization in time and space, of the dynamics of victimization, of the process of victim/target selection, and we have several theoretical models that are meant to explain the variations in victimization risks.

More progress has even been achieved at the applied level. The victim movement has been very successful in sensitizing politicians, policy makers, the criminal justice system and the general public to the plight of crime victims. This has resulted in a flurry of legislation aimed at improving the sad lot of crime victims and at recognizing and implementing some basic rights for crime victims. Many steps have been taken to increase victim participation in criminal justice proceedings, to improve the treatment of victims by criminal justice personnel, and to allow the victims some input in criminal justice decisions.

There have been many other developments at the applied level. In many countries, state programs to compensate crime victims were set up. Restitution by the offender is being ordered in a growing number of cases, particularly in cases of economic crimes, white collar crime, and property victimization. A paradigm shift is slowly shaping up in criminal justice and the growing realization of the futility of punitive/retributive justice is facilitating the acceptance of the new paradigm of restorative justice. Restitution by the offender (to the victim) is increasingly becoming one of the primary conditions of diversion and of probation, both in the juvenile and adult systems.

Programs for victim-offender mediation both in serious as well as in minor offences have been established in many countries and in most cases, making amends by repairing the harm done to the victim is one of the primary conditions of successful resolution of the conflict.

Victim services, practically non-existent two decades ago, are becoming widespread not only in the wealthy countries of the industrialized world, but also in many developing countries. Assistance, in various forms, though mostly by well-

intentioned volunteers, is being offered to victims who desire it. Special assistance to certain categories of victims, such as victims of rape, child victims of sexual assault, and victims of family violence is now available in many places. Shelters for battered women and children have been opened to help victims avoid the repetition of victimization. Special counselling programs are also made available to the families of victims of homicide.

It can thus be concluded that the achievements have been many and in some instances nothing short of spectacular. But the road remains long and paved with obstacles. A great deal remains to be done in order to meet the challenge to victim services in the next millennium.

THE VITAL ROLE OF VICTIMOLOGY IN THE REHABILITATION OF OFFENDERS AND THEIR REINTEGRATION INTO SOCIETY

*Ezzat A. Fattah**

I. INTRODUCTION

This paper is about a relatively new and not very well known discipline called victimology. The logical starting point is to see what victimology is all about, to briefly trace its beginnings, its historical evolution, and its present state. I will address three major questions that are highly relevant to the subject-matter of this training course. These are:

(1) Why is a good knowledge of victimology indispensable for better understanding the offender and the offence?
(2) Why is a good knowledge of victimology absolutely essential for positively changing offenders' attitudes and behaviour?
(3) What new and exciting possibilities does victimology offer for the rehabilitation of offenders and their successful reintegration into society?

Victimology is a very young discipline, much younger than its parent discipline: criminology. Victimology is only fifty years old but it is neither a fad nor a fashion, it is a scientific reality that has imposed and affirmed itself. Its impact on, and its contribution to, criminology have been significant. Victimological research fills an enormous gap in our knowledge about the phenomenon of crime. It satisfies a need deeply felt by researchers and practitioners alike for factual and systematic information about crime victims. It goes without saying that the study and the understanding of the phenomenon of crime will never be complete unless the victims are included in the explanatory models. No valid theory of criminal behaviour can afford to ignore the victim. To try to do so would be an attempt to explain a dynamic and interactionist form of human behaviour in a unilateral, uni-dimensional and static manner. This is why the study of the victim is, and will always remain, an integral part of criminology.

II. WHAT IS VICTIMOLOGY?

If criminology is the science of crime and criminal behaviour then, for the sake of simplification, we can say that victimology is the science of victims and victimization. Theoretical victimology is the study of crime victims, their characteristics, their relationship to, and their interactions, with their victimizers, their role, and their actual contribution to the genesis of the crime. It is also the study of the impact of crime on victims, in particular, the traumatic effects of victimization, victims' response to victimization, and the coping mechanisms they use for healing and recovery. Applied victimology is the application of knowledge acquired from the study and research on victims and victimization in practice to help and assist those victimized by crime and prevent victimization.

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III. A BRIEF HISTORY OF VICTIMOLOGY

Early victimological notions were developed not by criminologist or sociologist but by poets, writers and novelists. The first systematic treatment of victims of crime appeared in 1948 in Hans von Hentig's book 'The Criminal and His Victim'. In the fourth part of the book, under the provocative title 'the Victim's Contribution to the Genesis of the Crime,' von Henting criticized the static unidimensional study of the offender which had dominated criminology and suggested in its place a new dynamic and dyadic approach that pays equal attention to the criminal and the victim. Von Hentig had earlier treated the topic in a paper published in the Journal of Criminal Law and Criminology in 1940. In it, he noted that:

> *It is true, there are many criminal deeds with little or no contribution on the part of the injured individual. ...On the other hand, we can frequently observe a real mutuality in the connection of perpetrator and victim, killer and killed, duper and duped. Although this reciprocal operation is one of the most curious phenomena of criminal life, it has escaped the attention of socio-pathology.*

In his book, von Hentig (1948:438) is critical of the legal distinction between offenders and victims and the criteria used by the criminal law to make such attributions:

> *Most crimes are directed against a specific individual, his life or property, his sexual self-determination. For practical reasons, the final open manifestation of human motor force which precedes a socially undesirable result is designated as the criminal act, and the actor as the responsible criminal. The various degrees and levels of stimulation or response, the intricate play of interacting forces, is scarcely taken into consideration in our legal distinctions, which must be simple and workable.*

Elsewhere von Hentig points out that:

> *The law considers certain results and the final moves which lead to them. Here it makes a clear-cut distinction between the one who does, and the one who suffers. Looking into the genesis of the situation, in a considerable number of cases, we meet a victim who consents tacitly, co-operates, conspires or provokes. The victim is one of the causative elements. (p.436)*

Von Hentig insisted that many crime victims contribute to their own victimization, be it by inciting or provoking the criminal or by creating or fostering a situation likely to lead to the commission of the crime. Other pioneers in victimology, who firmly believed that victims may consciously or unconsciously play a casual role, outlined many of the forms this contribution can take: negligence, carelessness, recklessness, imprudence, and so forth. They pointed out that the victim's role could be a motivational one (attracting, arousing, inducing, inciting) or a functional one (provoking, precipitating, triggering, facilitating, participating) (Fattah, 1991).

Von Hentig's book was followed by a number of theoretical studies that dealt with victim types, victim-offender relationships, and the role victims play in certain kinds of crime. The book also provided an impetus for several empirical studies that devoted special attention to the

victims of specific offences.

The term victimology was coined in 1949 by an American psychiatrist, Frederick Wertham, who used it for the first time in his book 'The Show of Violence'. Wertham wrote:

> *The murder victim is the forgotten man. With sensational discussions on the abnormal psychology of the murderer, we have failed to emphasize the unprotectedness of the victim and the complacency of the authorities. One cannot understand the psychology of the murderer if one does not understand the sociology of the victim. What we need is a science victimology. (p.259)*

During the early years of victimology, literature on crime victims remained relatively small when compared to that on criminology. During the 1980's, however, a great spate of important books and articles marked the coming of age of victimology (Rock, 1994). At present, it is fair to maintain that the study of crime victims has become an integral part of criminology.

The need for criminology to thoroughly study the victims of crime may today appear obvious and axiomatic. And it may seem rather surprising that such obvious need has escaped the attention of criminologists for over a century. But it is not rare for social scientists to miss the-obvious. This point is well made by Rock (1994, pxi) who points out:

> *Even criminology and the sociology of deviance - disciplines concentrated most squarely on the analysis of crime, criminals and criminal justice - tended somehow to obliterate the victim for a very long while, failing to see what, in retrospect, should probably have been evident all along. Such omissions occur continually. They are an ineluctable part of any discipline, a consequence of the truth marked by Burke when he said that 'a way of seeing is always a way of not seeing.' The price of organizing, specializing and accumulating knowledge about any area is a systematic neglect of the other matters thrown out of focus and beyond the margins. Precisely because criminology is an empirically-driven discipline, it has tended to ignore those things that do not bear the name of crime, criminals and criminal justice.*

IV. WHY VICTIMOLOGY

Since the dawn of scientific criminology, criminologists have tried to find out why some individuals become criminals while others do not. They conducted countless studies to discover whether criminals are different in any respect from non-criminals. An equally interesting and thought-provoking question is 'Why do some individuals become victims of crime while others do not?'. Is criminal victimization a random occurrence? Is it due simply to chance factors, misfortune, or bad luck? Do victims of crime constitute a representative sample, an unbiased cross-section of the general population? Do victims of crime differ in any way from non-victims? How do offenders select their targets; how do they pick their victims? There are many other questions for which research is seeking answers. The following are just a few examples:

(1) Why are certain individuals or groups of individuals more frequently victimized than others? Why are certain targets (individuals, households, businesses, etc) repeatedly

victimized? How can the differential risks and rates of victimization be explained?

(2) Are certain persons (or targets) more prone and more vulnerable to victimization than others, and if so, why? What is the nature of this proneness; what are the elements of this vulnerability?

(3) Are there born victims, predestined victims, predisposed victims? Are there recidivist victims? Are there victim stereotypes just as there are criminal stereotypes?

(4) Are there specific characteristics or specific behaviours that enhance the risks and chances of criminal victimization, that are responsible for, or conducive to, becoming a victim? And if so, what are these characteristics and these behaviours?

(5) Is there such a thing as victim-invited, victim-induced, victim-precipitated, victim-facilitated criminality? Do some victims promote, provoke, or trigger their own victimization? Do potential victims emit non-verbal signals, signalling their vulnerability to would-be assailants through gestures, posture and movements?

These questions and many others raise a number of issues and research topics that are quite different from those that have been the focus of mainstream criminology. Although the scientific study of the criminal is more than a century old, the systematic study of the victim is still in its infancy. And yet, it seems axiomatic that to analyse the crime phenomenon in its entirety and in all its complexity, equal attention has to be paid to the criminal and their victim. There are several reasons that render the study of crime victims essential, indeed, indispensable, for a better understanding of the phenomenon of crime (Fattah, 1991):

(1) Motives for criminal behaviour do not develop in a vacuum (von Hentig, 1948). They come into being through drives and responses, reactions and interactions, attitudes and counter attitudes. In many cases, the victim is involved consciously or unconsciously in the motivational process, as well as in the process, of mental reasoning or rationalization that the criminal engages in prior to the commission of the crime (Fattah, 1976). In some instances, the motives for the criminal act develop around a specific victim. An examination of the place the victim occupies or the role the victim plays in these processes is necessary to understand why the crime was committed and why a particular target was chosen.

(2) The commission of a crime is the outcome of a process where many factors are at work. In most cases, crime is not an action but a reaction (or an overreaction) to external and environmental stimuli. Some of these stimuli emanate from the victim. The victim is an important element of the environment and of the criminogenic situation.

(3) Often, the criminal act is not an isolated gesture but the denouement of a long or brief

interaction with the victim. In such cases, it is not possible to understand the act fully without analysing the chain of interactions that led to its perpetration. It is scientifically unsound to examine and analyse the offender's act in isolation from dynamic forces that have prepared, influenced, conditioned, or determined it, or to dissociate it from the motivational and situational processes that led to its commission.

(4) Current theories of criminal and deviant behaviour, whether attempting to explain causation or association, offer only static explanations. Since criminal behaviour, like other forms of human behaviour, is dynamic, it can be explained only through a dynamic approach, where the offender, the act, and the victim are inseparable elements of a total situation that conditions the dialectic of the victimizing behaviour (Fattah, 1976).

(5) The traits approach, seeking the genesis of criminal behaviour in the characteristics and attributes of the offender, is simplistic. Theories of offenders' attributes, personalities, or social background do not explain why other individuals who have the same traits or personality type or who grow up in identical or very similar conditions do not commit crimes or do not persist in a criminal career. They fail to explain why the offender committed the crime in a particular situation, at a given moment, against a specific victim. The traits approach either ignores or deliberately minimizes the importance of situational factors in actualizing or triggering criminal behaviour. The study of victims offers great promise for transforming etiological criminology from the static, one-sided study of the qualities and attributes of the offender into a dynamic, situational approach that views criminal behaviour not as a unilateral action but as the outcome of dynamic processes of interaction.

(6) As Anttila (1974) points out, the study of the victim has a general informational value. It provides information on the frequency and patterns of victimization, thus making possible the measurement of risk probabilities and the establishment of risk categories (high, low, medium). It also provides valuable information on proneness to victimization, fear of victimization, response to victimization, consequences and impact of victimization. Such knowledge is essential for the formulation of a rational criminal policy, for the evaluation of crime prevention strategies, and for taking social action aimed at protecting vulnerable targets, increasing safety, and improving the quality of life.

(7) The victim has a strong impact on criminal justice decisions, particularly those of the police and the courts. In most cases, it is the victim who decides whether or not to mobilize the criminal justice system by reporting or not

reporting the offence. Furthermore, the characteristics, attitude and behaviour of the victims, and their relationship to the offender, have a significant bearing upon the decision of the police to proceed in a formal or an informal way (see Black, 1970). In the latter case, victim-related factors can greatly affect the final outcome. The study of the victim leads not only to a better understanding of the functioning of the criminal justice system, but also to improving the decision-making process. Enhancing victims' involvement in the process and establishing the modalities of such involvement require a better understanding of the role victims currently play in criminal justice.

(8) To better fulfil society's obligations to the victims of crime - in order to help, assist, and make the victim whole again - it is necessary to gain a thorough knowledge of the consequences and impact of the crime on those who are victimized. Moreover, an adequate knowledge of the various needs of victims of different types of crime is a prerequisite for setting up efficient victim services, victim assistance, and compensation programs. A better understanding of victims' perceptions of, and attitudes to, the criminal justice system, their reasons for not reporting victimization and refusal or unwillingness to co-operate with the system, are essential to improving attitudes and enhancing co-operation.

(9) Modern criminology is paying more attention to the concept opportunity (see Mayhew et al., 1976). The commission of many crimes is believed to be largely a function of the opportunities to commit those crimes. Opportunities, in turn, are viewed as being greatly influenced by the behaviour of potential victims. The collective behaviour of potential crime victims may have a strong impact on crime rates, and variations in those rates may be explained, at least partially, through differences or changes in victim behaviour. For this reason, a better understanding of the attitudes and behaviour of victims holds great promise for crime prevention. Victim-based prevention strategies have several advantages over offender-based ones. The former aims at hardening the targets, making the commission of crimes more difficult and less profitable. The role potential victims are called upon to play in this environmental/situational approach is a primary one.

(10) The medieval paradigm of 'retributive justice' seems to have reached its terminal phase and attempts are already underway to have it replaced by another paradigm of 'restorative justice.' Restorative justice is based on the principles of mediation, conciliation, restitution and compensation. Its primary aim is healing, not punishment. In a restorative justice system, the victim ceases to be a secondary or peripheral player and assumes an active role. He/she becomes a

full party in the process. The study of the impact of victimization on the victim, the attitudes and the needs of the victim are thus essential to a system of restorative justice (Fattah, 1995).

V. THE INADEQUACY OF THE DISPOSITIONAL THEORIES OF CRIMINALITY

Criminological theories that stress individual traits or offender pathology fail miserably when the task at hand is to explain the temporal and spatial patterns of crime, regional, provincial, intercity and intracity variations in crime rates, or the changes in those rates over time. Theories seeking the genesis of criminal behaviour in the abnormality or the psychopathology of the offender ignore the dynamic forces that determine, condition, shape or influence the offender's behaviour in a given situation. Not only do they fail to explain why many of those who share offenders' abnormal or pathological characteristics do not engage in criminal behaviour, but they also fail to explain why it is that most of those who commit incest or family violence (to give just one example) confine their sexual coercion or aggression strictly within the family and rarely, if ever, are violent or sexually preying against others outside the home. The theories do not fare any better when it comes to explaining retaliatory behaviour committed as a reaction to prior victimization or in response to provocation or precipitation. This is a serious shortcoming because:

(a) Retaliation is a key principle in violence (Felson and Steadman, 1983, p.60; Singer, 1986, pp.61-62) and because violence is, in many cases, situationally determined. In other words, it is the result of events and circumstances that cause a conflict to escalate (Felson and Steadman, pp.59-60);

(b) A non-negligible part of violence and homicide is victim precipitated (Wolfgang, 1958). In such cases, the violent response is more a function of the precipitating behaviour of the victim and the "situational determinants" (Felson and Steadman, 1983) than it is a function of the characteristics and the background of the respondent.

Another shortcoming of the "positivist" approach is the static way in which it views the personality traits and character attributes believed to be responsible for criminal behaviour. Traits such as aggressiveness, callousness, and dishonesty are neither constant nor absolute and, thus alone have very little, if any, explanatory value. Some individuals become aggressive only when under extreme stress, have consumed alcohol, or when provoked. Others may use violence only when they are humiliated or hurt in their vanity. Some men become violent in situations where they feel the need to assert their maleness. Some people may be shy and withdrawn without peer support, only to become extremely mean when in the presence of, and under pressure from, their peer group. People may be scrupulously honest in one situation and shamelessly dishonest in another. Many "honest" people, whose moral scruples would never allow them to cheat or steal from a friend or neighbour, a work partner, or in general another human being, become totally unscrupulous when it is a matter of cheating the government, a large corporation, or the general public. They could be today without inhibitions or compunction when it comes to committing a white collar crime, such as tax or custom duty evasion, insurance fraud, price fixing, and so forth (Fattah, 1991).

An individual's attitudes to other are not indiscriminate. Clifford Olson, a serial killer found guilty of slaying eleven children in British Columbia, and whom the police suspect of having slain even more, was proven to be a loving husband and affectionate father. Yet he had no sympathy or empathy for the several young victims he brutally killed to satisfy his sexual desires.

In view of all these serious problems and shortcomings, one might wonder why it is that theories of criminals' psychopathology have maintained their popularity for over a hundred years. The answer is rather simple. The attractiveness of the traits/attributes approach lies in its central (though faulty) premise that criminal and delinquents are different from the rest of us. Propagating the view that some individuals are "bad", "evil", or in some way abnormal, allows the average citizen to perceive offenders as distinct individuals, as different beings capable of committing the terrible crimes that we cannot conceive of ourselves as capable of perpetrating. It is a self-assuring approach that allows the dichotomization of people into the good and the bad, the normal and the abnormal, those who are criminally inclined and those not so inclined.

VI. THE SHIFT FROM DISPOSITIONAL THEORIES TO SITUATIONAL THEORIES

Fifty years ago, Sutherland (1947) suggested that explanations deviance and crime are either situational or dispositional, and that of the two, situational explanations might be the more important. Extensive research on violence, vandalism, and other forms of antisocial behaviour led Zimbardo (1978, p157) to challenge the prevailing stereotypes which locate the source of evil in people. He insists that we have been programmed by our socialization process and basic institutions to accept doctrines of individual guilt, sin, culpability, and failure, as well as to accept the cult of the ego, the strength of character, and the stability of personality. According to Zimbardo, contemporary social psychology maintains that we all overestimate the extent to which behaviour - be it evil, good, or neutral - is dispositionally controlled, while at the same time we systematically underestimate the degree to which it is situationally controlled (p.159).

The manifest and generally acknowledged failure of criminological theories (see above) points to the need for a new, dynamic approach that shifts the focus from predisposing factors to environmental, situational, triggering, and catalytic factors; from the notion of propensities and inclinations to the concept of opportunity. Such a dynamic situational approach pays great attention to the contexts in which violent confrontations occur and analyses these confrontations as situated transactions (Luckenbill, 1977). It maintains that many crimes are situation-specific, context-specific, and target-specific. In contrast to the dispositional perspective which postulates that the impulses for crime come from within the individual and are manifestations of the psychopathology of the offender, the situational approach looks upon criminal behaviour as a response to environmental stimuli, stimuli that ineluctably include the characteristics and the behaviour of the potential victim (Fattah, 1991).

The situational approach also pays great attention to victim-offender interactions. As Felson and Steadman(1983, pp.59-60) point out:

> *Outcomes of an aggressive interaction are not determined by either the characteristics or the initial goals of the participants; rather, they are at*

least party a function of events that occur during the incident. In other words, violence is in part, situationally determined - the result of events and circumstances that cause a conflict to escalate.

The situational approach posits that many crimes of personal violence, particularly spontaneous, impulsive, unplanned, and unpremeditated ones, are outcomes of long or brief interactions between two or more individuals. As such, these crimes cannot be adequately explained by static theories of criminal behaviour that focus on offender characteristics but give no consideration to the dynamic forces unique to each situation. It is these dynamic forces that determine, condition, shape or influence the offender's behaviour in that particular situation. The situational approach highlights the inherent weaknesses of dispositional theories of criminal behaviour by showing that everyone is capable of committing a crime in certain situations, when under certain pressures, in the presence of certain triggering factors.

By their very nature, dispositional theories (whether of the biological, consitutional, psychological, or sociological variety) dissociate criminal behaviour from the dynamic situational forces that trigger, provoke, determine, condition, shape that behaviour, or in other ways contribute to its occurrence. Violent behaviour, for example, could hardly be understood without a thorough analysis of the transaction that occurs between the participants prior to the perpetration of violence (Hepburn, 1973). Although this might seem axiomatic and despite the obvious dynamic and interactionist nature of violent crime, criminological research, with only a few exceptions, has focused on the perpetrator's characteristics and background, and has ignored the verbal exchanges between the participants prior to the use of physical force.

The situational approach also pays great attention to the problems of communication in confrontational encounters, such as rape and robbery situations. It analyses the subjective definitions and interpretations of the participants and see this as a key to understanding and explaining their actions and their responses. It also examines how victims respond to face-to-face victimization and the impact of the response on the final outcome of the victimization event (Fattah, 1984; 1991). The finding of this type of research could be used to provide potential victims with some guidelines on how to behave in specific victimization situations to minimize the chances of physical injury and of the crime being completed.

VII. THE ROLE VICTIMIZATION PLAYS IN OFFENDING: INTERCHANGEABLE ROLES OF VICTIM AND VICTIMIZER

Those among you who are in daily contact with offenders have surely noticed that a large number of them feel and behave like a victim. They suffer from heightened and acute feelings of injustice. These feelings of injustice, this firm conviction that they are victims, whether the victimization is real (as it is in many cases) or perceived, there seems to be little doubt that it plays a significant role in offending.

The transformation of victims into victimizers is an intriguing, though largely ignored phenomenon. Examples of the passage from the state of victim to the state of offender abound. Among the most obvious are cases of vendetta, vengeance, reprisal, retalitation, getting even, paying back, setting of accounts, as well as cases of self-defence, vigilante action, auto-justice

or taking the law into one's own hands, to mention but a few. In all these examples, the victimization is a direct contributor to the ensuing aggression, the *sine qua non* for it. Although this phenomenon is as old as the human race itself, it is only recently that it has attracted some attention, particularly in cases of battered wives who kill their battering husbands, of abusive parents who were themselves abused as children, of rapists and other sexual predators who had been sexually molested or assaulted during their childhood. New terms such as "the cycle of violence", "intergenerational abuse" were coined to describe this curious tendency of human beings to subject others the same pain and anguish to which they had been personally subjected or to inflict upon others the same victimizations they had suffered.

The phenomenon of role reversal raises three important issues:

(1) There is a close link between victimization and offending behaviour; they are the two sides of the same coin. Hence it is impossible to gain a true understanding of one if we ignore the other.

(2) The victim and offender populations are not, as commonly believed, two distinct and mutually exclusive populations. They are homogeneous and overlap to a large extent. Yesterday's victims are often today's offenders, and today's offenders are frequently the victims of tomorrow.

(3) The roles of victim and victimizer are not fixed, assigned, or static. They are dynamic, mutable, and interchangeable. The same individual can move successively, or even simultaneously, from one role to the other.

VIII. VICTIMIZAION AS ANTECEDENT TO VIOLENT BEHAVIOUR

A. From Victim to Offender

The importance of victimization as a causal factor in violent offending becomes all too evident when keeping in mind the fact that retaliations is a key ingredient in violence (Felson and Steadman, 1983), that revenge is the most prevalent motive for the use of force. Gratuitous violence is the exception rather than the rule. Violence in most instances is an expression of a grievance, a response to an attack, injury, or provocation. As Black (1983) points out, violence is a mode of conflict management resembling the modes used in traditional societies which have little or no formal law.

Homicide, for example, is rarely predatory in nature. Relatively few homicides are committed for gain or sexual gratification. In the vast majority of cases the killing is a reaction (or rather an overreaction) to some from of victimization: the lover reacting to being cheated on or abandoned, the victim of adultery avenging the offended honour, the drug dealer retaliating against the police informer, the hot-blooded young male stabbing the friend who got his sister pregnant, the landowner shooting the trespasser, the double-crossed gang member applying his own brand of justice, the rape victim attempting to incapacitate the attacker, the drunk responding to an insult, threat or physical assault.

When aggression is met with aggression, when violence is countered with violence, the roles are simply reversed. The initial aggressor becomes the victim and the initial victim ends up being the victimizer. Labels are applied not on the basis of the

original role but on the final outcome. The violent response, though defined as 'crime' by the law, is perfectly legitimate in the eyes of the perpetrator who perceives their retaliation as a justiciary act, as a rightful reprisal.

The observed link between victimization and offending is not the least surprising. The sense of being victim, whether the victimization is real or perceived, whether direct or vicarious, whether personal or collective, provides not only the motivations and justifications for offending, but also the necessary rationalizations and neutralization that make it possible for the potential delinquent to overcome whatever formal and informal controls may stand in the way of the offending behaviour, including the delinquent's moral inhibitions, religious convictions, the threat of punishment and so forth. These motivations and justifications are capable of transforming the victim into a ruthless victimizer. Cases of store or house owners who, once victimized, sit waiting with a firearm in hand for the next robber, burglar, or thief, in order to welcome the victimizer with a hail of bullets, have occurred with increasing frequency in the past few years. But these are just the extreme examples of this transformation. In schools, it is a common experience to find children whose books, articles, or supplies have been stolen by other children taking revenge by stealing the same or similar things from their school mates. Some youthful and adult car owners who have had some piece or part, such as a hubcap or mirror, stolen, do not report their victimization to the police, but instead, "help themselves" to the same part from a similar car. In doing so they feel they are only righting the wrong done to them.

Debuyst and Joos (1971) relate the story of a seventeen-year-old boy, Raoul, who had a collection of firearms, one of which was stolen from him. Sometime later , he broke into a firearms shop and stole some firearms. His mother, breaking down in tears over her son's conduct, could not understand how such an honest boy, who was from a well-to-do family, working, and well considered by everyone, could do such a thing.

In addition to concrete feelings of victimization resulting from a specific incident or incidents in which the person was actually victimized, individuals or groups may have sentiments of injustice and a vague sense of victimization unrelated to any specific event(s). In many offenses against property, resentment over economic exploitation and social injustices serves as a means of auto-legitimation. Many thieves, professional and occasional, tend to justify their delinquent behaviour by citing social injustices and by contrasting the scandalous wealth of the upper social-classes with their own misery and poverty. White-collar tax evaders convince themselves that the tax system is unfair as it victimized and penalized the hard-working, like themselves, while allowing many others to pay less or no taxes. Cressey (1953) discovered that perceived injustice and the sense of being victimized play an important role in the cases of embezzlement, trust violations, and one may add corruption. This may take the form of feeling underpaid or overworked, or of feeling unfairly treated in some other way involving finances. Cressey points out that it is not the fact of being maltreated that is important, if such a fact can be established. Rather, it is the fact that the individual feels maltreated, while, at the same time, for some reason, feeling obligated to continue in the service of the organization.

Feelings of injustice and of victimization play a crucial role in the acts of political

terrorists and of other minority groups who have been historically the targets of violence, maltreatment, and exploitation. It is true that offending is, in many instances, a reaction to, or a consequence of, victimization, then it is easy to understand why it is that punishment quite often fails in preventing the repetition of the behaviour being punished. There can be no doubt that for those offenders who have been victimized, punishment can only be seen as an added victimization, it can only aggravate the problem that led to offending in the first place. Expressions such as "getting even", "taking it out on society" exemplify the deep resentment and frustration felt by offenders who already perceive themselves, rightly or wrongly, as victims, and who are deprived of their liberty as a means of punishment.

As mentioned earlier, offenders whose violence is a retaliation against some from of victimization view their behaviour as perfectly legitimate, and are bound therefore to perceive their punishment as unjust and unwarranted. If victimization is an important factor in offending, and I strongly believe it is, then one very effective way of preventing crime, particularly violent crime, would be to reduce the incidence of victimization, exploitation and discrimination.

B. From Offender to Victim

Not only is there a strong link between victimization and offending, but there is also a close link between offending and victimization. Involvement in criminal, illegal or deviant activity greatly enhances the chance of becoming a victim. Sampson and Lauristen (1990) found a significant relationship between the risk of victimization and involvement in violence, vandalism, and theft offending. In other words, persons who engage in criminal offending sharply increase their overall risk of victimization (p.120,126). They further found that offence activity - whether of a violent or a minor deviance, such as drinking or drug use - directly increases the risk of personal victimization.

The inter-relationship between offending and victimization was reported in many other studies. Singer (1981) found that cohort members who were shot or stabbed were involved more frequently in official and self-reported criminal activity. His findings were corroborated by Savitz, Lalli, and Rosen (1977). The same pattern was observed in England by Sparks, Genn and Dodd (1977). Gottfredson (1984) discovered that for persons with at least one self-reported violence offence, the likelihood of personal victimization was seven times the likelihood of personal victimization for persons reporting no self-reported violent offences.

Johnson et al. (1973) followed up all victims of gunshot and stab wounds admitted to the City of Austin Hospital in Texas during two years and found that 75% of the male victims had a criminal record, and 54% had a jail record. Canadian homicide statistics for 1991 (Juristat, 1992) reveal that almost half of homicide victims (45%) have a criminal record. And in an American study of gunshot victims, Paul Friday (personal communication, March 1995) found that 71% of the victims had their own criminal histories.

Of the 92 assault victims in the hospital-based sample interviewed by Cretney and Davis (1995, p32), 24 (26%) told the researchers that they themselves had a criminal record, while 16 (17%) had at least one previous conviction for assault. Other offences committed by the sample of 'victims' included: shoplifting; theft; robbery with violence; and possession and dealing in drugs.

IX. OFFENDERS' ATTITUDES TO THEIR VICTIMS AND HOW TO CHANGE THESE ATTITUDES

Offenders' attitudes to their victims is an extremely important area of study in criminology, victimology and penology. This is so because such attitudes often play a crucial role in the motivational processes leading to the victimization, and a decisive role in the process of selecting the victim. For example, in the case of genocide, of terrorist activities, of acts of war, the potential targets are defined and perceived as the enemy that has to be attacked, exterminated or annihilated. Enemies evoke no sympathy, pity or compassion.

The same is equally true in conventional crimes. Rapists, for instance, have devalued images of women. They are sex objects, they are to be used for one's pleasure and then discarded or even killed. In many other offences, the victim is seen simply as a means to an end. Sutherland (1937) insists that professional thieves have no consideration whatsoever towards the victims whose wealth they are trying to steal. They think of their victims like fishermen think of a place to fish or hunters of a place to hunt.

The slang words often used by offenders to describe their victims: whore, slut, faggot, sucker, etc, betray not only their utter lack of respect, but also the contemptuous attitude they have *vis a vis* the victim. The mental process by which the victim is denied, blamed, denigrated, devalued, depersonalized may be referred to as the desensitization process.

A. The Desensitization Process

One of the most important techniques of offender rehabilitation is to counter what we call in victimology 'the desensitization process'. Criminal victimizations, whether directed at the victim's person or his/her property, are harmful actions. They cause physical injury, material loss, psychological trauma or a combination of all three. Feelings of guilt associated with international victimizations are stronger than those evoked by negligent victimization.

Most international victimizations involve the deliberate infliction of pain and suffering upon a fellow human being. While a small minority of victimizers may fit the psychiatric label of the heartless, callous, unfeeling "psychopath", the majority are not completely insensitive, apathetic, or impassible and are not totally devoid of the human feelings of pity and empathy. Thus, unless the victimizer desensitizes themself in advance, the victimization is bound to create moral tension and to elicit feelings of guilt, shame, remorse, reproach in the perpetrator. Since the source of these negative feelings is the pain and suffering the victimization will cause to the victim, negating this pain and suffering can be an effective means of desensitization. To do so, the victimizer can use one or more of several techniques of desensitization. These include the denial, reification, depersonalization of the victim, the denial of injury, blaming the victim, devaluating or denigrating the victim, and so forth.

The desensitization process in which the victimizer engages themself prior to the commission of the act explains better than "psychopathy", "moral perversion" or "emotional indifference" why certain offenders show no sense of guilt, remorse or repentance after having committed brutal and cruel acts. It explains why certain killers, while exhibiting extreme cruelty, brutality and callousness toward their victim, show tender love and compassion for others, even for animals. In a case studied by the author (Fattah, 1971) the murderer, after savagely killing his

victim and robbing the house, took utmost care to feed the victim's dog and cat, and even left them enough food for several days, for fear that nobody would come to the scene of the crime for some time.

There are various techniques that offenders use to desensitize themselves to the harm, pain and suffering they are inflicting on their victims. One of the most common techniques of desensitization is to deny the victim, to mentally turn him/her into an object, or to try to depersonalize and dehumanize the victim.

Another technique of desensitization often used by victimizers in their attempt to shield themselves against the victim's plight, to ease their conscience, and to free themselves of any feeling of guilt, is the denial of injury. It is a common technique among rapists before and during the act. But it is also common in property victimization as well. Impersonal, non-specific and intangible victims, such as the government, large corporations, and organizations, are considered by many as appropriate targets for victimization. Victimizing them is subject to fewer (if any) moral restraints and arouses less guilt than victimization directed against a personal, identifiable victim. The impersonal and diffuse character of the victim and its intangibility evoke little moral resistance in the person contemplating the victimization. Sykes and Matza (1975) wrote:

> *Insofar as the victim is physically absent, unknown, or a vague abstraction (as is often the case in delinquent acts committed against property), the awareness of the victim's existence is weakened. Internalized norms and anticipations of the reactions of others must somehow be activated, if they are to serve as guides for behaviour; and it is possible that a diminished awareness of the victim plays an important part in determining whether or not this process is set in motion. (p.668)*

The idea of stealing from or cheating the government or a large organization raises fewer moral scruples than the idea of cheating a person or stealing from a family.

A third technique is 'blaming the victim'. Once victimizers are able to convince themselves that the victim has done them wrong, that he or she is guilty of some injustice, they can rid themselves entirely of any compassion for that victim and of any sense of personal culpability. By blaming the victim and transforming him or her into a person deserving to suffer, victimizers are able to go ahead with the victimizaion without conceiving of themselves as criminals and while shielding themselves against post-victimization dissonance. The establishment of the victim's guilt beforehand, whether the guilt is real or imagined, acts as an anaesthetic on the conscience of the potential victimizers, enabling them to destroy or injure the victim without pity or empathy.

Although blaming the victim is a common and often-used technique of autolegitimation, neutralization and desensitization, it is not a process of international distortion. In most cases, victimizers are actually convinced of their victim's guilt. Nowhere is this more evident than in crimes of passion, in political crimes, and in the crimes of paranoiacs. Crimes of passion are characterized almost invariably by a justiciary attitude on the part of the offender.

Blaming the victim is also the dominant feature of crimes motivated by revenge, the typical example of which is the vendetta.

Here the victimization is seen as a legitimate reprisal, a rightful form of retaliation. The chain reactions resulting from the use of this type of legimitation is the development or perpetuation of a subculture of violence.

Devaluation of the victim is yet another technique of desensitization. In an attempt to desensitize themselves to the victim's plight, victimizers often attribute inferior qualities to the victim. They may devalue, denigrate and derogate the victim's worth, so that the victim appears blameworthy and deserving of the victimization because of a behaviour (he or she did something very bad) or because its their fate as a person (he or she is a bad person). This psychological process of devaluating the victim is not worked out in a logical, rational or conscious way (Ryan, 1971).

The preparation of the criminal act at the moral level is done, almost always, with reference to the attributes, personality, attitude, behaviour, and conduct of the victim. Certain attributes or qualities of the potential victim may be used to discredit and devaluate him or her in an effort to present the victim as a legitimiate and deserving target, and to justify the delinquent act. Attacks on homosexuals and on prostitutes are often so legitimized. Redl and Wineman (1951) found that for certain adolescents, stealing from homosexuals is a perfectly justifiable and legitimate act. Property crimes committed against prostitutes are rationalized in a similar manner. Furthermore, the forcible rape of a prostitute is also conceived of as a legitimate and guiltless act. Their style of life is interpreted as denying the right to dispose of their own body as s/he pleases; as if, because s/he sells their body to whomever pays the price, s/he no longer has the right to protest when someone tries to possess them by force. In such cases, the attitude toward the potential victim and the possibility of justifying the act are undoubtedly important factors in the choice of the victim.

In cases of property crime, the dishonesty of the victim seems to be seen in the same way as the lifestyle of the prostitute. The businessman is defined as a "monopolistic miser," or as a "dishonest merchant" who cheat customers and therefore deserves to be victimized, and the illegal act is defined as an act of normal indignation (Schwendinger and Schwendinger, 1967). The repugnance toward the victim overcomes any thought of the victim's right.

X. VICTIMOLOGICAL EXPLANATION OF REOFFENDING

Victimological explanations of recidivism and reoffending are quite simple and more common-sense than science. If environmental conditions, if situational, triggering and actualizing factors play an important role in offending (and there is overwhelming empirical evidence showing that they do), then a released offender, returned to these same conditions and situations that led to the first offending, will have a very high chance of relapsing and of committing new offences. The best treatment and rehabilitation programs in custody cannot be successful unless the environmental conditions to which the offender is released have been changed, and unless the situational, triggering and actualizing factors have been dealt with. Changing the conditions, controlling the factors, is generally a much easier and more effective task than the difficult and elusive task of changing the offender's personality, attitudes or behaviour. After all, no one, not even the most violent of offenders, is dangerous all the time and towards everyone.

In the vast majority of cases, dangerousness is episodical and specific. To

effectively control it, one only needs to know the conditions and situations in which the person becomes dangerous, and the person or persons against whom the violence or aggression will be directed. As explained earlier, many crimes are context specific, target/victim specific. Because of this, the violence is usually strictly confined. For example, in most cases of family violence, the violence is strictly confined to the wife (or the children). In the case of incest, the father or grandfather's sexual predations are strictly confined to their offspring. If the causes of the behaviour are endogenic (that is located in the individual himself), why is it that they manifest themselves or produce the violent or sexual behaviours only in these specific contexts, against these specific victims?

If the cause of criminal behaviour, as many criminologists claim, is lack of or weakened self-control, then how is it that the person is perfectly able to control their behaviour outside of these contexts and these targets. Good-sounding programs, such as 'anger management', simply ignore the fact that the individual has no problem controlling their anger outside of the home environment to which the violence is confined.

XI. CONCLUSION

Hopefully, this brief and hasty synopsis of victimology has given you an idea of how valuable victimological knowledge could be for those who are involved in corrections generally, or offender rehabilitation in particular. Victimological knowledge is not only essential for understanding the offender and the offence, for positively and successfully influencing the offender's, attitude and behaviour, but also because it has direct implications and applications for the task of rehabilitation and resocialization. Understanding the role victimization plays in offending, the phenomenon of role reversal, the interchangeable roles of victim and victimizer, is bound to change the views and stereotypes of offenders, help understand the motives for their behaviour, assist in establishing a rapport with them, and thus the possibility of influencing their attitudes and behaviour.

VICTIM REDRESS AND VICTIM-OFFENDER RECONCILIATION IN THEORY AND PRACTICE: SOME PERSONAL REFLECTIONS

*Ezzat A. Fattah**

I. INTRODUCTION

For many centuries, redress to the victim has been the primary, even the sole, objective of justice. Restorative justice continues to be the dominant practice in small, rural, agrarian societies and in cultures that have not been influenced by the religious principles of Judaism, Christianity and Islam. Anthropologists who studied the mechanisms of conflict resolution in non-state societies have observed a development that seems to be universal. The primitive and rather instinctive reactions of vengeance and retaliation, which inevitably result in weakening the group and eternalizing the feud, always gave way to the constructive and reconciliatory practices of composition, restitution and compensation. In these societies, untouched by western thought and practices, punishment for the sake of punishment, as a means of atonement and expiation, is totally unknown. Justice has utilitarian goals.

Indigenous populations in countries that were colonized by the powers of western Europe : Australia, Africa, North and South America, had a long tradition of restorative justice and continue to opt for healing practices over punitive sanctions. Western societies are beginning to recognize the superiority of restorative justice over retributive justice, and it seems likely that the paradigm shift in criminal justice will occur quite early in the next millennium.

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In an article I wrote few years ago for a Festschrift honouring Prof. Koichi Miyazawa, I tried to compare the two paradigms and it was obvious at the end of the comparison that restorative justice is the way of the future, because it is the natural way of doing justice.

I was converted to restorative justice early in my academic career. In the early 1970's, I was a visiting professor at the University of Abidjan in the Ivory Coast when I decided to do a comparative study of criminal homicide in Africa and North America. Once I started examining the official statistics and started studying police files, I was intrigued by the finding that there were very few homicide cases in rural and remote areas of the country. I wondered if they were peaceful communities, free from conflict?

Unfortunately, this was not the case. It turned out that there were two parallel systems of justice operating in the Ivory Coast: the formal punitive/retributive system imposed by France (the colonial power) and the tribal/restorative system that solved conflicts and settled disputes using the traditional, customary practices of reparation, compensation and reconciliation. The kinship of homicide victims, getting no satisfaction from the retributive practices of execution and incarceration, deliberately abstained from reporting the homicides to the police and preferred to have them dealt with within the tribe or the community. This was an eye opener that confirmed my long-held belief in the superiority of restorative

justice over the destructive and futile system of punishment.

II. FROM RESTITUTION TO RETRIBUTION AND FROM REDRESS TO PUNISHMENT: THE HISTORICAL EVOLUTION

The origins of criminal law can be traced to the attempts by the kings and feudal lords to consolidate their authority, to enhance their powers and generate revenue for themselves and their estates, by imposing fines and by seizing the lands and property of convicted persons. As the common law developed, criminal law became a distinct branch of law. Numerous antisocial acts were seen to be 'offences against the state' or 'crimes' rather than personal wrongs or torts. This tendency to characterize some wrongs as 'crimes' was encouraged by the practice under which the lands and property of convicted persons were forfeited to the king or feudal lord; fines, as well, became payable to feudal lords and not to the victim. The natural practice of compensating the victim or their relatives was discouraged by making it an offence to conceal the commission of a felony or convert the crime into a source of profit. In time, fines and property that would have gone in satisfaction of the victim's claims were diverted to the state.

Compounding an offence (that is, accepting an economic benefit in satisfaction of the wrong done without the consent of the court or in a manner that is contrary to the public interest) still remains a crime under the Canadian Criminal Code and discourages private settlement or restitution. It would now seem that historical developments, however well intentioned, effectively removed the victim from sentencing policy and obscured the view that crime was social conflict.

A. Crime is Not Different From Tort

Parker's (1977, p28) account of the historical development that led to the emergence of criminal law shows that the differentiation between crimes and torts is of relatively recent origin. Parker states:

> *At this stage of legal development there was no differentiation between what we know as crime or criminal law and tort or civil liability for damage inflicted. All injuries to persons of property were considered as 'wrongs.' The seriousness of the wrong depended upon the disruption caused to the community or the actual or perceived affront to the injured parties. Slowly, a distinction emerged between wrongs which were private disputes and required payment to the injured party or his kin and wrongs which had a public quality and required compensation to the whole group.*

This historical fact is often ignored by those who claim that crime is a unique, exceptional or distinct category of harmful behaviour. In the not too distant past, all harmful injurious behaviours were civil torts treated in more or less the same manner. The emergence of the criminal law saw the creation of a new category of behaviour believed to be deserving of punishment. The selection of behaviours to be brought under the realm of the criminal law was guided by political, historical and religious considerations, and not by the unique qualities of the behaviours that came to be defined as crimes. As a result, the distinction between crime and tort, between the criminal and the civil code, is both artificial and arbitrary, and the demarcation line separating the two is blurred. Very frequently the same act is both a crime and a tort. And yet, as Morris and Hawkins (1969, p46) point out:

No research projects have been conducted to search for the primary cause of tort..., no one inquires what social or psychological pathologies underlie the incidence of tort in our society, [and] no one has suggested that those who commit torts are biologically inferior to their fellows.

They add that a large part of criminal behaviour is perfectly 'normal,' both in the statistical sense and in the sense that it occurs naturally.

B. Criminal Behaviour is Not Qualitatively Distinct

Punitive /retributive justice is based on an erroneous premise (that crime is a distinct or exceptional category of behaviour) and on a false dichotomy between the so-called crimes and civil wrongs. This is a faulty premise because a comparison of acts made illegal by the criminal code or by statutes with similar behaviours that are unregulated by the criminal law suggests that there is no qualitative difference between criminal and non-criminal behaviour.

For every behaviour defined as criminal and sanctioned by law, there are identical or similar types of behaviour that are neither illegal nor punishable. Even acts that may, at first glance, appear to be morally heinous, socially harmful, and, therefore, condemnable are generally condoned in certain circumstances and are required or encouraged in specific conditions. The act of killing is not invariably criminal. Killing the enemy in war is not a crime (in fact, refusal to do so may be a criminal offence); it is an act of courage and heroism. The killers are not punished; they receive medals, decorations, awards and citations. Executing a convicted murderer is considered by many as an act of 'justice' or a 'proper' measure of social protection. It enjoys the support of a majority of the population and was once so popular that public executions drew huge crowds to the places where hanging or beheading took place. Killing a prison inmate trying to gain freedom or a hold-up man attempting to escape is considered a justifiable or excusable homicide in many jurisdictions. But killing in most other circumstances is regarded as a very serious, perhaps the most serious, crime. The difference does not lie in the nature of the act itself. Killing is killing. But killing is only defined as a crime if it is committed under certain conditions or against certain victims. Shooting and killing East Germans trying to flee to the West by crossing the Berlin wall was a legal act under the laws of the former German Democratic Republic. After the reunification in 1989, and the replacement of the East German Code by the Criminal Code of the Federal Republic of Germany, these killings are being prosecuted as murders, and the shooters are now charged with the deliberate taking of a human life.

Until a few years ago, the Canadian Criminal Code and many others did not define forcible sexual intercourse with one's own wife as a crime. But the same act perpetrated on a woman who is not the man's wife did qualify as a serious crime punishable by imprisonment for life. Although the behaviour in the two cases is identical, in one case it is criminal; in the other, it is not. depending on whether the two parties are bound by marriage or not. The same can be said of statutory rape, where an arbitrarily determined age is the deciding factor whether the behaviour is criminal or not, is punishable or not.

Not all types of violent, aggressive, or assaultive behaviour are made criminal by the law. Many forms of violence are condoned and tolerated to the extent that become culturally legitimate. Until recently, use of the strap in school for misconduct, using violence to discipline or

control the behaviour of inmates in penal institutions, and flogging offenders guilty of certain crimes were all seen as legitimate forms of violence, and those on whom such punishments were inflicted were seen as deserving targets. Milder forms of violence within the family are not criminal in most jurisdictions. Children are considered legitimate targets for the use of physical force in the process of training and control, and for a long time, husband-wife violence was regarded as legitimate by both the police and courts.

The absence of a qualitative difference between behaviour defined as criminal and behaviour that is not can also be observed in the areas of property and traffic offences, where the line between what is legal and what is illegal is often quite arbitrarily drawn. Offences like speeding and impaired driving are determined by speed limits and blood-alcohol levels set up in an arbitrary fashion. And the line separating the criminal offences of theft and fraud from what are normally referred to as 'sharp business practices' is exceptionally thin.

If crime is not qualitatively different from civil torts or civil wrongs, then why is it that we accept redress to the injured or harmed party in the latter but would not settle for anything less than criminal sanctions for the former? And why is it that in the case of civil torts the damages ordered by the court go to the victim whereas in criminal offences the penal fine goes to the public treasury?

C. The Crisis in Penal Law

The penal law in modern industrialized societies is in a state of deep crisis. It is lagging behind the times. The malaise is felt by scholars and practitioners alike. The commissions of reform established in many countries on a temporary or permanent basis are the proof that something must be done. The needed reform has to be sweeping and radical. The stage seems to be set for a scientific revolution or a paradigm shift in the sense proposed by Thomas Kuhn (1970). This is because most of the current problems can be traced directly to the old paradigm. As Barnett (1977) points out, many, if not most, of the ills of the present system stem from errors in the underlying paradigm. Thus any attempt to correct these symptomatic debilities without a reexamination of the theoretical underpinnings is doomed to frustration and failure (p.245).

The last fifty years have witnessed major changes in many branches of law: corporate law, labour law, insurance law, etc, to keep pace with the rapid changes that were taking place in society. The same could not be said for penal or criminal law. It is one branch of law that is least susceptible to change. As a result, penal law in most countries has not kept up with social evolution, it is lagging behind the times. It is in a state of crisis and is in urgent need of reform and modernization.

The Canadian Criminal Code (enacted in 1892), and many others, date back to the nineteenth century. The kindest thing that could be said about all these penal codes is that they are historical documents that mirror the mentality of the era in which they were enacted. The piecemeal changes that they have undergone since they were passed reflect various social and political circumstances occurring over a century. The fact that these codes have neither been overhauled nor replaced by new modern ones speaks eloquently to the criminal law's unmitigated resistance to change. That all the fundamental principles, all the basic notions of the criminal law of today, have been borrowed from the philosophy and theology of the 18th and 19th centuries is hard to understand. Such are the notions of evil, wickedness, malice, guilt,

culpability, retribution, expiation, atonement, to name but a few.

The time has come to ask whether notions such as 'free will', 'moral responsibility', 'criminal intent', '*mens rea*', 'premeditation', 'malice aforethought', as well as many others, do have a place in a modern, secular, socially oriented criminal law, like the one we would like to have in the 21st century. It is time we ask whether legal concepts such as 'insanity', 'diminished responsibility' etc, could withstand the test of science or whether notions such as retribution, punishment, just deserts and so forth, have a place in a modern, scientific and secular criminal policy.

D. The Crisis in Penal Policy

Early in the 20th century, the philosophical notion that punishment is a means to pay a debt to society generated by the offence, and the theological view of punishment as a means of inflicting pain and suffering to atone for, or expiate, a moral fault, were largely discredited and practically abandoned. Treatment and rehabilitation of offenders, re-education, re-socialization and reintegration in society became the key goals of penal policy. The word *corrections*, used to designate the probation, prison and parole systems, was used everywhere to emphasize the non-punitive features and goals of the new policies.

The liberal and progressive ideas of the 1960's and 1970's gradually lost ground and were fiercely attacked by the new conservatives who came to power in the 1980's: Margaret Thatcher in England, Brian Mulrony in Canada, Ronald Reagan in the United States. The manifest failure of treatment and rehabilitation programs to reduce crime or to prevent recidivism provided right wing politicians with the necessary ammunition to discredit corrections and to advocate a return to the harsh punitive policies of the past. Punishment, as a means of retribution and as an instrument of deterrence, was being pushed to its absolute limit. In the 1980's, both traditionally repressive countries, such as England and the US, as well as traditionally progressive countries, such as Holland, have seen their prison populations increase, sometimes to new records. And yet, none of the salutary effects promised by right wing politicians materialized. The bankruptcy of these punitive and highly expensive policies can no longer be denied and has been at tremendous social, human and financial cost.

In addition to the manifest failure of present policies to curb crime or to reduce crime rates, there are several other realities that illustrate the inconsistencies and deficiencies of the present system:

- As a result of gross under reporting most of the cases that the system is supposed to deal with are handled outside the system.

- As a result of ridiculously low clearance rates and of the attrition in the criminal justice process, only a tiny minority of all those who commit criminal offences face charges before the courts and an even smaller minority is punished. Estimates range between 5 and 10 percent.

- As a result of the widespread practice of plea bargaining (common in Anglo-Saxon countries) most of those who are punished are punished for offences other than the ones they have committed, or are offered a lenient sentence in exchange for a guilty plea. Ranish and Shichor's (1985) estimate that 90% of criminal cases in the US are disposed of

thorough plea bargaining gives some idea of the magnitude of the problem.

A criminal law system that uses 'the ability to distinguish right from wrong' as the prerequisite for criminal responsibility must rely on psychiatric evidence and calls upon the forensic psychiatrist to play an important role in the judicial process. It is the psychiatrist who supposedly enlightens the court on issues such as insanity, partial or diminished responsibility, mental disorder, psychiatric disability, dangerousness, and so forth. Psychiatry, however, is not an exact science and is, in fact, one of the least developed branches of medicine.

With the 21st century fast approaching, many countries are in the process of changing and modernizing their criminal law. While none of the new codes has abandoned the old paradigm (moral guilt/ moral responsibility/ punishment/ retribution) in favour of the new one (harm/ social responsibility/ restitution/ compensation), they are deviating more and more from the old paradigm and introducing more and more elements of the new one. This is particularly evident in the way strict liability is replacing moral responsibility. It is also visible in some areas where it was imperative to move from a guilt orientation to a consequence orientation, such as the areas of negligence and endangerment. Not only is the time ripe for a paradigm shift in the criminal law, but there are also specific political and social developments that are creating a context conducive to a successful shift. Two developments in particular, are worth noting:

1. Overwhelming Recourse to Insurance as a Means of Risk Coverage

One dominant feature of life in a modern, industrial, technological, highly, mechanized society, and of the social policy of the welfare state, is the overwhelming recourse to insurance (public and private) as a means of risk reduction and risk coverage. Recent criminological literature increasingly stresses the fact that the risk of criminal victimization is a 'natural' hazard of modern life, of social interactions. There is also a growing awareness of a strange anomaly that currently exists: whereas most other risks are covered by some insurance (public or private), the risk of criminal victimization is not. Actually, one of the ironies of the present system is that those who face the greatest risks of criminal victimization are the ones who can least afford the insurance, and the ones most frequently denied coverage by private insurance companies. Joutsen (1987) deplores the fact that state insurance schemes are rarely designed to cover crime risks. Instead, they generally cover losses or injuries incurred in certain risky fields of activity, regardless of the cause of this loss or injury, the most notable example being mandatory traffic insurance schemes. The insurance covers risks caused not only by traffic offences *per se* but also by any traffic accident. Joutsen adds that there is usually a national fund covering parties to a traffic accident who are not covered by insurance.

Slowly but surely, we are coming to realize that the distinctions that are made between victimization by crime and other victimizations, between the risk of crime and other social risks, are not only meaningless but also unfair to those who are victimized by actions that happen to be included in the criminal code. This paves the way for a new paradigm whose primary focus is restitution and compensation to the victim.

2. The Victim Movement

First espoused by the women's movement and then by the politicians of the new right, the cause of victims of crime

has led to the emergence of a powerful pressure group, the victim lobby. Active in many countries, including the US and Canada, the victim movement has focused attention on the plight of crime victims and demanded the re-examination of criminal and penal policies to render them more responsive to the needs of the victims. Persistent efforts at the national and international level culminated in the United Nations Declaration on the Basic Principles of Justice for Victims of Crime and the Abuse of Power which was adopted by the General Assembly on 11 of December 1985. The Declaration contains 21 paragraphs, at least 3 of which (8,9 and 10), are devoted to restitution. The three paragraphs exemplify the growing acceptance of at least two basic elements of the new paradigm: harm and restitution. Paragraph 8 addresses restitution from the offender or responsible third parties. It declares that:

> *Offenders or third parties responsible for their behaviour should, where appropriate, make fair restitution to victims, their families or dependents. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights.*

Paragraph 9 of the Declaration recommends the use of restitution as a sanction in its own right. It proposes that:

> *Governments should review their practices, regulations and laws to consider restitution as an available sentencing option in criminal cases, in addition to other criminal sanctions.*

Joutsen (1987) draws attention to the confusing wording of this paragraph in that it first calls for restitution as an option and then states that this option should be "in addition to other criminal sanctions". He also points out that, at present, few European countries provide for the possibility of restiution as the only sanction in criminal cases, whereas most allow the courts to order the offender to pay restitution in addition to the main criminal sanction.

Paragraph 10 of the Declaration recognizes the substantial harm that may be caused by environmental offences and the primacy of restitution in cases of this type. It stipulates that:

> *In cases of substantial harm to the environment, restitution, if ordered, should include as far as possible, restoration of the environment, reconstruction of the infrastructure, replacement of community facilities and reimbursement of the expenses of relocation, whenever such harm results in the dislocation of a community.*

Joutsen (1987) explains that an environmental offence may be so serious that the community cannot continue to exist in the same place. The air or water may be so polluted as to cause a danger to health, or may seriously hamper the livelihood of the whole community. We might add that it is precisely these extremely harmful, injurious actions (Bhopal, Chyrnoble, Exxon Valdez, etc) which very well illustrate the obsolescence of the old paradigm of the criminal law and the total inadequacy of conventional punishments (whether imprisonment or death) as a social reaction or a criminal sanction to these behaviours.

Christie (1977) has observed that the key element in a criminal proceeding is that the proceeding is converted from something

between the concrete parties into a conflict between one of the parties and the state. He points out that in the modern trial two important things have happened. First, the parties are being represented. Secondly, the one party that is represented by the state, namely the victim, is so thoroughly represented that she or he, for most of the proceedings, is pushed completely out of the arena, reduced to the trigger-off of the whole thing. The victim, Christie argues, is a double loser; first *vis a vis* the offender, but secondly and often in a more crippling manner, by being denied rights to full participation in what might have been one of the more important rituals encountered in life. The victim has lost the case to the state.

The criminal law, which does not cease to broaden its mandate and extend its boundaries, has declared a monopoly on every conflict or dispute falling under its jurisdiction. Joutsen (1987) cites many factors which speak in favour of informal, private settlements. These generally provide a quick decision at low cost. The individual features of the conflict can be studied to an extent not possible for the authorities of the criminal justice system, and there is considerably more discretion in deciding on the proper solution.

Instead of the 'all or nothing' decision that is often the only option for the criminal justice system (and in which one party is usually held to be the guilty offender, the other, an innocent victim), informal settlement can seek a compromise decision that fits the unique features of the case at hand and the parties to the conflict. Joutsen notes further that the parties can be directly involved in the search for the proper outcome to an extent that is not possible in formal criminal proceedings.

Finally, he points out that private settlements avoid the legal formalism that typifies criminal procedure. Rather than the black and white approach which characterizes the rules of criminal procedure, the mediation approach allows a more far-ranging view of the broad circumstances underlying the alleged offence, on the side of both the victim and the offender. He concludes that the trend towards private settlements will, in many cases, provide an alternative form of conflict resolution that can be of more assistance to the victim than can the criminal justice system.

Since current criminal law is centered upon punishment and retribution, and because of its avidity to extract revenue from the wrongdoers (in the form of fines), it naturally shuns any initiative for dispute settlement or conflict resolution especially when it is done outside the system. As a result, the criminal justice system has missed a golden opportunity to reduce its case load and to stop the repetition of certain offences through the reconciliation of the feuding parties.

Jobson (1977) asserts that the criminal justice system has overextended itself into conflict situations that are not adequately solved by existing processes. He estimates that almost fifty percent of crimes against persons and crimes against property prosecuted in the courts are characterized by an ongoing relationship between the offender and the victim. These crimes, argues Jobson, are not committed by strangers but by family members, neighbours, tenants or landlords, or within a customer-seller relationship.

Barnett (1977, 1981) insists that the paradigm of punishment is in a "crisis period". This, he believes, is as much because of its practical drawbacks as the uncertainty of its moral status. He further suggests that the alleged absolute justice of repaying evil with evil is really an empty

sophism since Christian moralists have always preached that an evil is to be put right only by doing good. Barnett concludes by admitting his inability to find any theory which justifies the deliberate, forceful imposition of punishment within or without a system of criminal justice. To replace the punishment paradigm, Barnett offers the restitution paradigm. This new paradigm views crime as an offence by one individual against the rights of another. The victim has suffered a loss and justice consists of the culpable offender making good the loss s/he has caused. This new paradigm, argues Barnett, calls for a complete refocusing of our image of crime along the lines of what Thomas Kuhn calls a "shift of world view":

> *Where we once saw an offence against society, we now see an offence against an individual victim. In a way, it is a common sense view of crime. The armed robber did not rob society: he robbed the victim. His debt, therefore, is not to society; it is to the victim (1981, p251).*

Barnett proposes two types of restitution: punitive restitution and pure restitution. He also outlines six advantages that a restitution system has over a system of punishment. These are:

(a) The first and most obvious advantage is the assistance provided to victims of crime.
(b) The possibility of receiving compensation would encourage victims to report crimes and to appear at trial.
(c) Restitution would aid in the rehabilitation of criminals because it is something the offender does, not something done for or to him/her.
(d) Restitution is a self-determinative sentence.
(e) Savings to tax payers would be enormous.
(f) Crime would no longer pay.

One big advantage of a system centered upon restitution is that it would enjoy the unqualified support of most victims. There is, in fact, overwhelming empirical evidence indicating that victims prefer reparative sanctions (such as restitution) to punitive sanctions such as imprisonment or fines.

III. THE RESTORATIVE JUSTICE PARADIGM

Justice paradigms have to change with social evolutions in order to remain in harmony with current belief systems and to take stock of whatever advances and discoveries are made in the fields of criminology and penology. It seems rather clear that the abstract goals of expiation and atonement are no longer in harmony with the realities of the secular, post-industrial society of the 21st century that is dawning upon us. In the modern, secular societies of today, the notions of risk and harm are gradually replacing those of evil, wickedness, malice, and are bound to become the central concepts in social and criminal policy of the future.

Future policies of crime control will be largely based on risk assessment, risk management, risk coverage, risk reduction, and risk prevention. The measurement of harm will become a central component of social reaction to crime, and the primary aims of such a reaction will be redress, reparation and compensation. My guess is that the artificial distinction between crime and civil torts will disappear and that the artificial boundaries that have been erected over the years between criminal courts and civil courts will be removed. All harmful actions will generate an obligation to redress, coupled with endeavours to prevent their future occurrence. This will

be the era of restorative justice.

It is not easy to define restorative justice. It means different things to different people. It is a *leit-motiv* for various policies and models which can be implemented in practice in many different ways and forms. To me personally, restorative justice offers a radically different (and rather refreshing) view of the criminal act. The act is no longer viewed as an offence against deity or divinity, nor an offence against the King or the Sovereign, not even as an offence against society. It is rather seen for what it really is: harmful, injurious behaviour that causes death, injury, loss, pain and suffering to the victim. Crime is regarded as one of the many risks to which we are daily exposed in the industrial, technological, mechanized and motorized society in which we live.

IV. IS PUNISHMENT NECESSARY?

If punishment has failed in achieving any of the utilitarian goals assigned to it, and empirical research provides ample proof of this failure, the question is whether punishment is necessary. The theological notions of expiation and atonement are inculcated in the minds of children in their tender age: if you commit sin you will go to hell, if you misbehave you will be caned, if you hit your sister you will spanked, if you commit crime you will go to prison. Later on it becomes extremely difficult to break this strong association between crime and punishment. It becomes almost impossible, particularly for the average citizen, to conceive of a non-punitive society, a society without prisons, a community that does not respond to harmful actions by the infliction of pain and suffering. Advocating and gaining acceptance for an alternative, non-punitive, justice paradigm becomes extremely difficult because the notion of a punishment that has to follow the fault, the wrongdoing, is too deeply anchored in the minds of most individuals. The idea of doing away with punishment altogether is not even acceptable to most criminologists. In her presentation of a feminist vision of justice, Kay Harris (1991, p94) questions this unshakeable faith in the need for punishment. She writes:

> *Indeed, we need to question and rethink the entire basis of the punishment system. Virtually all discussion of change begins and ends with the premise that punishment must take place. All of the existing institutions and structures- the criminal law, the criminal processing system, the prisons - are assumed. We allow ourselves only to entertain debates about re-arrangements and re-allocations within those powerfully constraining givens... The sterility of the debates and the disturbing ways they are played out in practice underscore the need to explore alternative visions. We need to step back to reconsider whether or not we should punish, not just to argue about how to punish.*

V. DO CRIME VICTIMS WANT REVENGE?

There is no evidence to support the claim that crime victims want revenge or that nothing other than the punishment of the offender will satisfy their thirst for justice. If anything the evidence clearly shows that victims are not as vindictive or as blood thirsty as some victim groups would want us to believe. Healing, recovery, redress, and prevention of future victimization are the foremost objectives of most crime victims (Fattah, 1997, p270). Studies by Boers, by Sessar, by Pfeiffer in Germany, by Umbreit in the United States, and by many others, show that victims' primary concern is to have redress: to have the stolen property returned, the broken

window fixed, the vandalized car repaired, the destroyed bike replaced. Their expectations and their demands are realistic, not moralistic (Fattah, p265). But what about victims of violence? One has to keep in mind that a high percentage of violent crime is committed between people who know each other or who are related by some family or other personal relationship.

Punitive justice ruptures social and familial bonds and destroys the chance for reconciliation. It widens the gap that separates the doer and the sufferer, generates further animosity and antagonism, and engulfs the parties in bitter, never-ending hostilities. It also forces others to take sides, thus contributing to the widening and perpetuation of the conflict (Fattah, 1995, p307). This fact alone shows how essential it is to have a conflict-resolving mechanism that settles the dispute and prevents further violence while maintaining those vital relationships intact. Moreover, the punitive, stigmatizing, and ostracizing nature of criminal sanctions prevents many victims from reporting their victimization to the police and from mobilizing a justice system that will expropriate the conflict and take no account of the victim's wishes. The result is that they continue to suffer in silence and try to cope on their own.

Even victims of the most serious and most heinous crimes of violence are not as vengeful as they are usually portrayed in the media or in the manifestos of right wing parties. The powerful television documentary *From Fury to Forgiveness*, the experiences of M. Umbreit in the United States and Ivo Aertsen in Belgium demonstrate in a vivid and deeply moving fashion that even victims who lose their young children or close relatives to homicidal killers can show genuine forgiveness and can plead with the justice system for the lives of their victimizers.

The fatal defect of the punishment paradigm is that it responds to harm with harm, to pain with pain, and its attempt to alleviate victims' suffering by inflicting yet more suffering on the offender. The flaw in this logic is best summarized in Ghandi's famous phrase: "an eye for an eye makes the whole world blind!". Or as Martin Wright said "responding to harm with harm doubles the amount of harm in society". In punitive justice systems there are at least two losers: the offender gets the punishment and the victim gets nothing.

Punitive justice neither serves the interests of crime victims nor does it satisfy their most obvious needs. Todd Clear (1994) affirms that penal harm does not actually help the victim. While punishment might be a public statement that the victim deserved better, it does little else. Clear insists that while penal harm cannot make the victim whole again, the focus on getting even with the offender could in some ways divert the victim from his or her personal path of recovery. He adds:

> *In this way, the emphasis on penal harm may actually be a disservice to the victim, in that it promises that if the State is only able to impose a penalty severe enough, the victim will be able to overcome the crime. The focus is placed on what happens to the law violator, not what happens with the victims. The victim's victory at sentencing is eventually exposed as a pyrrhic conquest, for the problem faced by the victim does not centre on the offender (1994, p173).*

IX. CONCLUSION

Attempts to exploit the cause of crime victims for political ends, and to sell the

policies of law and order under the pretext of doing justice to victims, often required the portrayal of victims as vengeful, vindictive, retributive, and even bloodthirsty. Those claiming to represent and speak on behalf of victims gave the impression that concern for crime victims invariably requires harsh, punitive justice policies. While the distress of some victims might be so overwhelming that they will demand the harshest possible penalty for their victimizer, this could hardly be said of the majority of victims. Healing, recovery, redress, and prevention of future victimization are the primary objectives of most crime victims.

If the primary purpose of social intervention is to restore the peace, redress the harm, heal the injury, and stop the repetition of the offence, then it is easy to understand how and why the restorative system (based on mediation, reconciliation, restitution, and compensation) succeeds where the punishment system fails.

Mediation and reconciliation bring the two parties together, face-to-face, and ensure that they see each other as human beings in a state of distress. When faced with the victim, it becomes impossible for the victimizer to deny the victim's existence or the injury or harm caused. They can no longer depersonalize, deindividuate, objectify or reify the victim. They can no longer avoid post-victimization cognitive dissonance. The confrontation between the offender and the victim in a mediation situation is the surest and most effective means of sensitizing them to the victim's plight, of countering and reversing the mental process of desensitization that s/he has gone through in order to avoid guilt feelings or bad conscience (Fattah, 1991a).

The mediation process, when done properly, can be very effective in awakening and activating any positive emotions the offender might have lying beneath their cruel and indifferent façade. Emotions such as pity, sympathy, empathy, compassion, commiseration, can all be brought to the surface and reinforced.

On the side of the victim, the mediation situation can also have salutary effects. The feared, strong, cruel and unemotional victimizer is bared to their weak and often helpless being, a being that evokes more pity than fear, more compassion than anger. Distorted but long held stereotypes disappear when checked against the real offender. Both parties end up by gaining a realistic view of one another and reconciliation becomes possible (Fattah, 1995, p312)

Thus in the long run, the interests of crime victims and of society at large are best served by humanity, empathy and compassion, by tolerance and forgiveness, by the development of conciliatory and forgiving communities rather than hostile and vengeful ones (Fattah, 1986, p13). Constructive healing, not destructive punishment, should be the primary and foremost goal of both victim policies and victim services.

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ANCILLARY (ADHESION) PROCEEDINGS IN GERMANY AS SHAPED BY THE FIRST VICTIM PROTECTION LAW: AN ATTEMPT TO TAKE STOCK

*Eberhard Siegismund**

I. INTRODUCTION

Even in the 1970s, an aggrieved person was still treated as a "forgotten man";[1] in scientific debate the victim of a crime was a mere shadow. In the 1980s that situation changed fundamentally. Specific amendments were rapidly made to the legislation of the time, which I shall look at later, and these changes are particularly remarkable because at the time no real "pressure group" existed to push for change.[2]

What victim protection in criminal proceedings basically aims to do is to stop a person aggrieved because of a criminal act from being a mere object of the proceedings, whose main function it is to be a witness in court; s/he should be made a player in the proceedings with rights which s/he can assert there. Victim protection also aims to deflect the focus of the proceedings from the accused ensuring that, while the proceedings still concentrate on establishing the accused's guilt, the proceedings also take on board the interests of the aggrieved person and the relationship between them and the accused.[3]

The concept of victim protection derives from the principle of the social state.[4] The state complies with that principle only if it ensures social justice in legislation and government, and helps the weaker members of society to assert their legitimate rights. It is quite obvious that the victims of crime are often weaker members of society and that they need help, emotional care, social stability and, last but not least, financial support.[5]

Finally, it should not be forgotten that improved victim protection can also contribute to ensuring effective criminal prosecution: this can be seen from the fact that in some 90% of cases, crimes are solved as a result of information provided by victims.[6] Consequently, if the judicial authorities take better care of victims of crime, this can have positive repercussions on people's feeling of well-being. Hence, in this way victim protection can help to strengthen the legal order.[7]

The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power adopted by the General Assembly of the United Nations on 29 November 1985 shows that this rediscovery of the aggrieved person or the victim of crime is not merely

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1 Cf. Weigend, ZStW 96 (1984, p.761).

2 Cf. Riess, Jura 1987, p281, p.283.

3 Cf. Jung, ZStW 93 (1981, p.1147).

4 Cf. *inter alia* Compendium of Judgments of the Federal Constitutional Court 39, 1 (p.47 f.); 88, 203 (p.257 f.)

5 Cf. Goll, ZRP 1988, p.14.

6 Cf. Kirchhoff, in: *Das Opfer und die Kriminalitätsbekämpfung* [Victims and the fight against crime] published by the Federal Criminal Investigation Office, 1996, p.48; Cf. also Koch/ Poerting/Störzer, *Kriminalstatistik 1996* [Criminal statistics for 1996], p.2 f.

7 Cf. Goll, *op. cit*.

a national phenomenon but an international one. As you are aware, the Declaration contains a range of recommendations intended to assist governments in the international community to help and assist the victims of crime and abuse of power of various levels.

As I shall tell you about ancillary proceedings as regulated by the German Code of Criminal Procedure, which governs compensation for aggrieved parties in criminal proceedings, it appears vital to start by quoting the basic provision of the aforementioned Declaration, which deals with asserting claims for damages:

> "*8. Offenders or third parties responsible for their behaviour should, where appropriate, make fair restitution to victims, their families or dependants. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights.*"

Later on we shall be looking at whether - and to what extent - German procedural law, as improved by the Victim Protection Law of 18 December 1986, takes accunt of these maxims.

II. ANCILLARY PROCEEDINGS IN PRACTICE

A. Basic Aims of Criminal Proceedings Under German Law

Criminal proceedings are not of an adversarial nature in the same way as civil proceedings, which are characterised by the parties freedom to shape them.[8] The aim of criminal proceedings is to investigate the substantive truth behind the criminal act and to punish the perpetrator of the act.[9] The traditional form of criminal proceedings under English law is that of an adversarial proceeding with the result that representatives of the prosecuting body and the defendant or their legal counsel shape the proceedings: if the prosecutor withdraws the charges or the accused confesses their guilt they can influence the course of the proceedings. In this way the judge is merely a neutral arbiter who delivers judgment on the basis of incriminating or exonerating evidence collected by the "parties".

The duty incumbent on German criminal judges to establish the substantive truth rather than formal truth also changes the roles in another way: the judge is master of the proceedings; s/he has to know what is in the case files, s/he does not merely examine the witnesses but is required, on their own responsibility, to gather all information which might incriminate or exonerate the accused. The duty to clarify the facts of the case, which is enshrined in the Code of Criminal Procedure, can require that the court collects evidence which exonerates the accused even against their will or that it clarifies incriminating facts, even if the public prosecutor shows no interest in them. Even if the accused and the public prosecutor both agree to forgo the further collection of evidence, that is not sufficient to release the court from its duty to clarify the facts of the case.

The principle that the court must clarify the facts of the case renders ancillary proceedings, which are part of the criminal proceedings, particularly attractive to victims of crime: they do not have to produce evidence themselves but can leave it to the public prosecutor and the court to

[8] Cf. Federal Court of Justice, NJW 1960, p.2346.

[9] Cf. KK Pfeiffer, Fourth Edition, Introduction, margin reference 2, with further references.

bring charges against the accused.

Ancillary proceedings are based on the notion that proceedings relating to a single set of circumstances should be handled together. So, where claims to substantive or symbolic compensation arise from a criminal act - be it fraud, embezzlement, even assault or slander - then there is much to be said for dealing with the aggrieved person's claim to damage in the criminal proceedings rather than waiting for a subsequent civil action to be brought, thereby avoiding duplication of efforts and also the possibility of contradictory judicial decisions.

The decision on the application is actually taken during the main proceeding, not, for example, at a separate, later hearing. To that extent, the term "ancillary proceeding" is in fact a misnomer. As already said, the principles of criminal proceedings - i.e. the inquisitorial maxims - apply to the proceedings. This means that the court must clarify the facts of the case of its own motion and is hence also not bound by the procedural declarations of the accused. Consequently there is no judgment of admission of the sort found in section 307 of the Code of Civil Procedure.[10]

The Victim Protection Law pursues the aim of improving reparation for damages within the criminal proceeding, primarily by aiming to broaden use of ancillary proceedings. This is done in the following way.

According to the revised version of section 403, subsection 1, of the Code of Criminal Procedure, in proceedings before the Local Court, the aggrieved person may, without the consent of the accused, also assert a property claim arising out of the criminal offence which exceeds the maximum value applicable to litigation before the Local Courts (previously DM 5,000, now DM 10,000).

This is important because some 99% of criminal proceedings at first instance are held before the Local Courts.[11] In proceedings before the Local Courts, it is possible to assert property claims (e.g for return of stolen assets or for pecuniary compensation - mainly reparation for pain and suffering - or claims for reimbursement of funeral expenses or claims resulting from unjustified enrichment) irrespective of the value of the object of litigation.

An amendment to section 406, subsection 1; 2, subsection 3, of the Code of Criminal Procedure has made it possible - as proposed in the government's draft legislation[12] - to produce judgments on the grounds of the claim or on a portion thereof. In the draft it was assumed that a decision on the grounds of the claim (which would be easier to clarify using the resources of the criminal proceedings) could in the future be taken in the ancillary proceedings. The level of compensation - which, as a point of detail, is irrelevant to the criminal proceedings, and to establish would delay clarification of the criminal proceedings - could, if necessary, be dealt with in later civil proceedings. In this way, so the 'explanatory' notes, it would be possible to avoid taking evidence on the grounds of the claim more than once. Moreover, in many cases it would make it possible to do without further acrimonious discussion as to the level of compensation.[13]

Where, however, a decision has been taken only on the grounds of the claim, the

[10] BGHSt 37, 263, as confirmed by Wendisch, JR 1991, p.297.

[11] Cf. Riess, Jura 1997, p.281, p.289.

[12] Cf. Explanatory comments in *Bundestag* Publication 10/5305, p.16.

[13] Cf. *Bundestag* Publication, *op. cit.*, p.15.

hearing to decide the amount (level of the claim) takes place, upon application, before a competent civil court.[14] The victim does not require legal assistance to do this (see section 404, subsection 1).

According to section 404, subsection 5, of the Code of Criminal Procedure, as amended by the Victim Protection Law,[15] the applicant may receive legal aid for the ancillary proceeding under the same provisions as in civil litigation.[16] The effect of this is as follows.

If the victim is unable to meet the costs of the litigation (or part of the costs, or in instalments), and if the case shows prospects of success (see sections 119 to 122, Code of Civil Procedure), the criminal court shall award legal aid once public charges have been brought. The decision is not subject to challenge by the other participants in the proceedings.

Where the court has convicted the accused and held that the victim is to be indemnified, the following problem in not uncommon. As a conviction means that the offender must also pay a fine and court costs, s/he will do all they can to avoid a substitute prison term (applicable if they defaulted) by using their available assets primarily to pay off the fine (and the costs) before indemnifying the aggrieved person.[17] The new rule introduced into the second sentence of section 459a, subsection 1, of the Code of Criminal Procedure is intended to prevent that from happening and to promote indemnification for damage by the offender. In effect, the execution agency may facilitate payment of costs or a fine (by delaying payment or the granting of payment by instalments) if, without such easier payment terms, the indemnification would be consiberably endangered. This might be the case even if the offender were able to pay the fine promptly but, given the primacy of the fine, s/he would subsequently be compensating the victim only much later.[18]

In summary, it can be seen that the law offers victims of crime the following options for initiating ancillary proceedings:

(i) Ancillary proceedings allow for the criminal and civil-law consequences of a criminal offence to be dealt with in a single set of proceedings. Hence they would allow the victim to assert their rights quickly and simply.

(ii) Normally speaking, even lawyers should be happy about the existence of these proceedings: they spare the judge and legal counsel from going through civil proceedings; they reduce the time spent in court because there is no need to bring the case before several different courts and so judicial decisions are not likely to become contradictory.

The interests of the aggrieved person or their heirs are taken on board in a number of ways:

(i) S/he is supposed to be informed of their option to assert a claim, even in criminal proceedings, at an early stage (section 403, subsection 2, Code of Criminal Procedure).

(ii) Claims must not take any particular

[14] Cf. section 406, subsection 3, third sentence, Code of Criminal Procedure, in conjunction with section 304, subsection 2, Code of Civil Procedure.

[15] Version pursuant to the *Bundesrat* proposal, cf. *Bundestag* Publication 10/5305, page 15, 29 no. 11, page 33.

[16] Sections 114 f., Code of Civil Procedure.

[17] Cf. Riess, Jura 1987, 281, 289; Riess/Hilger, NStZ 1987, 145, 157.

[18] Cf. Riess/ Hilger, NStZ, *op.cit*.

form - it can be made (even orally) at the main hearing before the beginning of the closing arguments (first sentence of section 404, subsection 1, Code of Criminal Procedure). S/he does not require a lawyer to file the claim.

(iii) If the victim is unable to meet the costs - in part or in instalments - of bringing the case, and if the case has sufficient prospects of success, they receive legal aid and a legal representative is appointed.

(iv) The victim has the right to be present and to be heard. As a participant in the proceedings, s/he must be heard at the main hearing.[19] The victim may apply for evidence to be taken,[20] has the right to ask questions pursuant to section 240 of the Code of Criminal Procedure, and is authorised under section 238, subsection 2, Code of Criminal Procedure, to challenge orders of the presiding judge concerning the way in which the hearing is conducted. Finally, in line with section 257, Code of Criminal Procedure, the victim has the right to make statements after the defendant has been examined and after each individual taking of evidence. In the main hearing, victims enjoy these rights, however, only insofar as they are relevant to the civil claim.[21] Finally, and of particular significance, is the right to consult the case files, which all aggrieved persons may assert through their lawyer.

(v) The fact that the ancillary proceedings are part of the criminal proceedings is particularly advantageous for the aggrieved party as it means that the principles of the criminal proceedings are applicable. Hence, unlike in civil proceedings, the court is required to establish the facts of the case (section 244, subsection 2, Code of Criminal Procedure). Consequently it must, of its own motion, extend the taking of evidence to all facts and evidence which are important for the decision. Unlike in civil proceedings, the aggrieved party is therefore not required to produce evidence; it can leave it to the public prosecutor and the court to establish the facts. However, the court's duty to establish the facts is limited by section 405 of the Code of Criminal Procedure: if an examination of the facts would protract the criminal proceedings disproportionately, section 405 requires the court to abstain from a decision.[22] I shall be looking at this provision in more depth later.

(vi) Finally, the aggrieved party still has the possibility of asserting before the civil courts claims asserted unsuccessfully before the criminal courts. In principle, therefore, the aggrieved party can only emerge from ancillary proceedings as a winner, not a loser.[23]

Thus, at first sight, it would appear that the catalogue of rights and entitlements enjoyed by the victims of crime takes full

[19] Cf. LR Hilger, *op. cit*.

[20] Federal Court of Justice, NJW 1956, p.1767.

[21] Cf. LR Hilger, *op. cit*.

[22] Cf. LR Hilger, 25th Edition, section 405, margin reference 11, with further references.

[23] Cf. Riess, Die Rechtsstellung des Verletzten im Strafverfahren, Gutachten für den 55. Deutschen Juristentag [Legal status of the aggrieved party in criminal proceedings; expert report to the 55th Conference of German Lawyers], Volume 1, Part C, margin reference 42.

account of the basic principles of justice for victims of crime and abuse of power adopted by the United Nations' General Assembly.

However, things look different in practice. Only a couple of weeks after the Victim Protection Law came into force, this attempt by Parliament to increase the aggrieved party's chance of obtaining reparation for damage suffered within ancillary proceedings was critically appraised in the literature.[24] The amendments which it introduced to the law were pejoratively described as "cosmetic" and there was said to be much doubt as to their ability to incriease the "enthusiasm" felt for ancillary proceedings in practice.[25]

Regret was expressed that no attempt had been made to deprive the courts of the possibility of abstaining from a decision on the substitute claim within the framework of the second sentence of section 405.[26] The latter provision allows the judge to abstain from a decision "in the event the motion cannot be properly settled in a criminal proceeding, in particular, if its examination would protract the proceedings or if the motion is not permissible". This was a facility of which the courts had made all too frequent use for a substantial period of time.

Criticism was also voiced that the law had failed to resolve the tug of war between the state's action to enforce pecuniary fines and the legitimate indemnity claims of the aggrieved party in a way which favoured the aggrieved party. This belies the fact that in many cases it becomes impossible to assert the aggrieved party's indemnity claims because the offender simply does not have sufficient resources. As already mentioned, in the face of a substitute prison sentence, the offender will first attempt to pay a fine. The solution identified by Parliament, i.e, to facilitate payment by the offender under the second sentence of section 459a, subsection 1 of the Code of Criminal Procedure, if, without such facility, the indemnification by the convicted person for damage caused as a result of the offence would be considerably endangered, was described as an unsatisfactory minimum and a "faltering first step".[27]

From the victim's point of view, it would certainly have been more satisfactory to refrain from collecting the fine if the offender complied with a duty to make reparation for damages or to satisfy the aggrieved party's claim from the proceeds of the fine.[28] As this manner of compensating victims would, however, have caused the state coffers to suffer considerable financial loss, the chance of pushing it through were rather slim from the outset.

As was to be feared, given the criticisms expressed in the literature, the improvement which Parliament expected to see in the settlement of victims' claims for damages from criminal acts, and the expected extension in the use of ancillary proceedings,[29] failed to materialise. Despite the fact that ancillary proceedings have formed part of the criminal proceedings since as far back as 1943 and that they are familiar to all lawyers, their use continues to be infrequent as the following figures illustrate.

[24] Cf. Riess, Jura 1987, p.281, p.290; Weigend, NJW 1987, p.1170, p.1176.

[25] Cf. Jung, JuS 1987, p.159; Weigend, NJW 1987, p.1170, p.1176.

[26] Cf. Weigend, *op. cit*.

[27] Cf. Weigend, *op. cit*., Riess, Jura 1987, *op. cit*.

[28] Cf. Wiegend, *op. cit*., with further references, cf. Weigend, ZStW 96 (1984) p.761, p.793.

[29] Cf. *Bundestag* Publication 10/5305, p.8.

In 1997 Germany's Local Courts handed down 2,951 judgments in ancillary proceedings. Of these, 2,840 were final judgments and 111 judgments on the grounds;[30] 142 judgments were handed down in ancillary proceedings by first-instance Regional Courts - 119 as final judgments and 23 as judgments on the grounds.[31] By contrast, over the same period the Local Courts handed down a total of 395,179[32] judgments and the Regional Courts handed down 10,823[33] judgments overall. These figures show how seldom ancillary proceedings are conducted; as a proportion of all judgments delivered, ancillary proceedings made up only about 1% of proceedings before the Regional Courts and 0.75% of proceedings at the Local Courts.

That said, it has been estimated in some competent studies that it would have been possible to bring ancillary proceedings in just about 70% of all cases in which a judgment was handed down.[34] In about 65% of those possible cases, reparation had yet to be made for damage caused. Given that in about a quarter of all such cases a civil action had already been brought or a lawyer had already issued a claim for the amount at issue, it can be assumed that there was a genuine need for ancillary proceedings to be conducted in about 35% of the eligible cases.[35] Had, therefore, ancillary proceedings been used as envisaged by Parliament, the proportion would not have been around 1% or 0.75% but more like 15 to 25%.

The reasons why people are less than keen to use ancillary proceedings in practice, than Parliament would have wished are well known. A wide-ranging study of legal trends carried out in the early 1990s demonstrated[36] that there was "broad" rejection of ancillary proceedings by judges, public prosecutors and legal professionals overall and proved that aggrieved persons are generally unfamiliar with this type of proceeding.[37] The low practical significance of ancillary proceedings in also decried by Germany's European neighbours, insofar as the legal prerequisites are comparable there.[38]

The reason given in the study for why Germany's judges, public prosecutors and legal professionals tend to shy away from ancillary proceedings is that they consider them to be "anathema to criminal proceedings".[39] The reason for this is possibly that the strict separation between criminal and civil law instilled during legal studies, and the mental distinction between punishment and reparation, run deep; also criminal judges might fear that they will be put under pressure and overburdened by having to deal with complex issues of civil law.[40] The reason for this may well be that the conditions attaching to culpability under the criminal law and those applicable to claims for damages under civil law are too dissimilar in German law: the causality obtaining

[30] Federal Statistical Office, Wiesbaden, Criminal Courts, 1997, working documents, p.12.

[31] Federal Statistical Office, Wiesbaden, Criminal Courts, 1997, working documents, p.46.

[32] Federal Statistical Office, Wiesbaden, Criminal Courts, 1997, working documents, p.16.

[33] Federal Statistical Office, Wiesbaden, Criminal Courts, 1997, working documents, p.50.

[34] Cf. Kaiser, *op. cit.*, p. 276.

[35] Cf. Kaiser, *op. cit.*, p. 276.

[36] Cf. Kaiser, Die Stellung des Verletzten im Strafverfahren, Implementation und Evaluation des Opferschutzgesetzes [Status of the aggrieved person in criminal proceedings, implementation and evaluation of the Victim Protection Law], Freiburg/Breisgau, 1992.

[37] Cf. *op. cit.*, p.278.

[38] Cf. Kintzi, DriZ 1998, p.65, p.72.

[39] *Op. cit.*, p.278.

[40] Cf. Kintzi, *op. cit.*

under the criminal law is one of equivalence, under civil law it is one of adequacy; liability under criminal law is restricted to actual guilt, under civil law exposure to risk is also taken into account; finally, there are major differences as to the distribution of the burden of proof and the duty to tell the truth (the defendant has the right to lie whereas respondents (under civil law) and witnesses are required to tell the truth[41]).

Moreover, the case-law of the Federal Court of Justice, which increasingly feels bound to reverse erroneous decisions in ancillary proceedings, is not apt to encourage the judiciary to make more use of this special type of proceeding.[42] This shows that, from the viewpoint of the Federal Court of Justice, the grounds that judges take for establishing compensation for pain and suffering in ancillary proceedings are not infrequently erroneous. Often there is insufficient detail on judicial findings on the facts and the reasoning used. If such shortcomings lead to judgments being reversed, the judge concerned is hardly likely to continue wanting to make decisions in ancillary proceedings.

However, not only legal difficulties cause lawyers to be shy of ancillary proceedings. Many people support claims that ancillary proceedings place an unnecessary burden on criminal judges. It is claimed that a considerable amount of additional work can stem from the ancillary proceedings.[43] First and foremost, judges and lawyers feel that the procedural delays resulting from the taking of additional evidence are considerable.[44] All professional groups agree that ancillary proceedings are the one source of rights for aggrieved persons causing the longest delays in criminal proceedings.[45]

The view of judges, public prosecutors and lawyers are in stark contradiction to the results of surveys of aggrieved parties: these surveys generally revealed a great deal of interest in active participation in criminal proceedings. 96.9% of all victims of crime favoured the possibility of dealing with the question of damages as part of the criminal proceedings.[46]

It must therefore be concluded that ancillary proceedings, which were created more than fifty years ago to reflect the interest of victims of crime and which have been improved by a number of provisions in the Victim Protection Law, are considered by those victims of crime to reflect their concerns, yet they have found few friends in the judiciary.

B. What Needs to be Done?

On this point, the Grand Criminal Law Commission of the Association of German Judges was appointed in the mid-1990s by the Federal Ministry of Justice to produce an expert report on improving victim protection in criminal proceedings. It took the view that (further) attempts at legislating would have no real prospect of breathing new life into ancillary proceedings.[47] They conceded that thought should be given to a mandatory provision requiring, upon application of the victim, the civil law aspects of establishing

[41] Cf. LR Hilger, *op. cit.*, introductory comment to section 403, margin reference 9.

[42] Cf. Kintzi, *op. cit.*, with reference to the decisions of 27 March 1987 (2 StR 106/87); 9 August 1999 (4 StR 342/88); 25 August 1989 (3 StR 159/89); 13 December 1990 (4 StR 519/90); 14 August 1991 (3 StR 37/91); 30 October 1992 (3 StR 478/92); 30 April 1993 (3 StR 169/93); 9 June 1993 (2 StR 232/93).

[43] Cf. Kaiser, *op. cit.*, p.265.

[44] Cf. Kaiser, *op. cit.*

[45] Cf. Kaiser, *op. cit.*

[46] Cf. Kaiser, *op. cit.* p.276.

[47] Cf. Kaiser, *op. cit.*

damages always to form part of the criminal proceedings. Yet, as not all primary claims for damages under civil law are suitable for being dealt with in criminal proceedings, a statutory provision of that type could not be implemented in the face of opposition from practitioners. This would mean that ancillary proceedings will probably continue to be of minimal significance.[48]

Against the background of these - in my view, convincing - arguments, it is no surprise that current legislative work by the *Länder* aimed at breathing new life into ancillary proceedings (ancillary settlement before the courts between the victim of the crime and the accused) have necessarily been doomed to failure.[49]

It continues to be doubtful whether reorganising ancillary proceedings more to the benefit of victims can bring about their renaissance. It would seem to go without saying that the judicial authorities must adopt a less reticent stance here if, in criminal proceedings, large numbers of victims of a crime can associate and press for a decision in ancillary proceedings.[50] Thought could be given to reducing the already low threshold for access to ancillary proceedings further, so that when the parties concerned - who, in any case, contribute to about 90% in solving crime - lay a criminal information before the police, they could be given a form which they could complete within a few minutes, constituting a full and proper application for the opening of ancillary proceedings.[51] In so doing, it could be possible to assist the parties by providing standard text, which applicants would have only to tick or supplement, for run-of-the-mill cases such as reparation for damage, compensation for pain and suffering, and the return of specific objects.

Even if such attempts at revitalising what might almost be considered "dead" law appear wholly praiseworthy, they cannot prevent judges, where necessary, from pulling on the handbrake by applying section 405 of the Code of Criminal procedure and abstaining from a decsion because dealing with the application for ancillary proceedings might considerably protract the criminal proceedings, e.g. because a motion by the victim for further clarification of the events at issue might cause new witnesses to be heard.[52]

In Germany, practice has shown that even organisational improvements (or training and increased publicity) have been unable to increase the use of ancillary proceedings. This is borne out by the fact that the above-mentioned proposals, which were tabled in the summer of 1996, have failed to have a positive effect on the numbers of cases involving ancillary proceedings. In the year thereafter, the Local Courts handed down very nearly four hundred fewer judgments in ancillary proceedings than in 1995; before the Regional Courts the number of judgements was reduced from 186 to 142. There can be no clearer proof of a trend away from ancillary proceedings in practice.

III. USING VICTIM-OFFENDER MEDIATION TO TAKE ACCOUNT OF THE VICTIM'S INTERESTS

While my comments might have shown that Parliament's attempts to improve the lot of victims of crime within the ancillary proceedings have not been entirely

[48] Cf. Kintzi, *op. cit.*, p.72.

[49] Cf, Bundesrat Publications, 50/95; 70/96; *Bundestag* Publication 13/6899.

[50] Cf. here Rössner/Klaus, NJ 1996, p.288, p.292.

[51] Cf. Rössner/Klaus, *op. cit.*, p.293.

[52] Cf. LR Hilger, *op. cit.*, section 405, margin reference 11, with numerous references.

successful, it should however be pointed out that the Victim Protection Law has set an important signal for the (further) extension of victim-offender mediation in Germany.

Among the detailed list of factors listed in section 46, subsection 2, of the German Criminal Code, which help exonerate the offender when criminal tariffs are calculated, an "attempt by the offender to arrive at a settlement with the aggrieved party" was included almost as a flag for future legislative action.[53] Its inclusion is intended to indicate that when fixing punishment, the courts should have special regard to an attempt by the offender to satisfy the aggrieved party's claim for reparation in ways other than by material reparation for damage. This provides an incentive for the accused to take on board the victim's interests - where possible before the hearing takes plase - to enable the court to impose a more lenient sentence.

That such facilities to improve the possibility of arriving at a settlement between perpetrator and victim were initially made practically possible, and later enshrined, in normative texts is one of the most significant criminal policy developments in Germany over the past years. In this connection, projects designed to allow for a settlement between perpetrators and victims were first set up under the criminal law relating to young people. Such projects under general law were included later. Their aim is to provide help for victims in coming to terms with the consequences of a criminal act. Under the supervision of a third party not involved in the conflict, a specially regulated mediation process aims to achieve a comprehensive settlement between perpetrator and victim. The settlement is centred upon an agreement arrived at during a mediation session by which the perpetrator commits themself to make good the damage caused. Given the manifold difficulties which such agreements may encompass, they are concluded only under the supervision of recognised experts (psychologists, social-education experts, social workers).

The settlement focuses not only on substantive reparations but, as far as possible, also aims to achieve genuine reconciliation between perpetrator and victim. This is why reparations are not restricted to replacing material damage; other - non-material acts - can also be considered, e.g, the perpetrator apologising to the victim.

While in 1989, 2,100 cases were handled in this way, in 1992 the figure rose to 5,100. In 1995 settlements were sought with more than 9,000 perpetrators and 8,000 victims,[54] i.e, more than three times the judgments handed down in ancillary proceedings. The most important classes of offence in terms of attempted settlements include:

- bodily injury - 63.6%
- theft/fraud - 11.3%
- damage to property - 14.5%
- robbery and blackmail - 9%
- defamation - 9.3%

[53] Cf. here Riess, Jura 1987, p.281, p.290; Weigend, NJW 1987, p.1170, p.1176.

[54] Cf. Wandrey/Weitekamp, Die organisatorische Umsetzung des Täter-Opfer-Ausgleichs in der Bundesrepublik Deutschland - eine vorläufige Einschätzung der Entwicklung im Zeitraum von 1989 bis 1995 [Organisational implementation of victim-offender mediation in the Federal Republic of Germany - an initial estimation of developments from 1989 to 1995], in "Täter-Opfer-Ausgleich in Deutschland, Bestandsaufnahme und Perspektive" [Victim-offender mediation in Germany - taking stock and looking forward], published by the Federal Ministry of Justice, Bonn 1998, p.131.

It is surprising to see how willing aggrieved parties are to arrive at a settlement:

- bodily injury - 78.1%
- theft/fraud - 82.5%
- damage to property - 84.9%
- robbery and blackmail - 62.6%.[55]

The most important criterion for assessing the success of victim-offender mediation is the settlement between aggrieved party, and the accused. The number of successful settlements is surprisingly high, broken down here by classes of offence:

- bodily injury - 86%
- theft/fraud - 91.3%
- damage to property - 92.4%
- robbery/blackmail - 94.3%.[56]

The content of the settlements is also of great interest. Looking at the actions agreed between the accused and aggrieved party, as part of the victim-offender mediation, the following picture emerges. Actions agreed included:

- apology - 72.4%
- giving a present - 6.8%
- return of property - 2.1%
- money for pain and suffering - 21.5%
- job of work - 6.6%
- joint activities with the victim - 8.4%
- compensation - 27.3%

As this assessment takes account of all the different possible actions, the total arrived at is in excess of 100%[57].

As regards the, sums of money, the picture obtained is as follws:

Reparation for Damages Payments	
up to DM 250	54.4%
from DM 251 to DM 2,000	39.8%
from DM 2,001 to DM 4,200	4.2%
in excess of DM 4,200	1.8%[58]

Payment for Pain and Suffering	
up to DM 500	62.3%
from DM 501 to DM 1,000	17.7%
from DM 1,001 to DM 35,000	20.0%

The evaluations so far have related to the agreement that services are to be provided. This sort of solution makes sense only if there is compliance, as otherwise the aggrieved person is merely disappointed yet again. It is pleasing to note that in about 80% of cases, the sums of money agreed were paid in full.[59]

As a result of the positive experience gained with victim-offender mediation, this facility became specifically enshrined in general criminal law as part of the Law to Combat Crime, which entered into force on 1 Decemer 1994. Section 46a of the German Criminal Code permits the courts to reduce penalties or - if the penalty imposed does not go beyond imprisonment not exceeding one year or a fine of not more than 360 daily increments - to refrain wholly from punishment if, in the attempt to achieve a settlement with the aggrieved party, the perpetrator has made reparation in full - or to a considerable degree - for their actions or has made a serious attempt at making reparation for their act.

By introducing this rule, Parliament attempted to focus greater attention on those of the victim's interests which can best be dealt with under victim-offender

[55] Hartmann/Stroezel, Die bundesweite TAO-Statistik [German national statistics on victim-offender mediation] in "Täter-Opfer-Ausgleich in Deutschland" [Victim-offender mediation in Germany], *op. cit.*, p.175.

[56] Hartmann/Stroezel, *op. cit.*, p.187.

[57] Cf. Hartmann/Stroezel, *op. cit.*, p.186.

[58] Hartmann/Stroezel, *op. cit.*, p.187.

[59] Cf. Hartmann/Stroezel, *op. cit.*, p.188.

mediation using forms of material and non-material assistance - compensating for damage and allaying fears. The explanatory memorandum to the legislation states that this approach is also more apt than simple punishment to gain the perpetrator's understanding of the reprehensible nature of their actions and to accept responsibility for the consequences of the crime committed.[60]

In cases where the court would be allowed to abstain from punishment, the public prosecutor - with the consent of the competent court - can even refrain from bringing public charges; in cases of that nature, there is not even a need for the case to come before the courts.

As the law currently stands, it is entirely up to the accused to decide whether s/he wishes to try and achieve a settlement with the aggrieved party and to make up for loss suffered as a result of the crime. This means that those accused persons who have competent legal counsel and sufficient resources are more likely to see their punishment reduced or to escape punishment than those accused persons who are unfamiliar with such possibilities. As this circumstance does not square with the German Government's concern to ensure comprehensive support for the interests of victims of crime, the Federal Ministry of Justice is currently considering enshrining victim-offender mediation in criminal procedural law. It is intended that the basic provision, which was drafted by the Ministry only a couple of months ago, should be worded as follows:

> *"At all stages in the proceedings, the public prosecutor and the court shall examine the possibility of achieving a settlement between the accused and the aggrieved person and, in suitable cases, take steps to achieve this."*

This "appellate norm" is intended to bring about more widespread use of victim-offender mediation in practice by ensuring that the public prosecutor and the court must - except in manifestly unsuitable cases - examine whether a settlement between the accused and the aggrieved person can be achieved. Yet this still leaves it for the court and the public prosecutor to decide how intensive that examination will be and how to bring about the mediation. There is a range of possibilities, from distributing a leaflet with abstract information to making oral recommendations in specific cases concerning how the damage might be repaired.

This provision has been supplemented by a further provision allowing the public prosecutor to instruct the accused "to take serious steps to achieve a settlement with the aggrieved party". Once that has happened, the public prosecutor has the option of discontinuing the proceedings.

While it is true that the aforementioned draft legislation, which aims to enshrine victim-offender mediation, has yet to overcome all the various Parliamentary hurdles, hardly anyone in Germany worth taking seriously would consider calling into question an extension of victim-offender mediation. Consequently, everything seems to support the view that victim-offender mediation, which it is now impossible to dissociate from the system of criminal law sanctions as a conceivable reaction to criminal acts, will continue - to a greater degree than hitherto - to help victims of crime to escape the psychological, social and financial problems which can result from crime.

[60] Cf. *Bundestag* Publication 12/6853, p.21.

THE FUNCTION OF HONORARY JUDGES IN CRIMINAL PROCEEDINGS IN GERMANY

*Eberhard Siegismund**

I. INTRODUCTION

In the following I shall attempt to give you an overview of the law relating to honorary judges in criminal jurisdiction in Germany and to explain the role played by lay judges in criminal proceedings. The participation of laymen and laywomen in criminal jurisdiction is one of those controversial topics in criminal law where opinions part ways. Whereas one group sees the participation of laymen and women as a guarantee of the democratic process in court[1], others are fundamentally sceptical about lay participation[2] or want to further curtail lay influence[3]. I will start by outlining the activities performed by lay judges, thereafter I will set out the requirements for appointing lay judges, describe their rights and duties and the course of deliberations in the court deliberations room. Finally, I will go into the question of whether lay judges should be dispensed with.

II. FIELD OF ACTIVITY OF LAY JUDGES IN GERMANY

Participation of lay judges in the criminal justice system is based on reform ideas and demands during the last century, parallel to the desire for popular participation in legislation and administration[4]. The original rule, for which provision was made in the Code of Criminal Procedure and the Law Concerning the Constitution of the Courts, which entered into force on 1 October 1879, assigned the decision on serious crimes of a severe and of a most severe nature to the jury court, which was characterised by the division of the bench into a judicial bench and a jurors' bench: the 12 jurors were assigned the decision on culpability and the 3 professional judges the decision on punishment, i.e. sentence. Other serious crimes and most less serious crimes were dealt with by the criminal chamber, composed solely of professional judges; less serious crimes of a minor nature fell within the jurisdiction of the jury court, where the 2 lay judges decided on culpability and sentence together with the professional judge[5].

Partly following the wide-ranging amendments to the law on lay judges - particularly during the thirties - the use of honorary judges in criminal jurisdiction today is as follows. Since the importance of the office of lay judge is governed, on the one hand, by their use in the various court instances and, on the other, by their differing numerical proportion to the professional judges, it would seem expedient to subdivide according to the various instances.

A. Courts of First Instance

Courts composed of several judges with jurisdiction at first instance are the Jury Court at the Local Court and the Grand Criminal Chamber at the Regional Court.

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1 cf. Wassermann, RuP 1982, p.117, p.120.

2 cf. Kühne, ZAP 1985, p.237.

3 cf. Michaelsen, Kriminalistik 1983, p.445.

4 cf. LR Schäfer, 24th ed., introduction chapter 15 margin reference 2.

5 cf. LR Schäfer, *ibid*.

The Jury Court, which used to be the first instance for very serious crimes, is now only a criminal chamber with special jurisdiction, but has retained its old name. The Higher Regional Court, which functions as a court of first instance in regard to crimes against the state, is composed of professional judges only.

At the Local Court, the jury court decides in criminal proceedings relating to serious and less serious crimes in cases where the criminal judge does not have jurisdiction; the sentencing range of the Jury Court extends to a maximum of 4 years imprisonment.

The Jury Court is composed on principle of one professional judge as presiding judge and two lay judges (section 29 subsection 1, Courts Constitution Law - CCL). Where the scope of the matter so requires, the Jury Court may also - upon application by the public prosecutor - function in the composition of 2 professional judges and 2 lay judges (section 29 subsection 2, CCL).

The Jury Court for youth matters is composed of one professional judge, as presiding judge, and 2 lay judges for youth matters. Criminal offences are prosecuted in this court if youth imprisonment, which is enforced in a youth prison, may be imposed as the sentence. If the anticipated sentence is less severe, as for instance in the case of youth detention, the prosecution is brought before a judge sitting alone with jurisdiction over youth matters. By the way, youth courts decide in criminal proceedings against juveniles and young adults, i.e, delinquents who were aged between 14 and 18, and between 18 and 20 years respectively, at the time the crime was committed.

As a court of first instance at the Regional Court, the Grand Criminal Chamber decides in the composition of 2 or 3 professional judges and 2 lay judges in all cases of serious crimes that do not fall within the jurisdiction of the Local Court or of the Higher Regional Court; it also has jurisdiction over all criminal offences where the sentencing powers of the Local Court are insufficient.

The so-called Jury Court constitutes a special Criminal Chamber for serious crimes of the greatest gravity, particularly homicide crimes listed in a conclusive catalogue of jurisdiction in section 74 subsection 2 CCL. This Chamber has the same composition as the general Grand Criminal Chamber.

The Youth Chambers of the Regional Court have the same composition as the normal criminal chambers. They decide at first instance on homicide crimes committed by juveniles and young adults. They also have jurisdiction in proceedings where juveniles and young adults are prosecuted together, and where the Local Court's sentencing range is insufficient.

The Youth Chamber of the Regional Court has jurisdiction, at first instance, in youth protection matters as well. These are cases where adults are prosecuted for criminal offences that caused injury to a child or a juvenile (e.g, maltreatment or sexual criminal offences) or where children or juveniles are required as witnesses.

B. Appellate Instance on Fact and Law

Lay judges also participate at the appellate instance at the Regional Court. Given that there is a review of facts and law on appeal, it would certainly seem expedient for lay judges to be brought in.

The Appeal Chamber at the Regional Court reviews Local Court judgements in the composition of one professional judge and 2 lay judges - i.e, with the same

composition as the Local Court.

In proceedings on appeals on facts and law against judgements of the Youth Court sitting with lay judges, the Youth Chamber is composed of 3 professional judges and 2 lay judges, and in proceedings on appeals on facts and law against judgements of a judge sitting alone in youth matters it is composed of the presiding professional judge and 2 lay judges in youth matters.

In Germany, we have about 61,000 lay judges at the courts with jurisdiction over matters relating to young people and over adults. This is an impressive figure when set in relation to the figure of 4,000 judges in criminal jurisdiction.

III. PUBLIC PARTICIPATION

There are basically three arguments supporting the participation of laymen and women in criminal proceedings, i.e, the democracy principle, the quality of jurisprudence and the popular educative effect[6].

A. Democracy Principle

By acting as a lay judge, the ordinary citizen can take part in the dispensation of justice and obtain experience of what happens in the deliberations room as well as of the difficulties, doubts and even the conflicts of conscience that may arise in coming to a just decision. Co-responsibility for the decision given counteracts the criticism that might otherwise easily arise, namely that judgements are delivered "from an ivory tower"[7]. Nevertheless, when considering this aspect, it must not be forgotten that laymen and women have the same statutory duty as professional judges to uphold the secrecy of judicial deliberations, i.e, to remain silent about the course of deliberations.

B. Improving the Quality of Jurisprudence

In this connection, one often hears the slogans: popular orientation, present-day relevance, sense of justice, and plausibility control[8]. It is said that the lay judge brings in a popular orientation by their sense of the popular mood, hence preventing the professional judge from sinking into a routine[9]. Through lay participation, the professional judge is forced to measure and clarify the accuracy of their observations and conceptions and the persuasive power of their ideas by being confronted with objections issuing from an untested sense of justice[10]. S/he is forced to formulate what s/he wishes to say in a clear and intelligible manner, in other words, in a manner conducive to popular comprehension.

By contrast, the following arguments are used to controvert this. Assuming that legal professionals articulate their ideas in a manner incomprehensible to laymen and women, lay judges would have to rectify this by self-confidently posing further questions. But, so the argument goes, this would be rather unlikely since lay judges are mostly only passive participants and they are overburdened by the task of examining the professional judge's proposal for a decision[11], especially as a lay judge does not have a command of specialist legal terminology.

Against this backdrop, there is a need for more intensive discussion of the question of whether the sense of justice that the lay judge brings to bear and their sense of plausibility are suited to improving the

6 On this see Kühne, ZRP 1985, p.237, p.238

7 cf. LR Schäfer, *ibid*., margin reference 8.

8 cf. Kühne, *ibid*., p.238.

9 cf. LR Schäfer, *ibid*.

10 cf. LR Schäfer, *ibid*.

11 cf. Volk in: Festschrift für Dünnebier, 1982, p.373, p.377; Casper-Zeisel, Der Laienrichter im Strafprozeß, 1979, p.84.

quality of jurisprudence.

C. Popular Educative Effect

Finally, the use of lay judges is also linked to the expectation that these judges will increase people's acceptance of court decisions, that they will improve popular legal knowledge, hence contributing to inner appreciation of criminal law norms and, at the same time, that they will have a general preventive impact[12].

But critics opposed to this notion say that this effect could only be achieved if lay judges were to be active in effective instruction of the public outside their court activity; however, this is said to be not normally the case[13]. Judging from my professional observations over a period of more than 10 years, this is negated by the fact that lay judges consistently perform their duties with great eagerness and pride so that we can assume that there is feedback in the lay judge's family and in their circle of friends and acquaintances. Whether, however, lay judges enjoy more credibility and have greater power of persuasion than professional judges - who are similarly in a position to report on their experience - must remain an open question.

IV. WHO CAN BECOME A LAY JUDGE?

A. General Prerequisites

Section 31, second sentence, CCL stipulates that a lay judge must possess German nationality. If a non-German lay judge takes part in criminal proceedings, the bench will not have been properly constituted with the result that this will present an absolute ground for an appeal on law[14].

Seen against the background of the large number of foreigners whose lives have been centred in Germany for a considerable length of time, and who are largely integrated in German life, but who shy away from acquiring German nationality for a variety of reasons, the question is being discussed as to whether non-Germans are to be admitted to the office of lay judge as well[15]. Hence it has currently been suggested that where a foreigner has lived in the country for a specified length of time, has the necessary linguistic competence and fulfils the personal prerequisites, s/he should be admitted as an honorary judge[16]. Grounds for admitting foreigners as honorary judges are said to be: integration of the foreign population and greater acceptance of court jurisprudence.

Admittedly, the fact that a certain integrative effect may follow from such a measure must not be overlooked. But it seems clear that an integrative effect would probably only arise in relation to those on whom the office of honorary judge had been conferred.

However, there are misgivings about the assumption that court jurisprudence would enjoy greater acceptance as a result of participation on the part of foreigners. This would only be possible if, in individual cases, special lay judges from a specific region could be chosen for a particular defendant, i.e. Turkish lay judges for Turkish defendants and so on. Apart from the fact that this would be linked to the risk of abuse and manipulation - which would hardly be conducive to acceptance of court jurisprudence - choosing lay judges for specific individual cases is not feasible

[12] cf. Kühne, *ibid*. with numerous references.

[13] cf. Kühne, *ibid*., p.239.

[14] cf. Section 338 no. 1 StPO; cf. LR Schäfer, 24th ed., Section 31 margin reference 4.

[15] cf. Röper, DriZ 1998, p.195; Jutzi, DriZ 1997, p.377.

[16] cf. Röper, *ibid*.

seeing that only about 30% of the suspected criminal offenders found by the police in 1997 did not have German nationality. In the end, it is likely that in the future too there will be no criminal courts composed of non-German lay judges[17].

The question of whether a lay judge should be male or female does not arise because equality for women is already anchored in the constitution (Article 3 of the Basic Law). More than 70 years ago, however, a speaker at the German Congress of Lawyers in Leipzig (in 1921) expressed his emphatic opposition to women acting as lay judges as follows:

> *"The reputation of the courts calls for judges for whom the defendant has respect. In the light of the actual conditions still pertaining here ... men often do not yet have the necessary respect for a woman. So admitting women would mean lowering respect for the court and therefore respect for the law. But this must be avoided particularly at the present time..."*[18].

Another question to look at is the question of whether women actually make up 50% of lay judges. Here we find interesting results when we compare benches handling matters relating to adults with those handling youth matters. Whereas women at courts handling adult matters were under-represented (compared with their share of the population), accounting for a figure of about 30% in 1975, of about 20% in 1981, of about 10% in 1989 and, in 1997, of just 3%. The result is quite different in respect of lay judges at youth courts: here women are a little over-represented - in 1975 by about 6% and in 1997 by about 1%.

The almost equal composition of the Jury Court for youth matters is based on the Youth Courts Law; there section 33 provides that a man and a woman should be brought in as lay judges at every main proceeding conducted by a bench. Parliament assumed that women, in their role as mothers and rearers of the young, would generally be able to understand young criminal offenders better and would be more likely to choose the appropriate sanction for the wrong committed. In actual fact, there are female lay judges particularly at the youth courts who are strongly committed in the educative sense as teachers, social workers or persons responsible for training others.

So as to ensure that lay judges have the necessary experience of life, the Law prescribes a minimum age limit of 25 years (section 33 no. 1 CCL). Since most citizens are already pursuing an occupation at this age, they will usually have a general understanding of the life situations to be adjudicated in criminal proceedings. On the other hand, the maximum age limit of 70 years is designed to ensure that people who are no longer capable of matching up to the physical and mental rigours of the office of lay judge are not appointed to that office[19].

Familiarity with local conditions (section 33 no. 3), as required by the law, allows regional views regarding the importance and circumstances of a criminal offence to have some influence on the judgement[20].

It seems obvious that that a prospective lay judge must be in full possession of their civil rights and must be eligible to hold public office, if s/he is to be appointed to the office of lay judge (cf. section 32 no. 1).

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[17] cf. Wassermann, NJW 1996, 1253, 1254, Jutzi, DriZ 1997, p.377.

[18] cf. von Hasseln, DriZ 1984, p.12, p.14.

[19] cf. Schäfer, *ibid*., Section 33 margin reference 1.

[20] cf. Benz, Zur Rolle der Laienrichter im Strafprozeß, 1982, p.67.

B. Grounds for Exclusion

To prevent incompetent or unsuitable people from holding the office of lay judge, the Law makes provision for a number of grounds for exclusion. People who have been sentenced to a term of imprisonment of more than 6 months' duration for commission of an offence with intent are excluded, and so are those in respect of whom investigation proceedings are pending for an offence that might lead to loss of eligibility to hold public office (section 32 nos. 1 and 2).

Section 33 no. 3 (restriction of disposition by virtue of a court order) refers to all cases of restricted disposition in connection with property as a whole, as with all persons deprived of legal capacity on account of mental illness, mental deficiency, prodigality, alcoholism or drug addiction, or with those placed under temporary guardianship[21].

Finally, the cases of unsuitability on the ground of a person's occupation (section 32 nos. 1 to 6) are also of interest. This is designed to avoid taking people performing functions that are important in public life away from their full-time work, as well as to avoid tensions between defendants and lay judges which might lead to mutual prejudices as far as people working in the administration of justice are concerned[22].

C. Grounds for Refusal

The office of lay judge is admittedly an honorary one (section 31, first sentence, CCL) but selection for this office is nevertheless a duty from which the person concerned can obtain an exemption only on the strict conditions laid down in section 35 CCL. The following persons can refuse appointment to the office of lay judge:

- Members of the German Federal Parliament and Federal Council, of a Land Parliament or of a second chamber;
- People who, in the preceding term of office, performed the duties of honorary judge for 40 days or who are already performing the duties of honorary judge;
- Members of the medical professions;
- People who have reached the age of 65 years or who will have done so at the end of the term of office.

An additional case for exemption has recently been introduced: it covers those cases where acting as a lay judge would seriously endanger the economic existence of the person concerned or of a third person.

It is true to say that cases of exemption are usually already taken into account when the list of candidates and lay judges is being drawn up; they are otherwise only recognised if the lay judge concerned asserts them within one week after s/he has been informed of their assignment. Where such grounds arose or become known later, the time limit shall start to run from that time (section 53 subsection 1 CCL).

D. Selection of Lay Judges

Lay judges are selected every four years. The Regional or Local Court director determines the required number of principal and assistant lay judges (substitute lay judges) for the Jury Courts and Criminal Chambers on the presumption that principal lay judges will not be brought in more than 12 times on sitting days every year, and s/he will inform the municipalities of the figures allocated to them. Pursuant to section 36 subsection 1 CCL, the municipalities draw up uniform lists of lay judge candidates for the Local

[21] cf. LR Schäfer, *ibid*., Section 32 margin reference 11.

[22] cf. Benz, *ibid*., p.70.

Court and the Regional Court. Candidates can be nominated by parties and charitable associations, although any interested citizen can indicate this to their municipal administration. In spite of the obligation under section 36 subsection 2 CCL to take representative account of all population groups, this means that predominantly politically active members of the municipality - i.e, mainly middle-class people - are proposed for selection in line with the ratio of party representation in the municipal bodies[23]. If there are not enough candidates, municipalities occasionally take their candidates for the list from the register of residents in accordance with the principle of random selection[24].

The municipal council approves by 2/3 majority the list of lay judge candidates from the preliminary lists of candidates. The list should contain at least twice as many names as the number of persons determined by the President of the Regional Court or of the Local Court (section 36 subsection 4 CCL). Since it seems wholly impossible in cities with lists of candidates containing about 2,5000 names to "select" individual persons in the sense of weighing up the personal characteristics of individual candidates, candidates for the office of lay judge are occasionally selected by mere counting or at random, and are then approved by 2/3 majority[25].

After the list has been displayed in public for one week (section 36, 37, 38 CCL) the lay judge selection committee, set up at the Local Court, will select the lay judges for the next term of office from this list. The same applies to lay judges for the Criminal Chambers (section 77 CCL).

There is special selection procedure for lay judges at the Youth Courts. In order to obtain citizens who have a special educational aptitude or who have had long experience in the education of young people, the lists of candidates for the office of lay judge are drawn up by the youth welfare committees, bodies set up at the municipality whose members are experts on matters of child and juvenile education. The Youth Court judge will take the place of the Local Court judge at the lay judge selection committee.

V. RIGHTS AND OBLIGATIONS OF LAY JUDGES

As mentioned above, every citizen who has been appointed as a lay judge must perform the duties of this office properly, even where it is considered burdensome in the circumstances of the individual case. Pursuant to section 56 CCL, the judge is entitled to impose a regulatory fine on a lay judge who, without sufficient excuse, fails to appear at sittings on time or who seeks to evade their responsibilities in some other way, e.g, by refusing to participate in a vote[26].

This provision is not without its problems, considering that section 30 CCL provides that during the main proceedings the lay judge exercises judicial office and enjoys the same voting rights as the professional judge. The equality of lay judge and professional judge established under the aforementioned provision is definitely restricted by granting the professional judge explicit rights over lay judges.

A. Participation of Lay Judge in the Main Proceeding

In accordance with the aforementioned

[23] cf. Kühne, ZRP 1985, p.237, p.238

[24] cf. Lieber, Der praktische Ratgeber für Schöffen, 1st ed., p.86.

[25] cf. Jasper, MDR 1985, p.110, p.111.

[26] cf. Schäfer, *ibid*., Section 56 margin reference 3.

provision of section 30 subsection 1 CCL, during the main proceedings the lay judges fully exercise judicial office and enjoy the same voting rights as the professional judges and, as a matter of principle, they also participate in decisions to be taken during the main proceeding.

Before dealing with the decision-making powers of professional judges and lay judges, it would seem to be indispensable to describe the function of the Criminal Court judge in Germany, which is not comparable to the function of the Criminal Court judge in English-speaking systems.

In the adversarial system, as a matter of principle, the court has to make its decision solely on the basis of the evidence presented to it by the parties. This system is based on the idea that the court proceedings should be structured in the form of a dispute between two equal adversaries before an arbiter who also has to decide the outcome of the duel. If the parties agree to resolve their dispute by the notorious "plea bargaining", or by reducing the charges from a serious crime to a less serious offence, the judge will usually be bound by such an arrangement. In this dispute, the public prosecutor is not an impartial authority, but party to the proceedings. This is the role imposed on them. The judge is, so to speak, only the intermediary or arbiter who sees to it that the parties stick to the rules of the game. Even if the court would want to learn the whole truth, it has no procedural means to take action to this effect, given the dispositive powers of the parties. In fact, the court might have to decide on the basis of insufficient evidence.

The system operated in Germany is different. When the police or the public prosecution office in Germany learn about a criminal offence, they are obliged to ascertain the facts thoroughly, i.e, they also have to investigate any exonerating circumstances. Where an indictment is preferred, this duty to investigate is all the more incumbent upon the judge (section 244 subsection 2 Code of Criminal Procedure). This provision reads as follows:

> *"In order to determine the truth, the court shall, upon its own motion, extend the taking of evidence to all facts and evidence which are important for the decision."*

The duty to investigate extends to all facts which need to be proven, no matter whether these facts are directly or indirectly relevant to the question of guilt, to the question of legal consequences or to procedural questions. So the duty to investigate applies, in particular, also with respect to the facts which are relevant to the determination of sentence, no matter whether these facts concern the offence or the offender.

The duty to investigate is first of all incumbent upon the court. It extends in every direction, in favor of the defendant and against them, and it is not subject to any motions, suggestions or requests by the participants. So it can happen that the court will proceed to take exonerating evidence even against the defendant's will or to investigate incriminating circumstances, even if the public prosecution office shows no interest. Even where the defendant and the public prosecutor both agree to dispense with the taking of further evidence, the court will not be released from its duty to investigate.

As has been outlined before, during the main proceedings the lay judges perform judicial functions to the full extent and with the same right to vote as the professional judges; this means that when I am speaking of "the court" this includes the lay judges as well. They participate in any

order, decision and voting unless the law expressly assigns certain tasks to the presiding judge or the professional judges. The most important decision is a judgement which consists of a conviction and a sentence, as well as other decisions ending the proceedings, such as termination of proceedings. It is important to note that the conviction and a sentence are pronounced in one single decision, like the following: "The defendant is guilty of theft. He is sentenced to 6 months imprisonment. He is ordered to pay the costs of the proceedings." Orders preceding the judgement, such as a decision on a motion for the admission of evidence, are also made in co-operation with the lay judges.

In order to be sufficiently informed - with regard to the court's official duty to investigate as mentioned before - the lay judge is entitled to question the defendant as well as witnesses and experts (section 240 subsection 2 Code of Criminal Procedure). The lay judges put questions directly; they only have to ask the presiding judge formally to be granted the right to speak. They are not obliged to disclose to the presiding judge the content of the question in advance or to ask for permission to pose questions. In practice, however, lay judges seldom make use of their right to ask questions. Such restraint on the part of lay judges is something that the professional judges do not mind in practice. Awkward, ill-considered or even unfair questions from lay judges may considerably impair the proper course of criminal proceedings. For instance, a lay judge asking the defendant why s/he doesn't finally confess since the evidence available provided sufficient proof might lead to a defence counsel motion of challenge on grounds of bias. If such motion is successful, the lay judge will be excluded from the proceedings, which means that the trial has to be started again unless a substitute lay judge is available. A similar risk for the course of the trial lies in thoughtless remarks from lay judges concerning the outcome of the proceedings in the presence of defence counsel or public prosecutors. Against this background, it is easily understandable that the professional judges prefer lay judges who do not ask questions in the main proceeding and refrain from making any remarks concerning the proceedings - whether in the main proceeding or outside. It is obvious that this is not compatible with the function of the lay judge to contribute to the decision-making in the same way as a professional judge.

VI. DELIBERATIONS AND VOTING

In the deliberations and in the voting, which usually follow the hearing, lay judges and professional judges have the same vote. The manner in which the deliberations take place is defined by statute in two rules only (section 194 CCL):

- The presiding judge chairs the deliberations, poses questions and collects the votes.
- Differences of opinion concerning the subject, the formulation and the order of questions or concerning the result of the voting are decided by the court, i.e, the professional judges and the lay judges together.

Usually the secret deliberations start with the question as to which facts are proven. At the Local Court, the presiding judge will give their version of the facts and discuss it with the lay judges; at the Regional Court, where two or three professional judges are involved, this function will in most cases be performed by the rapporteur.

Subsequently, the deliberations will deal with the question as to which of the facts constitute the elements of an offence, i.e,

which offence has been committed. Then the court will discuss any mitigating or aggravating circumstances. Finally - and this is more often than not highly controversial - the sentence will be determined.

If consensus cannot be achieved on individual points, formal voting is required. The order of voting is regulated by section 197 CCL: first the youngest lay judge will cast their vote, then the older one. The professional judges vote after them, first the rapporteur, the others in the order of their length of service, the youngest first. The presiding judge is the last one to cast their vote. This is meant to ensure that the lay judges do not feel inhibited before the professional judges, or the younger judges before the older ones.

Any decision to the defendant's disadvantage concerning culpability and the legal consequences of the offence requires a two-thirds majority (section 263 Code of Criminal Procedure). This means that the two lay judges - at least in theory - can take advantage of their power not only at the Local Court but also at the Regional Court against the three professional judges. However, in my experience of more than ten years at various penal chambers, I have never seen lay judges actually take this option. This is certainly due to the fact that the presiding judge, who chairs the deliberations with the lay judges, performs an advisory function concerning legal issues and can skilfully steer the result[27]. This applies in any case to the Local Court; the situation is different with the chambers of the Regional Court: here it may indeed happen that a "stubborn" professional judge and a lay judge enforce a more lenient decision.

Since the lay judge as well as the professional judge have to preserve secrecy regarding the deliberations - also after the term of service has ended - (section 44 subsection 1 German Judiciary Act) such processes are hardly ever discussed in public, and for good reason. The secrecy of deliberations ensures open discussion in the administration of justice[28], so that no professional or lay judge needs to fear that their opinion might be revealed to the public. Hence, under German law, public announcement of a dissenting vote is not allowed. An exception applies to the Federal Constitutional Court, the highest German court. If a lay judge discloses the secrecy of deliberations, a regulatory fine may be imposed pursuant to section 56 CCL.

VII. SHOULD LAY JUDGES BE DISPENSED WITH?

Meaningful participation of lay judges in the administration of criminal justice is conceivable only if they are capable of assisting the professional judge in the application of the law. Since lay judges are barred from inspecting the files, they can only rely on the result of the oral hearing. But they will not be able to gain an adequate basis for decision-making unless the professional judge directs the proceeding in such a way that it is generally understandable and, if necessary, also uses recesses in order to explain technical terms to the lay judges, comment on expert opinions or recapitulate the taking of evidence step by step[29].

As my own experience has shown, it is extremely rare for a lay judge to contribute to the clarification of facts, unless for example when s/he happens to have specific knowledge of the subject or where s/he is able to contribute professional experience or experience of life in the field concerned.

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[27] cf. Benz, *ibid*., p.84.

[28] cf. Schmidt-Räntsch, JZ 1958, p.329.

[29] cf. Benz, *ibid*., p. 90.

But it would nevertheless be short-sighted to dispense with the participation of lay judges. An empirical and psychological-theoretical study of existing law concerning lay participation in criminal jurisdiction has shown that lay judges can indeed cope with the tasks assigned to them[30].

There is no qualitative difference between the decision-making processes of lay judges and those of professional judges; the process of judging by lay judges is a rational one, too. It is governed roughly by the same factors as the process of judging by legally trained persons and it is not affected, to any major degree, by sympathy for, or dislike of, the defendant. In addition, lay judges do not have any stronger tendencies towards extremely harsh or lenient decisions than the respective presiding judges. The attitude of lay judges, therefore, is not appreciably more repressive or more lenient than that of presiding judges.

Nor is there anything wrong with the ability of lay judges to understand what is going on. As a rule, lay judges are able to follow an average main proceeding easily. Most lay judges are able to understand what is happening in the main proceeding and what it is all about. There are certain problems of comprehension, though, which lay judges may have and which may be understandable in the particular case, but which must not be ignored. Indeed, they occur too often simply to be tolerated. A classical problem, for example, is the participation of lay judges in cases involving economic offences. In such cases, people with no special training will find it difficult, in particular, to comprehend economic processes[31]. Although there are no practical approaches in sight so far to solve this specific problem, the key statement remains true, namely, that acting as a lay judge, in general, is not asking too much of the person concerned. Nevertheless, it seems advisable for lay judges to be given some assistance in the fulfilment of their tasks-whether through specific information to be provided by the professional judge or through regular training[32].

For lay judges it is very important that judicial decisions should reflect what the public feels is right or wrong. This is what they regard as the main purpose of their office. During the deliberations, therefore, most lay judges strive to voice popular convictions of what is right or wrong[32]. As the results of the aforementioned study show, this leads rather frequently to differences of opinion between lay judges and professional judges[33]. Surprisingly, however - and this is also what I have experienced - it rather seldom happens that lay judges exert influence with respect to the outcome of proceeding. The question as to the reasons for this must be left open; it would seem possible that a quite substantial number of lay judges endeavour to avoid disagreement with the presiding judges[34].

Lay judges are often purported to be highly susceptible to media influence. According to the aforementioned study, which is based on interviews with professional judges, there is no indication that the attitudes of lay judges are influenced by public or published opinion to any extent worth mentioning. It is true,

[30] cf. Rennig, Die Entscheidungsfindung durch Schöffen und Berufsrichter in rechtlicher und psychologischer Sicht, 1993, p.570 et seq.

[31] cf. Katholnigg, Wistra 1982, p.91; Michaelsen, Kriminalistik 1983, p.445; Wassermann, JVBI. 1970, p.145, p.148.

[32] cf. Rennig, *ibid*., p.572.

[32] cf. Rennig, *ibid*., p.572.

[33] cf. Rennig, *ibid*., p.573.

[34] cf. Rennig, *ibid*.

though, that it cannot be ruled out completely that media reports may have some effect on the opinions of lay judges, but for the same good reason this could also be said of professional judges[35]. In any case it should be noted that the belief that lay judges are highly susceptible to media influence must finally be abandoned[36].

In conclusion, it should be pointed out that the participation of lay judges in the administration of criminal justice has more advantages than many of its opponents expect. In addition to increasing popular confidence in the justice system, in ensures, above all, that criminal proceedings - and, in particular, the verdict - remain easily understandable and comprehensible to everybody. This seems to be all the more important as criminal law, after all, is a matter not only for the professionals involved, but for society as a whole.[37]

[35] cf. Rennig, *ibid*.

[36] cf. Rennig, *ibid*.

[37] cf. Rennig, *ibid*.

[38] cf. Geerds, Schiedsmannzeitung 1980, p.86.

COMMUNITY POLICING IN THE CONTEXT OF SINGAPORE

*Jarmal Singh**

I. INTRODUCTION

Singapore has grown in many ways over the last 40 years to become a city-state that enjoys a high level of economic growth, political stability and most importantly, a sense of safety and security. It was not a smooth journey, as the country experienced its turbulent periods in the 1950s and the 1960s, characterised by problems of political instability, communist insurgency, secret societies, unemployment and communal riots.

Today, Singapore's crime rate is low by international standards and has declined successively for 9 years from 1989 till 1997. Crime rate has only edged up slightly by 5.2% in 1998 when the entire South East Asia region plunged into financial and economic crisis. The rise was mostly attributed to theft of handphones and cash cards, and immigration offences.

Amidst the rapid modernisation of society, much of the transformation from the old crime-ridden town to a safe city today can be attributed to the Singaporean government's tough stance towards criminals and criminality in the form of strict laws and heavy penalties.

Apart from the strict laws and rigorous enforcement, the improvement of the social and economic situation helped to control crime. Over the past 15 years, the Singapore Police Force (SPF) has made two significant innovations in the area of policing in light of social and economic changes. The first being the introduction of a community-based policing strategy through the Neighbourhood Police Post (NPP) system in 1983 and the shift towards community-focused policing through the creation of Neighbourhood Police Centres (NPCs) in 1997.

Prior to 1983, policing strategies were reactive in nature. Police services were dispensed centrally, mainly through the 8 police stations existing at the time. Each police station served a very large area and these areas were patrolled by cars. Impacted by urbanisation, social and economic transformations, the police were faced with rising crime and a loss of public contact and support. The SPF then realised the importance of fostering closer police-community relations in an effort to prevent crime. By re-orienting a patrol strategy that was skewed towards the motorised mode to one that was community oriented and emphasised foot patrol, it is felt that the police could create a heightened sense of presence and visibility to deter crimes.

The Neighbouhood Police Post (NPP) system, adapted from the Japanese Koban System, was introduced in 1983. Eight NPPs were set up as a pilot in a constituency, with a view to assess the impact and success of the system in Singapore's environment. The trial was a success. By 1993, the entire set of 91 NPPs was set up throughout the island. This was accompanied by falling crime and increased sense of safety and security amongst the public.

However, in view of rising expectations of both the public and police officers, and the need to address new challenges arising

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from various developments, the police have now embarked on revamping the NPP system into the NPC system. The aim of this paper is to share the SPF's experience in its adoption of community policing as the principal policing strategy. In addition, the NPP and NPC systems, which are the operating structures to carry out this strategy, will be discussed.

II. CONCEPT OF COMMUNITY POLICING

The basic premise of community policing is that the police and the members of the public should work together to eliminate, suppress and prevent crime in society. This is an extension of the realisation that crime is a community problem created by societal issues and failures, and not just a police issue or an indication of its effectiveness. Police effectiveness and public order cannot be greatly enhanced unless the community can be persuaded to do more for itself.

Community policing seeks to inform and educate the public about crime, its causes and effects within the society. It actively seeks to mobilize the various sections of the community such as public organizations, private firms, governmental agencies and the general population in crime elimination, prevention and control. By educating the community in these areas, community policing hopes to reduce crime rates and at the same time, stimulate the society to self-poIice.

III. COMMUNITY POLICING VERSUS TRADITIONAL POLICING

As opposed to the traditional reactive, legalistic crime fighting strategy, community policing advocates a community-oriented policing strategy. It is based on the assumption that the problem of crime cannot be adequately met with law enforcement. Instead, it emphasizes proactive policing tactics and the mobilization of the community in the areas of crime elimination, prevention and detection. The key differences between Community Policing and Traditional Policing are as listed below.

Traditional Policing	Community Policing
• Reactive to incidents.	• Pro-active in solving community related problems. Discuss possible solutions with the community.
• Roles of police officers are limited to incident response.	• Roles of police officers are broadened to include identification and solving of problems.
• Random patrols in cars to respond to crimes.	• Visible patrols to interact with the community, i.e foot patrols, bicycle patrols, scooter patrols.
• Focus on internal resources. • Limited linkages with the commuity.	• Leverage on community resources. Police work with extensive co-operative links with the community.
• Information from the community is limited.	• Information from the community comes from many sources.
• Supervision is control-oriented; authoritative style or command and control style.	• Decentralisation of authority and autonomy given to front-line officers.
• Rewards based on solving of cases.	• Performance evaluation rewards based on service activities; crime prevention, satisfaction and sense of safety of the community.

IV. SPF'S ADOPTION OF THE COMMUNITY POLICING STRATEGY

The key strategic driver for the SPF's adoption of the community-oriented policing model was to establish and leverage community support for our own law enforcement policies and strategies in the face of a changing operating environment. The key changes in the operating environment were as follows.

A. Increasing Crime Trend (1974 to 1983)

Firstly, although the crime rate in Singapore was low by world standards, there was a disturbing trend of an overall increase in all types of crime (except violent property crimes) for the period 1974 to 1983. Analysis revealed that 70% of such crimes were house-breaking, theft of vehicles, and robbery which could have been prevented. The promotion of community-oriented policing would help the SPF to battle crime, as improved police-public relationships should result in a higher level of crime prevention awareness and greater public co-operation with the police.

B. Change in Population Distribution

Secondly, the population distribution was changing. In the 1960s, before the creation of the Housing Development Board (HDB), the bulk of Singapore's population was concentrated in the centre of the city. However, as a result of the HDB success in providing low cost public housing, about 84% of Singapore's population shifted from the city area to new towns and estates all over the island. These new public housing estates comprised mainly of high rise buildings and these lessened the opportunities for the public to interact with the police.

The SPF could no longer simply rely on the 8 divisional police stations for efficient and speedy service. There was a pressing need to develop a new, efficient response system that could cope with the changing operating environment and at the same time, offer opportunities for meaningful police-public interaction in a densely populated, urban environment. This spurred the SPF to develop the decentralised system of the NPP to serve the needs of the urban population better.

C. Rising Public Expectations

Thirdly, the general population was increasingly affluent and educated. This raised two challenges for the SPF. One was to meet rising public expectations of the police service. The other was stiff competition from the public and private sectors for quality recruits. The nature and prospects of police work was deemed by the younger generation as comparatively unappealing. Community-oriented policing addressed these two challenges by raising the quality of police services through attracting better quality officers seeking job challenge and satisfaction in the enhanced job scope.

D. Learning From the Japanese Koban System

At this stage, the SPF was in search of a successful community policing model. This was found in the form of the Japanese Koban (or police post) system. In Japan, the high crime clearance rate of 60% was due to the trust and co-operation that the public had with the police. Statistics also indicated that 80% of the Japanese public readily provided information to help the police arrest offenders. The desire to learn from the Japanese experience and to emulate the success of the Koben system led to the institutionalisation of community policing as the new policing strategy and philosophy of the SPF.

V. THE NEIGHBOURHOOD POLICE POST (NPP) SYSTEM

A. Study Team

In November 1981, a team of Japanese experts was invited to help implement the Koban System in Singapore. The Koban system was to be adapted for use in the Singaporean environment, with varying social settings and attitudes of the populace.

With the recommendation of the Study Team to establish one NPP per constituency, 8 NPPs were first established on 1 June 1983 in the 8 constituencies in one police division. The second phase of implementation began with the setting up of several NPPs in two other police divisions. Positive public response to the NPP system lead to the acceleration of the final implementation phase ending in December 1994. There are now 91 NPPs throughout the island. One division was merged with neighbouring divisions so that manpower saved could be deployed to the frontline, to meet the needs of the new system.

B. Purpose of the NPP system

The NPP system was implemented in Singapore with the following objectives:

- To improve police-community relations in Singapore;
- To prevent and suppress crime through the co-operation of and support from the community; and
- To project a better police image and win the confidence of the public in the police with more community-oriented services.

C. Infrastructure / Location

NPPs are the most familiar police contacts of the community within their neighbourhood. They are kept small to be personal, but big enough to make an impact in the community. The area of coverage of each NPP is based largely on the political boundaries. The average population covered by each NPP is about 35,000.

Being the most familiar police contacts, the NPPs have been located where their services will be demanded most. Factors such as the number of households and population are taken into consideration in setting up and locating NPPs, to reach out to the widest possible section of the population.

D. Oganisational Structure

A NPP is manned by a team of about 12 to 16 police officers who provide round-the-clock service by working in 3 eight hour shifts. The Deputy Officer-in-Charge (OC) of the NPP, is tasked to lead and manage the NPPs with guidance and support provided by the operations staff units in the land division headquarters.

NPPs are also grouped in fives or sixes and placed under the charge of an OC NPP for better management and coordination between the different shifts. This allows for the transfer and movement of officers among NPPs in the same group. Officers in neighbouring NPPs supplement each other through joint night patrols and covering the duties of absent officers. Flexible working hours and shift have also been introduced in the NPP system.

E. NPP Function & Duties

The establishment of NPPs enables the smooth execution and running of various functions and activities. The key functions of the NPPs, which ultimately must result in better police-community relationships, more arrests and effective crime prevention, are as follows:

- High profile police presence (or high visibility patrols)
- Provide efficient counter service

- Respond to incidents
- House visits
- Crime prevention
- Community liaison
- Security coverage/crowd control duties

F. High Visibility Patrols

NPP officers are required to patrol in the area under the jurisdiction of their NPP. The officers conduct foot patrols, bicycle patrols and scooter patrols so as to be able to interact with the community and enhance their rapport with the residents.

G. Counter Services

NPP officers provide a wide array of counter services in order to attract the community to visit the NPP and thus increase the opportunity of interaction with the public. The counter services provided by the NPP officers are:

- Lodging of Police Reports
- Traffic Accident Reports
- Lost & Found Reports
- Change of Address
- Reporting of Deaths
- Enquiry

H. Incident Response

NPP officers attend to non-urgent cases only. Urgent cases are attended to by the Fast Response Cars (FRC) from the Land Divisional Headquarters. However, NPP officers will still respond to urgent cases to assist the FRC officers.

I. House Visits

NPP officers are also required to conduct house visits to residents within the constituency. The rationale of such house visits is to enable the NPP officers to develop rapport with the residents. These House visits also help the residents to get to know the NPP officers personally as well as the services provided by them and the NPP. The close rapport and interaction between the residents and the NPP officers not only improve police-community relations, but also lead to increased public co-operation and support for the SPF's efforts at preventing and suppressing crimes in Singapore.

J. Crime Prevention

The NPP also function as a crime prevention centre where crime prevention advice is given and where services such as the engraving of names on personal property is provided free for the residents. To enhance the community's awareness on crime prevention, the NPP officers conduct crime prevention exhibitions, school talks, crime risk surveys, as well as the distribution of crime prevention pamphlets and newsletters to the residents.

K. Community Liaison

Before the NPP system was implemented, there was no dedicated officer assigned to liaise with community and grassroots organisations. With the NPP system, NPP officers were assigned to attend meetings of organisations in their areas of jurisdiction and this improved markedly the co-ordination and co-operation between the police and the community organisations. The NPP system also accelerated the formation of Neighbourhood Watch Groups (NWG) for residential areas and Crime Prevention Committees for industrial estates and shopping complexes.

VI. RESULTS OF THE NPP SYSTEM

The introduction of community policing through the NPP system has certainly brought revolutionary changes within the realm of policing. Firstly, it has changed the SPF's from a reactive or incident-driven policing approach to a proactive approach that attempts to prevent the possibility of crime before it can occur. The community is now mobilised to play an important role

in crime prevention.

Another effect of the NPP system is the decentralisation of police functions from the divisional level to neighbourhood level. The police at the frontline are more empowered with greater autonomy and discretion to discharge their duties. This has expedited police response to crime incidents and improved quality service.

The decentralisation principle has also enabled the police to penetrate deeper into the society and thereby effectively pre-empt criminogenic conditions. It is possible for the police to tap valuable information about the people and the conditions that are causing criminality.

Community policing has shifted its emphasis from car patrols to foot and bicycle patrolling. Together with house visits, this has brought the police very much closer to the community. The increased visibility of the police in the neighbourhoods has helped to deter crimes and eliminate the general fear of crime in society. This is also noted in the decreasing crime rates each year.

With community policing, the public has also become more aware of its role and responsibility in crime prevention and detection. The number of public-assisted arrests had steadily increased from 33.6% in 1992 to 34.8% in 1993 and 36.1% in 1994. That is about 1/3 of the total arrests made! The close co-operation is not only reflective of the high level of public spiritedness but also the evolving partnership between the public and the police in crime busting. The SPF has strengthened the trust of the public in the police.

Two surveys conducted in 1987 and 1991 confirmed that:

- NPPs have created more and closer contact with the public;
- NPP system has increased the confidence of the general public in the police;
- NPP system has had a positive impact on the image of the police.

Community policing and the NPP system has brought the police services to the community, helped Singapore achieve a low crime environment, and enabled SPF's to reach out to the public.

There is ample evidence that the community policing strategy and the NPP system in Singapore is a success. The 1996 Global Competitiveness Report ranks Singapore the safest city in the world in terms of its resident's confidence that their person and property are protected.

VII. BUILDING ON THE COMMUNITY POLICING STRATEGY

The NPP based system of community policing has served the SPF well for 14 years from 1983 to 1997. In 1996, the SPF initiated a review of its operational strategy. The review was driven by the realisation that the future would not be built through perfecting the past, no matter how successful it had been. More importantly, the SPF must ensure that the success of the NPP system itself does not become a limiting force that stifles growth and innovation in meeting new policing challenges and public needs.

As the SPF enters the new millennium, being the sole provider of policing services, the organisation owes its fellow citizens to further improve the already low-crime environment and strive to make Singapore even safer than it already is. Policing must be done smarter and more effectively than before. It is also clear in the SPF's vision to become a strong service organisation by

making continuous improvement to work processes to meet rising public expectations. At the same time, the SPF wants to offer every officer within the organisation a more enriching job scope and experience that stretches the officer's abilities and helps maximise their potential.

Since the implementation of the NPP system, the SPF has retained its traditional, reactive policing capabilities (namely, fast response patrols and investigation teams) in its 7 land divisions. Only the 91 NPPs that report to these police divisions have evolved along the direction of developing community-based policing capabilities.

Community-based policing has also been refined incrementally over the past 14 years. One recent innovation is the doctrine of 'problem-solving', under which NPPs initiate the resolution of certain community law and order problems that arise from simple systemic causes. The problem-solving approach makes community policing more effective because it is proactive and pools the whole community together in a concerted effort to ensure a safe, peaceful and cohesive society.

An example of a good problem-solving case is that by Hong Kah South NPP. The NPP used to receive many complaints about coffee-shop patrons consuming beer, after midnight, even when the coffee-shops in question were closed. Residents complained about the incessant noise pullution, littering, vandalism (often vulgar words written on walls), urinating in public places, and fighting. The coffee-shop patrons' unruly behaviour caused sleep deprivation to the residents, dirtied the neighbourhood and created a sense of public unease (especially to young ladies returning home late at night). Aware that repeated one-off responses to such incidents is not an operationally effective solution to the problem, Hong Kah South NPP adopted the following solution.

A. Co-operation with Coffee-shop Owners

Mindful of the need to maintain good rapport and act in partnership with community resources to resolve local community problems, Hong Kah South NPP officers sought the co-operation of the owners of the problematic coffee-shops in the following areas:

(1) Stop the sale of beer and start preparations to close half-an-hour before the end of the stipulated licensing time, so that ample time is given to the patrons to finish their drinks.

(2) Stack up the chairs and chain them up, before closing the coffee-shop.

(3) Remove all empty bottles from the tables to prevent their use as weapons.

B. Dialogue Sessions with Coffee-shop Owners

Based on the recommendation of Hong Kah South NPP, regular dialogue sessions with the coffee-shop owners are conducted at the Division Headquarters. Besides crime prevention advice and police recommendations, there is also sharing of good practices between the coffee-shop owners. This is effective in exerting peer group pressure on the owners of problematic coffee-shops to follow the good example set by their counterparts.

The above measures were successful in curbing the problem. Residents now enjoy restful nights, the neighbourhood is pristine in appearance, and a sense of peace and security prevails.

VIII. NEW OPERATING ENVIRONMENT

The SPF is expected to work in an increasingly complex environment, with forces that affect community safety and security arising from a multiplicity of causes. These complex social ills are characterised by seemingly intractable problems such as juvenile delinquency, spousal violence, the link between substance abuse and property crime, or the law and order problems posed by foreigners working in Singapore.

The SPF's traditional tool of effective enforcement can no longer, by itself, adequately address these challenges. The doctrine of problem-solving, which is targeted at simple systemic causes, and analysed and solved at the level of the NPP, is also impotent in the face of higher-order social dysfunction.

In addition, the SPF must continue to meet the rising public expectations of its service standards, as well as its ability to enhance safety and security. A recent survey, commissioned by the Service Improvement Unit (SIU), revealed that one area where the SPF failed to provide high levels of satisfaction, but which was highly important to the public, was the ability of the police to help solve the problems that have been brought to the attention of the NPPs.

In October 1997, the SPF made another significant and bold move to re-design the NPP system in a bid to strengthen its community policing approach, in light of the changing environment and factors. A system that can carry the strengths of the previous NPP system, like tapping on local knowledge to solve crimes, and at the same time can enable the SPF to grow and address key policing needs, ensures its continued relevance. The Neighbourhood Policing Centres (NPCs) system has been created to enhance the community policing approach by:

- Strengthening the SPF's front-line operating system;
- Building a strong service organisation;
- Increasing community involvement and responsibility for its own safety and security; and
- Optimising the value contributed by each police officer to the policing process.

IX. NEIGHBOURHOOD POLICE CENTRES

A. Changes to NPP System

In order to deliver decentralised, flexible, integrated and community-focused capabilities, the existing structure of land divisions and NPPs will be modified. At the centre of the new operating system is the Neighbourhood Police Centre (NPC). The existing seven police land division will be reconfigured into six policing regions. Reporting to each of these regional commands will be the NPCs.

NPCs will be the sole vehicle for front line policing to ensure the community's safety and security. In the redesigned system, NPCs will be accountable for the total outcome of policing in the community. A short summary of the key differences between the NPP system and the NPC system is given in the below figure.

NPP System	NPC System
• Community policing post with limited services	• One-stop total policing centre provding the full range of policing services
• Disparity in workload due to electoral based boundaries	• More efficient pooling of manpower resources to serve the community
• General services to attract residents and establish points of contact	• Focused on services that are critical to safety and security
• Low value tasks and narrow job scope	• High value, board job challenge, better quality officers
• Compartmentalisation of services with many officers each performing a separate task	• Integrated service process with one NPC officer handling the entire service process
• Lower priority on proactive work	• Dedicated resources for proactive work
• Community-based policing	• Community-focused policing

B. One-Stop Total Policing Centre

Today, the areas policed by NPPs vary significantly. Some NPPs have jurisdiction over areas with 2,000 households, while other NPPs serve up to 5,000 households. NPCs will however serve areas of similar residential population sizes.

On average, each NPC will serve about 100,000 residents. The size of each NPC is kept to between 100-120 officers, with administrative overheads, such as personnel and logistical support borne by the Regional Command Headquarters. It also ensures that the NPCs are not so large as to present a cold and impersonal image to the public.

A total of 32 NPCs will be created by the year 2001 to serve an indigenous population of 3.2 million in Singapore. NPCs, as centres of total policing, have a variety of policing options, ranging from reactive patrols and investigations, to pro-active policing activities. These 32 NPCs islandwide will be supplemented by at least another 66 NPPs, with each NPC managing between 1 to 4 NPPs.

With the creation of NPCs, the current 91 NPPs would be re-distributed to achieve a balance of easy accessibility to police counter services for the public and an optimal number of NPPs to be deployed in the NPC system. The emergence of the NPC as the sole vehicle for the provision of policing services means that NPPs cease to be sub-units of a larger police unit. The officers manning each NPP will come from the NPC itself. NPPs therefore represent service points only, with the deployment of patrol, investigative and pro-active policing resources based on the overall needs of the entire NPC area of operations.

Each of the six policing regions will have a dedicated Regional Command Headquarters to oversee police operations. Six Regional Commands will replace the existing seven police divisions. These Regional Commands will comprise the command and support elements for the region. They will also include specialist investigation units, focusing on investigations into serious crimes and other investigations likely to lead to prosecution in court. Each Regional Command will house a NPC to serve as the frontline service point for public interaction.

[1] A DGP is a development plan that defines and builds a particular township. In the plan, each town's boundaries are clearly mapped out.

C. Relationship to Development Guide Plans (DGPs)

Unlike the current NPP boundaries which are linked to political constituencies that may change after a General Election, NPC boundaries are based on Urban Redevelopment Authority's (URA) Development Guide Plan[1] (DGP) areas for the following reasons:

(a) The DGP areas, being geographically-based, provide additional leverage by creating a sense of territorial ownership for the community. This will enhance the community's identity.

(b) Each DGP area also has an expressed vision, which further reinforces a coherent identity for the communities living within that area.

(c) DGP areas are permanent, unlike electoral boundaries. Over time, distinct identities can emerge for different communities, without being interrupted by changes in constituency boundaries.

Each NPC operates out of police facilities sited within its area of operation. Facilities for the NPCs could be co-located with other community agencies. A single edifice, representing all the community agencies for that area, will further reinforce the sense of community identity and permanence. As NPCs or NPPs are the means through which the SPF engages in community-focused policing, they can easily blend into a building that encompasses community clubs, community libraries, and service points for other community agencies. Most NPCs would be sited at the heart of the residential area in the DGP and remain easily accessible via public transport.

D. Strengthening SPF's Front-Line Operating System

The front-line operating system refer to the way the SPF organises and discharges its policing duties that impact the public every day : fast response patrols, investigations, counter service and proactive functions such as house visits. A key feature of the NPP system is the compartmentalisation of its functions. A typical minor crime case is attended to by a fast response crew, then by NPP officers who guard the scene until a Divisional Headquarters investigator arrives. Frequently, the Scene of Crime officer may even arrive separately to take photographs of the scene and dust for finger-prints. The case and the victim are thus handed from one officer to another.

The present system has many drawbacks. Firstly, each officer handles only a small piece of the entire service process. This unnecessarily limits the contributions and job challenge open to officers. Secondly, it also dilutes the ownership over the case. The sense of ownership diminishes when one officer passes the case over to another to complete the service delivery process. Thirdly, the NPP officers' local knowledge is not tapped in the cases, as their participation at the crime scene is only transient. Lastly, the crime victim is inconvenienced and may even get confused with the service delivery due to the internal inefficiencies in police work processes.

The NPC system aims to integrate the entire service process : where fast response, general investigations and basic scene of crime work are launched from the NPCs. Officers are trained, supported and enabled to carry out all the previously compartmentalised functions in one single service delivery. They will also take over the ownership of cases, which are of a neighbourhood character, and pursue

follow-up investigations. Complex cases will still be handled by the Regional Headquarters and the Criminal Investigation Department (CID).

The NPC officers are also rotated among a wider and more challenging range of duties as compared to the NPP sstem : fast response and counter service during which s/he will take over the investigations of the cases that s/he attends to; follow-up investigations; and proactive policing such as community patrols, house visits, community liaison, school visits etc.

More attention and time is accorded to proactive functions as the NPC system seeks to reach out to the community even further. Officers on such duties will not be re-deployed to attend to other cases unless the case is urgent and involves life and death.

E. Building a Strong Service Organisation

Although the SPF's primary goal will remain to ensure safety and security, it must, in order to continue to win widespread community support and trust, respond to the community's needs in this area through high service standards. However, over the years, the NPPs have take on more services. Some of these were justified on the grounds that police officers need to interact and reach out to the public.

The SPF realised that in order to succeed in strengthening the sense of safety and security of the communities the police serve, there is a need to refocus efforts on those services that directly affect this sense of safety and security. These core services include responding to and detecting crimes, maintaining the peace and preventing disorder.

Another change in the NPC system is the conscious matching of police resources to the demand for police services. For example, the number of fast response cars varies with the demand throughout the whole day. One may see a higher number of patrol cars during the peak morning and evening hours, where incidents are usually high. In addition, some of the NPPs are closed partially at night from 11 pm to 8 am, where the demand for counter service is low and the police officers could be re-deployed to perform more effective moblie patrols.

A major quality service programme was also initiated to help officers internalise a strong service mindset.

F. Enhancing Community Involvement and Responsibility

The need to enhance community involvement and responsibility is consistent with the need for the SPF to expand beyond its traditional areas, so as to best tackle the impact of deep-seated social ills on law and order. By leveraging on the involvement and sense of ownership of individuals living within the community, the resources available to address such social dysfunction are also far greater than if the NPPs, grassroots organisations or other community agencies attempted to solve them on their own.

This marks a key shift from community-based policing to community-focused policing. Community-based policing is, at its heart, concerned with how the community can help the police do its job better. In the new model, the focus is entirely on the community, as the customers to which the police add value. The police, together with the community, will strive to provide total solutions to the community's safety and security needs. This is the next natural stage in the development of policing in Singapore. It builds on the trust and goodwill the police have secured through community policing.

The shift to a community-focused model fundamentally alters the SPF's operating strategy. Successful policing will no longer be measured solely in terms of falling crime rates. As the focus shifts from the police to the community, what matters to the community, for example, its level of safety and security, will determine the success or otherwise of the police mission.

Arising from this, it will no longer be appropriate for formulaic approaches to be applied uniformly across the different communities. Police units operating in different communities must develop customised solutions tailored to meet the needs of, and which take into account the constraints on, each community. The need for specific, custom-made and workable solutions will redefine the required levels of operational competence. These demands will fuel the need to develop, at the organisational level, learning competencies so that each customised solution enhances the quality of the future solutions.

An operating strategy that is focused on the community also entails a skillful management of relationships between the police and the individuals, grassroots organisations and volunteer groups that form part of the community. Structurally, the SPF will be empowered and decentralised, so that at the front-line, police officers can 'broker' for total solutions in response to community law and order concerns.

Such an approach also has other benefits, in particular, by providing opportunities for individual participation in improving the quality of life in their community, so that emotional bonds to the community are strengthened. It therefore forms an inportant element in the overall Singapore 21 vision to build a civil society with strong community ties and active citizenry. It is also an integral part of the Government's strategy to gradually lower the community's level of dependency on the authorities and to engender shared responsibility for social problems and their solutions.

This is done through a new initiative known as the Community Safety and Security Programme (CSSP). A CSSP is an action programme jointly drawn up by the grassroots leaders, residents and the police. It consists of the profile of the community and its needs, the key agencies involved and the action plans to tackle the community problems affecting the safety and security of the neighbourhood. Through CSSPs, the NPC system aims to shift the community's mindset from what the police are doing about safety and security to what we can do together.

One CSSP is crafted for each precinct / constituency and each differs from another, since different communities in different neighbourhoods might not share the same concerns. The CSSP aims to get the residents more involved and be responsible in taking actions to address the safety and security concerns affecting their neighbourhoods. The driving belief is that each citizen can make a difference to society.

G. Optimising the Contribution of Each Police Officer

The SPF currently has a regular component of nearly 8,000 officers and 1,000 civilian staff. With falling birth rates, the size of new cohorts joining the workforce grows smaller each year. As an organisation competing within a limited pool of labour resources, the SPF must be attractive and challenging to bring in the best talents. Whilst the SPF may face the challenge of attracting the best talent to join the organisation, it has to contend with retaining officers over the medium to long term.

SPF Commissioner, Khoo Boon Hui, during one of his dialogue sessions with NPC officers said *"...That is why not only do we have to take care of those who are with us, but to get the best people to join us ...one of the main motivations of why we are going into the NPC system, ... is to bring our officers to match the expectations of the job, and to be proud of what we do."*

Through the NPC system, the SPF is able to redesign its front-line jobs so that it can continue to recruit quality manpower from each graduating cohort. At the same time, in line with the national policy of continuous upgrading, the SPF also needs to upgrade the qualifications of its officers after they have entered the service. Re-designing jobs to create viable and attractive front-line careers in the NPC system will serve to enhance the credibility of the SPF as an institution, and instill trust in the ability of the police to carry out their tasks effectively.

The educational profile of police officers serving the community must be kept high to match the broad rise in educational qualification of the society. This will enable the SPF to meet new job demands, greater challenges and the expectations of the public.

H. Organisational Structure

In order to fulfil its role as being community-focused, and responsive and flexible to the needs of the community, police officers in the NPC operate in an empowered and self-directed fashion. They work as a team, rather than as individual officers.

The basic unit in the NPC is a group of three front-line officers, led by one group leader. This group of four officers is self-directed, and undertake the entire range of policing responsibilities of the NPC. Each group is also responsible for nurturing and building a network of community relationships within a precinct of about 1,200 - 1,500 households. As this group is deployed as an operational entity, it will facilitate the process of team learning, a key lever of change and innovation in the redesigned system.

An average of 5-6 such groups form one team, which is led by a team leader and one assistant team leader. Each NPC have four teams, reporting to an NPC commander. Each NPC comprise, on average, 100 regular officers. With another 15 full-time national servicemen attached to the NPP, the total strength of the NPC will be about 115 officers.

X. NPC IMPLEMENTATION PHASES

As the NPC system is a major change for the entire the SPF. It involves major re-organisation. Many of these changes will take some time to implement. A phased implementation approach has been adopted:

<u>Pilot Phase</u>	
Oct 1997	1st pilot: Queenstown NPC created in Central West Region.
Apr 1998	Another 3 NPCs, namely Bukit Timah NPC, Bukit Merah West NPC and Jurong East NPC were created in same region.
<u>Phase I</u>	
Jun 1999	6 NPCs in West Region to be created.
<u>Phase II</u>	
Jun 2000	14 NPCs to be created in North, North-Eastern and East Regions.

Phase III

Jun 2001 8 NPCs to be created in Central-Western Region.

In Commissioner Khoo's words, *"A pilot is not to test whether the system will succeed or not. It is a pilot in the sense that we allow officers more leeway to improve the system, to share experiences, resolve operational problems and tell us what is wrong."*

XI. PRELIMINARY NPC'S RESULTS

A recent review of the pilot phase implementation has shown positive results and all the NPC objectives are largely met. A large majority of the officers felt that they had stronger working relationships with their team mates, between teams, supervisors and key officers. 74% of the officers were confident of their abilities in performing the various aspects of NPC duties (information technology systems, procedures and investigative duties). 81% of the officers rated the facilities in the NPC to be much better than their previous workplace (NPPs and Land Divisions).

Compared to one year before the NPC was set up, one-third of the residents in the precincts felt that the safety in the neighbourhood now was "much better". Two-thirds of the residents felt that the police had at least made some improvements to increase security in the neighbourhood with the creation of NPCs.

XII. CONCLUSION

The community policing framework in Singapore has been shifted to uplift the professionalism in front-line jobs and getting the community more involved in safety and security matters. The re-design of the NPP system builds on the achievements the SPF has made over the past few years - community policing, empowerment and quality service. The SPF believes that its policing changes are set in the right direction. Our success will depend on our willingness to learn and change the way we operate. Our commitment and passion to learn collectively as a team, from the top police chief to the front-line officer, may turn out to be the most significant success factor in our journey into the new policing environment presented by the next millennium.

CRIME PREVENTION-THE SINGAPORE APPROACH

*Jarmal Singh**

I. INTRODUCTION

Singapore, being a city state dependant on trade and with business links to all parts of the world, is a very open country. Further, its strategic location makes it a natural hub for airlines and ships. In view of the very many varied cultures and historical attractions in the region surrounding it, large numbers of tourists and business travelers pass through it. It is hence open to varied influences, and is also vulnerable to passing crooks who can easily pass of as locals or tourists.

As most of its occupants are descendents of immigration stock, mainly from the Peninsula Malaysia, the Indonesia archipelago, China, India and Europe, it is heterogeneous. There are hence sensitivities relating to race, religion, language and nationality. These need to be safeguarded against exploitation by bigots and anti-national elements. Nevertheless, their common destiny and the need to work among and with each other have led to the establishment of a generally similar outlook relating to their physical self and property. As all value these rights, crime which attacks these rights is obviously abhorred and is always a highly topical subject of concern inspite of Singapore having one of the lowest crime rates in the world.

The low crime rate has been achieved by the combination of deterrence, enforcement and rehabilitation under a very effective criminal justice system. Deterrence is provided by tough laws, pushed by a strong executive and enacted by a very responsive legislature; a very robust and efficient world class court system; a police force also aspiring to be world class in its total policing capabilities, which includes at its bedrock, community policing in a strong, symbiotic partnership with the community it polices, strong enforcement by incorruptible officers and an austere but humane correctional system which aids rehabilitation whenever possible.

The main thrust of the police-community partnership is based on mutual help, with the public being persuaded and encouraged to take personal responsibility both individually and in partnership with others in safeguarding themselves, their property and their neighbourhood with the advice and assistance of the police. It is based on the principle that prevention is a community responsibility and crime prevention measures taken by the community can limit and reduce opportunities for the commission of crime. Further, the community has a role in mitigating the impact of crime on unintended victims, such as the dependents of victims, offenders and others who suffer collateral damage from these crimes. The community also has a role in reintegrating people into society.

Since 1988, Singapore has been enjoying a decreasing crime rate for 9 consecutive years. This would not have been possible if not for cooperation from the public, brought about by community-policing. About 1/3 of all arrest cases are solved as a result of public-spiritedness shown by members of the public, assisting or giving vital information leading to the

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apprehension of the criminal.

In the last two decades, Singapore has become highly industrialised and urbanised. The SPF has become an organisation fully committed to serving the needs of and protecting the people living in Singapore. In response to these changes, the SPF has also undergone a period of transformation in terms of its organisational structure and policing strategies.

The SPF has moved from reactive policing to proactive policing based on the concept of community policing and adapted from the very successful Japanese Koban model. This led to the establishment of 91 neighbourhood police posts (NPPs) under the supervision of 7 land division headquarters. The NPPs primary role is creating a sense of security in the neighbourhood through easily accessible counter service, close liaison with the public, high visibility patrols, house visits and crime prevention education.

II. CRIME PREVENTION CONCEPTS AND STRUCTURES

A. Concepts

Accompanying community policing, is the development of a proactive approach to crime prevention. The most strenuous efforts by the police alone will not produce the desired results if the community stands by passively in the erroneous belief that crime is purely a police responsibility. The community must accept that the task of crime prevention is as much a community responsibility as it is a police responsibility, and must join hands with the police to make crime prevention effective. The failure of public involvement in crime prevention may be attributed to ignorance. It is the police responsibility to overcome this ignorance through a sustained programme of education that brings about crime prevention awareness throughout the community. Crime prevention education make people aware that:

(i) They are personally responsible for the safety of their property and themselves, and for the safety of their neighbourhoods.
(ii) Many crimes are opportunistic in nature and are committed through the negligence and carelessness of the victims. Crime is prevented if the opportunity is denied or delayed.
(iii) They can prevent crimes by taking simple and effective measures on their own or in co-operation with their neighbours. Crime prevention measures must be commensurate with the threat. Effective protection will not come from any single measure but from the sum total of all practical and possible measures.

B. Formation of a Crime Prevention Branch

The Crime Prevention Branch of the SPF was formed in 1977 under the Criminal Investigation Department (CID) to cater for the needs of a specialised branch devoted exclusively to crime prevention activities. The main task of the branch was to inform the public that they have a significant role to play in safeguarding themselves and their properties against crime. For that purpose, the branch embarked on an extensive programme of crime prevention activities, which includes talks, exhibitions and personal calls to disseminate advice on measures that could be adopted to prevent crime.

In view of the economic growth and industrial development in Singapore, the branch was expanded to that of a Crime Prevention Division (CPD) in 1981, so as to provide a more thorough and efficient crime prevention programme for the public.

The formation of the CPD signaled the beginning of the community-oriented policing strategy in Singapore. Since its inception, the CPD has initiated several projects in crime prevention, namely the Neighbourhood Watch Scheme (NWS), Crime Prevention Committees (CPCs), Crime Risk Surveys, Operation Identification, crime prevention exhibitions, crime prevention campaigns; and youth programmes like the Crime Proficiency Badge Scheme for uniformed groups like the National Police Cadet Corps, Scouts and Girl Guides etc.

The Division was later to work closely with the National Crime Prevention Council (NCPC) which was formed on 4 July 1981. The formation of the Council marked an extremely important event in the history of crime prevention work and development in Singapore.

C. National Crime Prevention Council

The National Crime Prevention Council (NCPC) was set up in 1981 to act as a catalyst and partner to mobilise the support of groups and individuals from the community to work closely with the police on crime prevention. It is a non-profit making organisation which depends entirely on donations to run their activities. The NCPC objectives are:

(i) To raise the level of public awareness and concern about crime;
(ii) To encourage self-help in crime prevention;
(iii) To study, develop and improve crime prevention measures suitable for adoption by the public; and
(iv) To co-ordinate the efforts of organisations interested in such activities.

The NCPC comprises of persons from both the private and public sector. Members include business and social leaders, professionals and police officers. It is involved with other organisations and government departments in promoting crime prevention. It works closely with the police and organises exhibitions, workshops, courses, contests and talks to involve and educate individuals and organisations on crime prevention. It also conducts research into various aspects of crime prevention. Research is also commissioned to measure the effectiveness of crime prevention programmes. Various subcommittees are also formed under the NCPC to address problems related to crime within various trades and concerns. They include:

(i) Hotel Security Committee
(ii) Security at Construction Worksites Committee
(iii) Children & Youth Committee
(iv) Security at Commercial Premises Committee
(v) Security in Housing Committee
(vi) Focus Group Committee

III. CRIME PREVENTION SCHEMES

A. Neighbourhood Watch Scheme (NWS)

In 1981, the SPF introduced the Neighbourhood Watch Scheme (NWS) to tap on the resources of the community, especially the residents of high-rise apartments, in line with its community, policing concept. The Scheme was originally conceived to encourage mutual care and help among neighbours, through residents keeping an eye out for each other's premises, and it was hoped that civic-mindedness, neighbourliness and social responsibility in the context of crime prevention would be enhanced. This would contribute to keeping neighbourhoods safe from crime.

By 1993, the NWS had 10,000 groups of about 5 households located on the same floor of a block of apartments, and led by a group leader. Such a group is called a Neighbourhood Watch Group (NWG). The goals of the NWG are:

(i) To encourage residents to keep an eye for their neighbours' premises, so as to enhance the physical security of their estate.
(ii) To disseminate, through the NWG leader, awareness of potential threats to resident's safety in their estate.
(iii) Instill, through the NWG leader, an awareness of potential threats to residents' safety in that estate.

Despite the large number of NWGs formed, the scheme met with limited success. The activities of the NWGs have been minimal or, in some cases, non-existent. This is due to the following factors:

(i) Lack of leadership by NWG leaders;
(ii) Lack of participation by NWG members;
(iii) Limited scope of activity for NWGs;
(iv) Existence of alternative channels of communication.

In the light of the above factors, a review of the NWS in 1996 was made with a view to ensuring that it continues to remain effective and to complement the work of the Residents Committees (RCs), Residents Associations (RAs) and the police. The RCs and RAs are grassroots community-based civic organisations that are all over Singapore. The principal considerations on the revised NWS form an integral part of the police's overall strategy of community policing, working in conjunction with attempts to reach out to the community-at-large (through initiatives such as problem-solving), and to the individual (through house visits). In order to achieve this, the following was addressed:

(i) The need for the aims, structure and activities of the revised NWS to be congruent with the priorities of community agencies, thus underscoring the relevance of community-based cooperation at the grassroots level.
(ii) The need to leverage on the strengths of the existing grassroots network such as Residents Committees (RCs) / Residents Associations (RAs).
(iii) The need for activities under the revised NWS to cause individuals to develop a greater sense of belonging to and responsible for the neighbourhood they live in.

B. Neighbourhood Watch Zone (NWZ)

The new model for the Neighbourhood Watch Scheme envisages a strategic partnership between the SPF and Residents' Committee (RC) for Public Housing and Resident's Association (RA) for Private Housing (the key community agency at the grassroots level). The SPF no longer attempts to build up a network of community relationships in isolation. Instead, it will work with and through the RCs and RAs, in order to achieve the objective of the Neighbourhood Watch Scheme. This is done primarily through the creation of "Neighbourhood Watch Zones" in each of the 456 RC and 65 RA Zones. NWZs will form an integral part of the RC and RA structure, and will be led by the Liaison Officer (LO) of the RC or RA Zone, assisted by their Assistance Liaison Officers (ALOs). They can be the vehicle through which the RC's and RA's aim of engendering a strong community spirit can be achieved. Their focus, unlike the NWGs,

is not on crime-related concerns alone, but on all issues that interest or affect the community.

RCs and RAs have been strengthened as the pre-eminent community organisations at the precinct level. They have the mandate not only to discuss, but also to deal with all aspects of concerns that have crime or law and order implications. Key areas of community concern will be focused on the RCs and RAs. This gives the community an identity to rally to. Since the RCs and RAs have more substantial areas of focus, the possibility of active and meaningful participation in RC/RA activities by residents will be raised.

The transformation from Neighbourhood Watch Groups to Neighbourhood Watch Zones (NWZ) is a move from quantity to quality. With a more manageable number of NWZs to work with, NPPs can concentrate on working more closely with each NWZ, thus strengthening its leadership and administration. A total of 25 NWZs were launched at the pilot phase in April 1997. To date the SPF has established 191 NWZs. A typical NWZ is made up of a Liaison Officer (LO) and is assisted by Assistant Liaison Officers (ALOs). The LOs and ALOs of the NWZ work very closely with the NPP officers to coordinate crime prevention activities and programmes to foster community bonding. They will also disseminate information to the residents and channel feedback from residents to Resident Committees (RCs)/ Resident Associations (RAs) and NPPs. The role of our NPP officers in NWzs are to work in close partnership with the members of RCs/RAs in promoting neighbourhood watch. Typically, they will:

(i) Actively support RC and RA activities;
(ii) Disseminate crime prevention information through house visits, leaflets and posters;
(iii) Work jointly with RC and RA members to discuss and propose solutions to crime concerns;
(iv) Seek residents' feedback on police issues during house visits;
(v) Meet NWZ LOs for information on RC/RA events;
(vi) Identify RC/RA activities as platforms to promote crime prevention awareness;
(vii) Organise activities at a 'small group' level to provide opportunities for NWZ members to meet and get to know each other;
(viii) Customise police publications with community level messages for dissemination to residents; and
(ix) Work with the community on crime prevention publications.

The role of Liaison Officers (LOs) in NWZs are as follows:

(i) Promote neighbourliness, harmony and cohesiveness within the NWZ;
(ii) Conduct NWZ programmes to raise the crime prevention awareness of the residents;
(iii) Acting through the ALOs, disseminate information to and channel feedback from the residents to the neighbourhood police post/RC/RA.
(iv) Coordinate and promote a wide range of activities eg, social and cultural, etc, to engender a strong community spirit among residents and to raise crime prevention awareness;
(v) Attend to neighbourhood and community crime prevention matters;
(vi) Promote and encourage resident participation in crime awareness

programmes;

(vii) Mobilise community resources to address residents' crime concerns

(viii) Resolve, with the support of NPPs, disputes among residents; and

(ix) Foster civic consciousness amongst residents.

The SPF, in building a strong community support, had created the Neighbourhood Watch Zones in 25 RC Zones for its pilot scheme launched in April 1997. A survey was conducted a year later to find out the level of awareness of the NWZ scheme and and the crime prevention knowledge of the residents. The findings were that more than 90% of the respondents wanted the scheme to continue or be implemented in their estates. They also felt that the scheme was effective in helping to prevent crime. With the success of this scheme, the SPF is embarking to expand it island-wide. To date, the SPF has established 191 NWZs.

IV. CRIME PREVENTION PROGRAMMES AND PROJECTS

With community policing firmly in place, and strategic networks established with public organisations such as grassroots organisations, and private bodies such as various trade associations, it becomes possible to leverage on their cooperation and expertise in crime prevention. The reach of crime prevention programmes initiated by the SPF is greatly enhanced through these collaborations with leading public and private organisations that aim to enhance security-awareness and security within their respective trades and spheres of operation. The following are some of the crime prevention programmes being implemented by the police in collaboration with the community.

V. CRIME PREVENTION FOR THE GENERAL PUBLIC

A. Crime Prevention Exhibitions and Talks

To stimulate greater public interest and instill crime prevention awareness, crime prevention exhibitions are held throughout the year at shopping centres, community centres and void decks of apartments to reach out to the general public. The police also conduct talks at grassroots and private organisations. Crime prevention phamplets, posters and handbooks are also produced and distributed to the general public during exhibitions or talks and are easily available at the Neighbourhood Police Centres/Posts.

B. Annual Crime Prevention Campaign

To focus attention on crimes which affect the public at large, the police, together with the NCPC, jointly organise the Year-End Festive Season Crime Prevention Campaign. The mass media such as television, cinema, posters etc, would also be employed to communicate crime prevention messages to the general public.

C. Crime Risk Surveys

To determine security weaknesses, the police conduct Crime Risks Surveys for both residential and commercial premises upon request (by appointment or registration at crime prevention exhibitions). The police also visit scenes of crime to advise the victims of means of improving the structural security features of their premises. The aims of the surveys are:

(i) To provide specialised advisory services on crime prevention to the public at no cost;

(ii) To help improve the physical security features of premises; and

(iii) To encourage the use of various crime prevention measures and devices to enhance the security of premises.

D. Crime Watch TV Progamme

To educate the general public through the television, the police and the NCPC also jointly produce the Crime Watch TV Programme Series. The programme features crime awareness including solved and unsolved cases, appealing for information and witnesses and public education segments on crime prevention measures or road safety. This TV programme is shown monthly during prime-time in both the English and Chinese languages.

E. Crime Prevention for Senior Citizens

Senior citizens being vulnerable and trusting, can easily become victims of unscrupulous criminals. Crime Prevention Talks are conducted by Crime Prevention Officers (CPOs) to various senior citizen associations or groups. This also involves police liaison with the People's Association and related organisations on the organising of crime prevention programmes and exhibitions.

F. Crime Prevention for the Young and Youths

1. School Security Committees (SSCs)

The Committee is headed by teachers in the schools themselves. The programme was formed to enhance crime prevention and fire safety in the schools. The police officers at the NPPs act as liaison officers to these SSCs. Meetings are held with SSCs to update them on the latest crime trends and advice. The police also render assistance, such as arranging and conducting crime prevention talks to the students.

2. Crime Prevention for Uniformed Groups

To reinforce crime prevention messages among uniformed youth groups in schools such as the National Police Cadet Corps, the Scouts and Girl Guides, participation in crime prevention activities are encouraged. These activities include crime prevention knowledge tests, visits to NPPs and the Crime Prevention Display Room. Upon completion of these activities, students would be awarded the Crime Prevention Proficiency Badge. The police intend to extend the award to all other uniformed groups in schools.

3. Textbook for Students

To educate our students on crime prevention, a series of crime prevention textbooks called "Dear Mr Policeman" were brought into the school curriculums in 1986 to teach students from upper primary to lower secondary levels the importance of crime prevention. This series, which is still currently being taught, will soon be replaced in 1999 by an enhanced series called "Safe and Secure: That's Our Singapore", which will carry not only crime prevention messages from the police, but also road safety, and fire safety messages from the Singapore Civil Defence Force, and drug abuse prevention messages from the Central Narcotics Bureau.

4. Crime Prevention CDs for Schools

A crime prevention interactive multi-media CD targeting students and youths have been developed. The CD contains the messages of crime prevention, fire safety/ emergency preparedness, anti-drug abuse and road safety, from the police, Singapore Civil Defence Force and the Central Narcotics Bureau respectively. The CD comes complete with digitised images and good audio and visual animation to make learning fun and interactive for students and youths alike.

5. Crime Prevention Videos

An educational video called "Gangfile" warning teenagers of the dangers of joining gangs; and a handbook called "Say No To Gangs", has been produced and distributed to all schools. Another video, entitled "Prison Me? No Way!" has been produced for students and youths to steer them away from crime. The video recounts the prison life of 2 youth offenders, and conveys the severity, harshness and consequences of a prison sentence. The video, which is distributed to all schools, comes complete with a teachers' guide.

6. Joint School Talks on Crime and Drug Abuse Prevention

To maximise the benefits of combined preventive drug and crime education among students, the police and the Central Narcotics Bureau (CNB) have integrated and coordinated joint school talks on crime, secret society activities and drug abuse prevention. The police, CNB and Ministry of Education (MOE) also work together to draw up a year-long lecture schedule for schools. This schedule ensures that every school will be visited by the officers and benefit from their talks. Apart from the schedule, schools can also request special talks to small group of students who have been singled-out for any kind of infractions. This helps the police and CNB to establish better ties with discipline masters and with schools in general.

7. Streetwise Programme

In addition to preventive education in schools, the National Youth Council (NYC) has initiated the "StreetWise Programme" -a programme designed to change the behaviour of youths who have unwittingly drifted into gang activities. Three key components in the programme are:

(i) Counselling;
(ii) Development training to inculcate life skills and provide academic and recreation support; and
(iii) Voluntary curfew.

Participants in the voluntary curfew scheme will have to undertake not to visit certain entertainment outlets and likely gang hangouts. They must also stay at home during certain times of the day. Their parents will have to agree to supervise them and ensure that they observe the curfew for the duration of the programme.

8. Visits to Penal Institutions

The police and CNB will continue to organise institutional visits for youths identified to be involved in petty crimes and other delinquent activities at the prisons and Drug Rehabilitation Centres respectively. This would enable the youths to have direct exposure to the deprivations in the drug and penal regimes.

9. Organisation of Police Youth Camps

Youth camps for high-risk students will be organised by the police to serve as an outlet for energy and imagination, to steer youths away from crime or associating with bad elements. This will also instill some confidence as well as social skills in them.

10. Honorary Volunteer Special Constabulary (VSC) Scheme

As juvenile delinquents have become increasingly defiant and aggressive over the years, the police alone cannot tackle the problem effectively. The Honorary VSC scheme was introduced in 1997 to strengthen the links between schools and the police in an effort to keep juvenile delinquency problems and youth-gang influences away from schools. Teachers are appointed as Honorary VSC Senior Officers.

The appointment symbolises police presence and authority in schools and enhances teachers' position as the overseer

of school discipline. The Honorary VSC Senior Officers carry warrant cards which enables them to make arrests when there are serious breaches of the peace within, or in the immediate vicinity of, the school compound or during school activities.

The Honorary VSC Senior Officers play the role of the liaison officer between the respective schools and the police. Police will work closely with them to curb juvenile delinquency. They will contact the police should the need arise and assist in scheduling talks on topics related to secret society activities or crime prevention. They also help to organise police-youth activities such as visits to prisons and monitor the behaviour of delinquent students in schools.

As they are part of the SPF, they are conferred powers of arrest, and can offer advice on police procedures and police-related matters to staff and students in their schools. They also counsel recalcitrant students on the consequences of criminal or gang activities.

G. Commercial and Industrial Sectors

1. Crime Presentation for Crime Prevention Committees (CPCs)

To look after the commercial and industrial sectors, the police in 1982 introduced Crime Prevention Committees (CPCs). CPCs serve as an organised body where the police can work closely with both the commercial and industrial sectors on crime prevention. They are equivalent to the Neighbourhood Watch Scheme in public/private residential estates and are responsible for monitoring and looking after the security of their respective commercial/shopping or industrial complexes; organising crime prevention activities and implementing the recommended security measures in consultation with police representatives. To date, 145 CPCs have been formed all over Singapore.

2. Crime Prevention for Construction Sites

Security audits of construction sites are conducted jointly by the Singapore Contractors Association Limited (SCAL), the NCPC and the police. The objectives are to promote and encourage crime prevention awareness, enhance work site security and to deter unauthorised visitors and illegal immigrants. To educate foreign workers, a crime prevention video for construction workers in 7 different languages was also produced and incorporated as part of the orientation programme for foreign workers. Every year, seminars on construction safety and security are also jointly organised by the police, NCPC and SCAL.

3. Crime Prevention for Hotels

The Singapore Hotel Association (SHA), the NCPC and the police work closely in organising the annual Hotel Security Conference and Awards Presentation. Together with SHA, the police also conduct security audits at hotels to ensure their standard of security. The objectives are to promote an urgent sense of security in the hotels, to encourage and assist installation of mechanised security systems such as closed-circuit television (CCTV) and to endorse security training programmes for the hotels.

VI. EVALUATING THE EFFECTIVENESS OF THE COMMUNITY POLICING STRATEGY / CRIME PREVENTION PROGRAMMES

The effectiveness of any country's policing strategy and crime prevention programmes is best gauged by a public perception survey on the overall crime levels, sense of security and police

presence. To this end, such a survey was conducted by the police in 1997. Of those surveyed, 62% of the respondents believed that major crimes were declining, and 46% perceived that minor crimes were declining. Comparing the general security of Singapore with most countries in the world, 93% of the respondents felt it was better. 86% of the respondents also felt that the security in Singapore at present (1996) was better than 5 years ago (1991). More than 95% of respondents felt that, on the whole, the NPP system, and the police in general have met their expectations.

In terms of the effectiveness of crime prevention programmes, television programmes such as crime watch continue to top the list, with 93% of respondents having known of it. Of the respondents who expressed knowledge of the crime watch programmes, 75% have watched it before. Other crime prevention activities which the public are aware of include posters (73%), leaflets and newsletters (69%), and exhibitions (68%).

VII. FUTURE CHALLENGES

A. Expansion of Neighbourhood Watch Zones

The strategy of engaging the community in crime prevention awareness will continue. The police are looking into the expansion of the NWZ Scheme. The aim is to foster the idea of neighbourhood watch and the concept of self-help in crime prevention to residents via the Residents' Committee (RC) and the Residents' Association (RA). With close partnership in the community, the NWZ Scheme will become more effective in reaching out to residents island-wide.

B. Enhancing Strategic Alliances with Community Groups

The SPF intends to enhance the strategic alliances with community groups and grassroots organisations to raise crime prevention awareness. To do this, the police will continue to establish close partnerships with community-based organisations and self-help groups to leverage on mutual strengths and expertise to combat crime.

C. Enhancing Crime Prevention Awareness among Police Officers

To continue enhancing crime prevention awareness among its officers, the SPF aims to further enhance the expertise of Crime Prevention Officers, by upgrading the general crime prevention knowledge (including technical and highly specialised aspects) and awareness of officers through training. Police will, together with the NCPC, generate initiatives for crime prevention and build strategic alliances with organisations in the private and public sector to raise crime prevention awareness in their respective fields.

VIII. CONCLUSION

To manage the expectations of the public, and to meet the challenges of the 21st century, the police will continue to improve and fine-tune the system of community policing and to continuously involve the public. Internally, the police will continuously hone and improve the existing infrastructure of community policing to keep in step with the complexity of the crime scene in the years to come. No effort is spared as our officers are continuously trained with the latest technology and know how. Laterally, the police will also venture to establish strategic alliances and partnerships with grassroots bodies, private organisations, various trade associations, public institutions, etc, to curb crime. In this regard, work on the NWZ Scheme will be carried out in earnest so that it is implemented island-wide. The future of our policing strategy is embodied in our crime prevention slogan for 1998/

99, which is “Together We Can Prevent Crime”. Thus, as we enter into the 21st century, the police-public partnership will remain a vital chemistry for any success in combating crime.

CRIMINAL VICTIMISATION ACROSS THE GLOBE

*Ugljesa Zvekic**

I. WHY THE INTERNATIONAL CRIME VICTIM SURVEY

The potential of victim surveys for comparative purposes led to the carrying out of the first International Crime Victim Survey (ICS at the time, later renamed ICVS), in 1989. A first proposal to organise an international victimisation survey was launched by the OECD in the 1970s. Pilot studies were carried out in the USA, the Netherlands and Finland. Further to a meeting of the Standing Conference of Local and Regional Authorities of the Council of Europe, held in 1987 in Barcelona, a working group was created and started developing the survey methodology and questionnaire. Some twenty countries were invited to participate in a standardised victimisation survey.

There were three main reasons for setting up the ICVS. The first was related to the enormous problems with offences recorded by the police for comparing crime in different countries. The second was the lack of any alternative standardised measure, and the third was the promotion of the victim survey in countries that have no, or only a meagre experience of it. All the above-mentioned reasons are fully applicable to countries in transition.

Police figures are inadequate for comparative purposes because the majority of incidents that the police become aware of are brought to their attention by victims, and any differences in propensity to report in different countries will influence the comparability of the amount of crime known by the police. Police figures vary because of differences in legal definitions, recording practices, and precise rules for classifying and counting incidents. These limitations are well known.

A number of industrialised countries have launched crime or "victimisation" surveys to gain a wider and better knowledge of national crime problems - and, to a great extent, the ICVS reflects their approach and experience. Such surveys ask representative population samples about selected offences they have experienced over a given time. They deal with incidents that have, or have not, been reported to the police and in particular, with the reasons why people do or do not choose to report them to the police. They provide a more realistic record of the population affected by crime and - if the surveys are repeated - a measure of trends in crime unaffected by changes in the victims' reporting behaviour, or by administrative changes in recording crime. Social and demographic information on the respondents also provide an opportunity to analyse types of crime risks and the way they vary for different groups according to a number of factors, such as social status, age, gender, etc.

The experience gained with national and local surveys called for a comparative international survey in view of the fact that the number of countries with appropriate surveys were limited, and the surveys used different methods, thus making comparison far from straightforward.[1]

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II. THE ICVS TO DATE

There have been three rounds of the ICVS. The first was developed by a Working Group set up in 1987, leading to fieldwork early in 1989. Thereafter the Working Group reformed, consisting of Jan van Dijk (Ministry of Justice/ University of Leiden, the Netherlands; overall co-ordinator), Pat Mayhew (Home Office, United Kingdom), and Ugljesa Zvekic and Anna Alvazzi del Frate of the United Nations Interregional Criminal Justice Research Institute (UNICRI) in Rome.

The second ICVS took place in 1992/94, and the third in 1996/97. In the industrialised countries, each country met its own survey costs, although much of the administrative overheads of the ICVS programme were borne by the Dutch Ministry of Justice, which has also sponsored survey activities in almost all the developing countries and countries in transition. Further financial assistance was provided by the Dutch Ministry of Foreign Affairs; the Home Office, UK; the Department of Justice Canada; the European Institute for Crime Prevention and Control (HEUNI); and UNDP. The Working Group managed oversight of the surveys, although a co-ordinator in each country was responsible for the conduct of fieldwork and, where necessary, for ensuring a sound translation of the questionnaire. The technical management of most of the surveys in the industrialised countries was carried out by InterView, a Dutch survey company. InterView sub-contracted fieldwork to survey companies in the participating countries, while maintaining responsibility for the questionnaire, sample selection and interview procedures. UNICRI was responsible for the face-to-face questionnaire and for monitoring of the ICVS in the developing countries and countries in transition. The data from the surveys were integrated and processed by John van Kesteren of the Criminological Institute, Faculty of Law of the University of Leiden in the Netherlands.

Fifteen countries took part in the first (1989) ICVS, including the cities of Warsaw (Poland) and Surabaya (Indonesia). The second (1992/94) ICVS covered eleven industrialised countries, thirteen developing countries and six countries in transition. Eight of the countries had taken part in 1989. Full details of the 1989 and 1992 surveys in industrialised countries are reported in van Dijk *et al.*, (1990) and in van Dijk and Mayhew (1992). Further information and reports on the 1992 ICVS, including six countries in transition, are presented in Alvazzi del Frate *et al.* (1993).

The second (1992/94) round of the ICVS expanded to include standardised surveys in thirteen developing countries and six countries in transition, mainly at the city level. These were taken forward largely by UNICRI, which was keen to sensitise governments of developing countries and countries in transition on the dimensions and extent of crime in their urban areas - especially as police data on crime was often poor. Results from the developing world are reported in Zvekic and Alvazzi del Frate (1995). After the second ICVS, a programme of standardised surveys of crime against businesses was also mounted in nine countries. Comparative results are presented in van Dijk and Terlouw (1996).

The third round of the ICVS was carried out in 1996 and 1997 and encompassed

[1] Differences in survey design and administration influence both the amount and type of victimisation measured. The technical differences at issue include: the number of people interviewed in the household; sampling frame and age range; mode of interviewer, "screening" methods and number of "screeners", "recall" period; and respose rates.

eleven industrialised countries, thirteen developing countries and twenty countries in transition. Two volumes (Zvekic, 1998, and Hatalak, Alvazzi del Frate and Zvekic, 1998) report the findings related to countries in transition, while the results of the 1996 ICVS for industrialised countries are reported in Mayhew and van Dijk (1997) and, for developing countries, in Alvazzi del Frate (1998). All in all, with the 1996/97 ICVS, more than 130,000 people were interviewed in 40 languages around the world.

TABLE 1

International Crime Victim Survey - Overview of Participation in the 1989, 1992-94 and 1996-97 "Sweeps"

Industrialised Countries	1989	1992-94	1996-97
Australia	*	*	
Austria			*
Belgium	*	*	
Canada	*	*	*
England & Wales	*	*	*
Finland	*	*	*
France	*		*
Germany	*		
Italy	*		
Japan	*		
Malta			*
The Netherlands	*	*	*
New Zealand		*	
Northern Ireland	*		*
Norway	*		
Scotland	*		*
Spain	*	*	
Sweden		*	*
Switzerland	*		*
USA	*	*	*

Countries in Transition	1989	1992-94	1996-97
Albania			*
Belarus			*
Bulgaria			*
Croatia			*
Czech Republic		*	*
Estonia		*	*
F. R. of Yugoslavia			*
FYR of Macedonia			*
Georgia		*	*
Hungary			*
Kyrgyzstan			*
Latvia			*
Lithuania			*
Mongolia			*
Poland	*	*	*
Romania			*
Russia		*	*
Slovak Republic		*	*
Slovenia		*	*
Ukraine			*

TABLE 1 (continued)

Developing Countries	1989	1992-94	1996-97
Argentina		*	*
Bolivia			*
Botswana			*
Brazil		*	*
China		*	
Colombia			*
Costa Rica		*	*
Egypt		*	
India		*	*
Indonesia	*	*	*
Papua New Guinea		*(°)	
Paraguay			*
The Philippines		*	*
South Africa		*	*
Tanzania		*	
Tunisia		*	
Uganda		*	*
Zimbabwe			*

(°)Data set not available

III. SURVEY METHODS

The ICVS was carried out by using two main survey methods: computer assisted telephone interviewing (CATI) and face-to-face. As a rule, CATI was adopted in the industrialised countries, with the exception of Northern Ireland (1989 and 1996), Spain (1993) and Malta (1997), and face-to-face was used in the developing countries and countries in transition, with the only exception being Slovenia (1992 and 1997).

A. Sampling

In all developed countries and in some countries in transition, a national sample ranging between 1000 to 2000 respondents was used, while in most developing countries and countries in transition a city sample of 1000 was used.

B. The Count of Crime

The ICVS enquires were about crimes against clearly identifiable individuals, excluding children. While the ICVS looks into incidents which, by and large, accord with legal definitions of offences, in essence it accepts the accounts that the respondents are prepared to give to the interviewers of what happened. Therefore, the ICVS accepts a broader definition of crime than the police who, once incidents are reported to them, are likely to select those which merit the attention of the criminal justice system, or meet organisational demands and parameters to allow for further processing.

Eleven main forms of victimisation are covered by the ICVS, three of which allow for further grouping. Household crimes are those which can be seen as affecting the household at large, and respondents report on all incidents known to them. For personal crimes, they report on what happened to them personally.

Household Property Crimes:

- theft of car
- theft from cars
- vandalism to cars
- theft of motorcycles
- theft of bicycles
- burglary with entry
- attempted burglary
- robbery

Personal Crime:
- theft of personal
- property pickpocketing
- non-contact personal thefts
- sexual incidents
- sexual assaults
- offensive behaviour
- assaults/threats
- assaults with force
- assaults without force

In the surveys in developing countries and countries in transition, consumer fraud and corruption were also covered. Consumer fraud was asked about in the industrialised countries in 1992 and 1996, and corruption in 1996/97.

The respondents are asked first about their experience of crime over the last five years. Those who mention an incident of any particular type are asked when it occurred, and if in the last year, how many times. All victims reporting incidents over the past five years are asked some additional questions about what happened.

C. Translation of Questionnaire

In some countries the interviewers, having to work in several local dialects, were provided with the translation in the language of the majority linguistic group; while translations into dialects were provided on the spot, that is to say, during the interviewing process. It is difficult to assess to what extent this affected the responses, but it does indicate the need for closer monitoring and control of the translation procedure and reliability. Back and forth translation from the original English into and from the language in question was carried out in a number of countries, both to ensure the adequacy of translation as well as to provide for the most appropriate native wording.

D. Carrying Out of the Full-fledged Survey

Data collection lasted from eight to ten weeks in each country and was followed by

TABLE 2

Aggregate Victimisation Rates by World Regions
ICVS (urban five year rates: 1988-96)

	Total	Western Europe	New World	Latin America	Countries In Transition	Asia	Africa
Car crime	29.7	36.8	44.6	29.9	27.8	7.5	22.4
Burglary/attempt	20.4	14.4	23.3	32.4	17.3	11.3	35.4
Other theft	32.3	27.1	26.6	42.4	31.9	30.3	41.7
Violent crime	20.4	15.8	20.2	36.1	17.3	13.0	31.8
Violence (females)	7.4	5.0	8.0	14.3	6.0	4.8	12.6
Violence (males)	6.2	5.0	8.4	8.0	6.5	2.4	7.9
Any crime	63.7	61.2	65.3	76.6	62.0	45.0	74.0
Consumer fraud	29.4	12.5	7.9	24.4	39.8	27.6	48.7
Corruption	11.0	1.1	1.0	19.5	12.6	20.2	13.5

Note: Table elaborated from J.J.M. van Dijk. "Criminal victimisation: a global view", paper presented at the International Conference on *Surveying Crime: A Global Perspective*, Rome, 1998.

the data entry and logical validation process. On average, fieldwork lasted four months including translation of the questionnaire, sampling, data collection and preparation of the dataset for delivery. A final report was prepared by each national co-ordinator.

The results are based on data which have been weighted to make the samples as representative as possible of national populations aged 16 or more in terms of gender, regional population distribution, age, and household composition.

E. Face-to-face Interviewing

In most countries, the survey was carried out by an *ad hoc* team of interviewers. On average, face-to-face interviews lasted thirty minutes and could generally be understood by illiterate respondents.

IV. CRIMINAL VICTIMISATION: AN OVERVIEW

Criminal victimisation is a widespread feature of urban areas across the globe: there is no crime-free country. Victimisation by conventional crime is commonly experienced by all nations and in particular, the inhabitants of large cities. In this sense, criminal victimisation is a global statistical norm. It is not a distinct property of some countries only.

Irrespective of the part of the world, over a five year period, two out of three inhabitants of large cities are victimised by crime. It is particularly significant to note that the victimisation rates are highest in Latin America and Africa, while they are the lowest in Asia. Countries in transition show rates remarkably similar to those of Western Europe.

Specific crime victimisation rates such as those for burglary, other theft and violent crime are highest in Latin America and Africa. In these two regions, the level of violence is more than twice as high as elsewhere but it is also high in the New World (Australia, Canada, New Zealand and the USA); Western Europe and Asia are less exposed to violent crime. Different is the global pattern of distribution for car related crimes for which the highest rates are in the industrialised world. However, car owners risk of having their cars stolen, burglarised and/ or vandalised are similar across the globe (with the exception of Asia where it is the lowest) but somewhat higher in Africa.[2] Furthermore, the rates of property crime have gone down or stabilised in several of the most industrialised countries. However, the risk of being victimised by violence across the world is at least one in five.

As regards consumer fraud and corruption in public administration it is much higher in the developing world and countries in transition, adding additional burden and cost of overall criminal victimisation to people in less affluent societies.[3]

Certain residential, age and gender groups, as well as life styles, run higher risks of criminal victimisation. While much of it is circumscribed, gender differences do appear to show somewhat more stable differential patterns. In the industrialised world, men and women run similar level of risk for assault. In other parts of the world there are clear gender differences putting women at a much higher risk of being victimised by violence. Thus, while men across the globe run a similar level of risk of being assaulted, the risks for women in Latin America, Africa and Asia are fifty percent higher [4]. Furthermore, assaults on women tend to be familial or domestic in

[2] Van Dijk. "Criminal...", *ibid*, table 2 note.

[3] U. Zvekic, *Criminal Victimisation in Countries in Transition*. UNICRI Publ. No. 61, 1998.

TABLE 3

Crimes Reported to the Police in Three Global Regions: ICVS (1992-96)

	Industrialised Countries	Countries in Transition	developing countries
Theft of car	92.6	87.5	89.5
Burglary	84.5	64.9	47.4
Theft from car	56.9	44.3	41.8
Assault with force	48.1	34.1	36.2
Robbery	46.9	32.7	34.2
Theft of Personal Property	43.8	21.9	19.2
Sexual assault	26.8	21.3	22.4

the sense that in a third of the cases of violence against women, the offender was known (even by name) to the victim. Domestic violence is most often reported by women in the New World and Western Europe.[5]

Crime rates based on officials statistics are universally lower than survey-based victimisation rates. Therefore, differences in officials crime rates among countries have much to do, in addition to the crime type, with the propensity to report crimes to the police, and further down the criminal justice road, police capacity to record them, and then the prosecution and courts capacity to process the cases and charge/ sentence offenders. The attrition rates (capacity) of the criminal justice system is widespread, and filtering out is a universal process present in both mandatory as well as discretionary criminal justice systems. The first filtering out is to be looked for in the relationship between citizens and the police. In no part of the world are all crimes reported to or detected by the police, nor are all those that are known to the police passed on further down the road to result in a criminal charge and court sentence. In the majority of countries, around half of the suspects or those criminally indicted are found guilty and subsequently sentenced.[6]

In all the parts of the world, the most frequently reported crime is that of theft of car, with the reporting rates around 90%. With the exception of burglary in the industrialised world and countries in transition, as well as of theft from cars in the industrialised world, all other crimes in all three developmental categories are reported by less than half of the victims. Particularly low are the reporting rates for sexual assault. In other words, less than one in three female victims of violence report their victimisation to the police.

It is evident that national and global crime levels, as reported by the UNCJS (official statistics), are much lower than the "true" levels of crime, mainly due to reporting patterns. On average, crime reported to the police continued to rise in 1980s and 1990s. "*The most commonly*

[4] Van Dijk. "Criminal...", *supra*.

[5] A. Alvazzi del Frate, *Victims of Crime in the Developing World*, UNICRI Publ. No.57, 1998, pp. 69-71.

[6] G. Newman, "Advance in Comparative Criminology: The United Nations Global Report on Crime and Justice" paper presented at the International Conference on *Surveying Crime: A Global Perspective*, Rome, 1998.

TABLE 4

Percentage of Victims Satisfied with the Police upon Reporting an Incident ICVS (1992-96)

	Western Europe	New World	Countries in transition	Asia	Africa	Latin America
Burglary	67.8	74.4	37.8	42.2	29.4	24.6
Contact crimes	64.0	69.7	39.8	61.7	46.8	34.2

reported crime was theft, followed by burglary. Violent crime made up some 10-15% of all reported crime" [7]. The established reporting pattern is that irrespective of crime type, there are much higher police reporting levels in the industrialised world as compared with other parts of the world. This propensity to report is related to a number of factors, including as regards property crimes, insurance coverage. The ICVS has clearly demonstrated that the ratio between average insurance coverage for the industrialised world, on the one hand, and the rest of the world, on the other, is that of 70%: 10-15% (although the situation has improved recently in countries in transition).

The propensity to report also has to do with citizens' evaluation of police performance. This type of information is not provided by the official criminal justice statistics. The ICVS explored this issue to find that there is proportionately more victims of crime from the industrialised world satisfied with the police upon reprting a crime than it is the case with the victims from other world regions who reported an incident to the police.

Satisfaction with reporting to the police shows a similar pattern of general satisfaction with the police in controlling crime. The highest levels of satisfaction with the police in controlling crime are expressed by the citizens from the New World, Western Europe and Asia (74%, 50% and 60% respectively). Much lower levels of satisfaction are expressed by citizens from Africa (41%) and particularly dissatisfied are citizens from Latin America and countries in transition (just around 20% are satisfied).

The analysis of the results of the United Nations Survey of Crime Trends and the Operation of Criminal Justice Systems [8] shows that most countries tend to imprison those offenders who were sentenced for serious crimes. Prison is the universal sanction applied for serious offences, more the any other sanction. This is regardless of the type of legal system or level of development of a country. There are also wide variations in the prison rates of various countries. However, these variations do not appear to be dependent on the amount of crime in the society. Nor does the use of non-custodial sanctions, the availability and use of which are policy choices. As a general pattern, greater use of non-custodial sanctions does not lead to less use of prison, or vice-versa. In the developing world and countries in transition, the public displays a marked preference for prison as a punishment. There appears to be, however, a certain similarity in comparative perspective between the amount of prison actually used and the preferences for types of

[7] Van Dijk, "Criminal...", supra.

[8] H. Shinkai and U. Zvekic. "Punishment" in G. Newman (Ed.) *Global Report on Crime and Justice*. New York-Oxford, UN & Oxford University Press, 1999.

punishment. Punishment practice and policy do not appear to be grossly determined by the developmental level of the country.

V. CRIME AND DEVELOPMENT IN GLOBAL PERSPECTIVE

Without entering into by now a criminological common knowledge regarding the main theories of crime and development, and in particular crime and modernisation, the afore considerations regarding crime levels and punishment issue have clearly demonstrated that much of the discussion on the relationship between crime and development needs to be revisited.

Much of the previous debate on crime and development, originating with Durkheim, was tested with official criminal justice data on crime levels. In short (and with a certain degree of simplification) they appeared to confirm that the levels of property crime are higher in more developed societies than those of violent crimes in less developed societies. Indeed, earlier UN reports based on UNCS also supported this interpretation. However, integration of the UNCS and the ICVS data casts serious doubt as to the above relationship.

The first analysis of the ICVS results in 1993 [9] and 1995 [10], when data from the developing world and countries in transition were made available for the first time ever, indicated that the traditional interpretation of the relationship between crime and development needs revisiting. Subsequent analyses and in particular the most recent one by Van Dijk [11] of motivation and opportunity factors based on ICVS showed that the levels of contact (violent) crimes and thefts are higher in the countries where a high proportion of people feel economically deprived and that the lower affluence was associated with higher risk of victimisation by more serious crimes.

The ICVS data on victimisation rates for theft of personal property, burglary and assault all reveal a negative correlation with the UNDP Human Development Index. The more developed the country, the less frequent victimisation for theft (-0.560 N=53), burglary (-0.422 N=53) and, to a much lesser extent, assault (-0.113 N=53). The Fifth UNICJS provides compatible data for 1994 on intentional homicide and theft[12] from 28 countries ranging from the most to the least developed according to the Human Development Index (HDI).[13] By correlating data for homicide and theft with the HDI for the respective countries, a positive correlation with theft rates is found (0.596 N=28), while a negative correlation between homicide rates and HDI is also found, although weaker (-0.204 N=28). [14]

[9] U. Zvekic, A. Alvazzi del Frate. "Victimisation in the Developing World: An Overview" in A. Alvazzi del Frate, U. Zvekic, J.J.M. van Dijk (eds.) *Understanding Crime: Experiences of Crime and Crime Control*, UNICRI Publ. No. 49, 1993.

[10] U. Zvekic and A. Alvazzi del Frate. "Comparative Perspective" in U. Zvekic and A. Alvazzi del Frate (eds.) *Criminal Victimisation in the Developing World*. UNICRI Publ. No. 55, Part One, 1995.

[11] van Dijk, "Criminal...", *supra*.

[12] The UN Crime Survey categories used here are "total intentional homicide" and "total theft".

[13] The 1994 Human Development Index for the responding countries is taken from *Human Development Report 1997*,United Nations Development Programme, Oxford University Press, Oxford / New York, 1997.

[14] The analysis of the correlation between data from the ICVS, the Fifth UN Crimes Survey and Human Development Index is presented in A. Alvazzi del Frate, *Victims of Crime in the Developing World*, UNICRI Publ. No. 57, 1998, pp. 133-138.

TABLE 5

United Nations Survey of Crime Trends and Operations of Criminal Justice Systems, Homicide and Theft Rates (1994) and UNDP Human Development Index (1994)

Country Name	Homicide Rates×100,000 pop.	Theft Rates×100,000 pop.	HDI 1994
Japan	1.4	1,049.8	0.940
England&Wales	1.4	4,863.6	0.931*
Singpore	1.7	919.6	0.900
Canada	2.0	3,430.4	0.960
Scotland	2.2	4,641.8	0.931*
Malta	3.0	1,125.0	0.887
Belguin	3.4	2,733.0	0.932
Austlia	3.5	1,582.3	0.932
Slovakia	3.8	1,099.8	0.873
Hungary	4.7	1,321.7	0.857
Denmark	5.1	3,963.1	0.927
Italy	5.3	2,330.9	0.921
Slovenia	5.7	811.7	0.886
Israel	7.2	182.3	0.913
Romania	7.6	457.6	0.748
India	7.9	33.1	0.446
Azerbaijan	8.9	65.0	0.636
Rep of Moldova	9.5	334.1	0.612
Costa Rica	9.7	520.8	0.889
Kyrgyzstan	12.3	238.4	0.635
Georgia	14.4	109.7	0.637
Kazakstan	15.7	591.6	0.709
Ecuador	18.5	239.6	0.775
Bolivia	23.3	392.4	0.589
Nicaragua	25.6	173.9	0.530
Jamaica	29.8	520.5	0.736
Kuawit	58.0	10.6	0.844
Colonbia	78.6	233.3	0.848

Sources: Fifth United Nations Survey on Crime Trends and the Operations of Criminal Justice System, UNICJIN (rates elaborated by UNICRI); Human Development Report 1997, United Nations Development Programme, Oxford University Press, Oxford/New York, 1997.

TABLE 6

Correlation with the Human Development Index (HDI)

Homicide	-0.204	Assault	-0.113
Theft	0.596	Theft	0.560
		Burglary	-0.422

VI. CONCLUDING REMARKS

The above referred to results and considerations seriously challenge the modernisation theory, which as stated earlier, was empirically tested with police reported figures, which are normally much lower in less developed societies. The empirical base for testing the modernisation theory was exclusively composed of official criminal justice statistics. The ICVS empirical base, which is composed of victimisation data on experiences with crime and reporting to the police, undermines the very foundations of the prevalent crime and development explanatory perspective.

Crime and justice appear to have a degree of independence from levels of development more than previously thought[15]. This is particularly evident with respect to the following:

- there is no strong evidence that developing countries have higher violent crime rates than developed countries; either they never had them but data was restricted or in recent years the levels have become quite similar;
- the assumption that the developed world exhibits higher property crime rates than developing countries seems not to hold true, at least as regards the urban areas;
- all countries use imprisonment for serious offenders and the prison rates are not generally related to crime rates, the levels of socio-economic development or to the use of non-custodial sanctions; yet, punishment preference still reflects to a great extent the affluence levels, the actual use of imprisonment or shared belief in "just deserts".

Much of the previous discussion and revisited modernisation theory is based on interpretative integration of UNCS (official criminal justice statistics) and ICVS (victimisation survey-based data). However, this is not sufficient to reveal with any degree of reliability the "true" empirically based historical relationship between crime and development, since there are no comparative international historical victimisation survey data that would match those available through the official criminal justice statistics and the UNCS. Thus, one is tempted to credit the globalisation process with effects reflected in a certain degree of levelling off crime and justice across the globe. While this might prove to be true, in view of the fact that the ICVS data used for comparative analysis relate to urban areas only, and thus embedding *urbanisation*, (which certainly is the trade-mark of modernisation all over the world). There still is much to be desired in exploring the globalisation-related conventional crime effects.

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CITIZENS' EXPERIENCE WITH CRIME PREVENTION

*Ugljesa Zvekic**

I. THEORETICAL BACKGROUND

Among the criminological theories specifically applicable to crime prevention, the economic theory of crime proposed by Becker in1968[1] asserts that potential offenders constantly move between legitimate and illegitimate activities, depending on the results of a cost-benefit assessment. While making the decision, as whether or not to undertake illegitimate actions, they calculate the risk of being apprehended as costs against the economic benefit if the action is successfully concluded. This theory starts from the assumption that the offender's behaviour is induced by the desire of economic gain. In order for a crime of this type to be committed, three elements are determinant: the presence of a suitable target, skill and opportunity.

According to his theory, further developed by Ehrlich[2], the offender represents the *supply* side of the crime market. The supply of crime will be based on the costs (the probability of being caught, the amount of sanction envisaged for that particular crime and all possible intervening variables). Depending on the level of the cost, more or less crimes will occur. Such "costs" very much depend on deterrence determined by effective law enforcement.

In more recent years, the rational-interactionist model developed by van Dijk[3] also envisages a "crime market", but the presence of motivated offenders is defined as the *demand* side and the availability of suitable and poorly protected targets as the *supply* side.

Although motivated by the same assumption of the existence of a "crime market" as was the case for Becker and Ehrlich, van Dijk reverses the parties and describes the victims as "reluctant suppliers" of opportunities for crime: "*The criminal opportunities offered by potential victims are an undesired side-effect of their possession of certain goods*".

The theory keeps the focus on the offender's behaviour and the cost-benefit analysis which motivates the decision of whether or not to commit a crime. However, in this paradigm, higher opportunity costs for the offender are determined by better protection of suitable targets and increased self-precautionary measures adopted by potential victims (*target hardening*), rather than effective law enforcement alone. In this respect, more attention is paid to the *prevention* of crime rather than the *punishment* of the offender once a crime has already occurred. Potential victims are involved in the scheme, thus shifting from a specialised role for the police in crime prevention to

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[1] G. Becker, "Crime and Punishment: An Economic Approach", Journal of Political Economy, 76:2, 1968, pp. 169-217.

[2] I. Ehrlich, "Participation in Illegitimate Activities: A Theoretical and Empirical Investigation", Journal of Political Economy, May 1973, pp. 521-565.

[3] J.J.M. van Dijk, "*Understanding Crime Rates*", British Journal of Criminology 34:2, 1994, pp. 105-121.

community-based crime prevention.

The rational-interactionist model helps to understand crime phenomena, which are similar in many countries and are of high concern to the international community. this model is applicable to crimes against the household, but also to property and economic crimes in which shops, office buildings and corporations are increasingly becoming the victim. In both cases - crimes against individuals or households and crimes against business - target hardening is up to the potential victims.

However, an involvement of the "formal" structures in crime prevention activities is still necessary to address the problems which are at the basis of the offender's behaviour. Issues to be addressed include urbanization, migration flows, education and opportunities for employment, especially for young males. Furthermore, urban design, especially in newly built residential areas, should be improved to provide the necessary infrastructure (e.g, schools, shops, recreational areas) as well as services (e.g, street lights, public transport and telephones), which would assist in improving the quality of life in the neighbourhood and of the people who live there.

II. URBAN DESIGN AND TYPE DWELLING

The International Crime (Victim) Survey was carried out on national samples in Western Europe and the New World, while in other participating countries samples were drawn from large cities.

The type of dwelling most frequently found in the survey was a house, either isolated, semi-detached or in a row. For example, the popular formula of houses in a row represents the absolute majority of cases in Northern Europe.

Apartments rank first as the type of dwelling, except in the group of countries in transition, where the former-socialist model based on extensive urbanization predominates. In these cities the large majority of people live in apartment-buildings. In Africa, Asia and Latin America, the large majority of the respondents live either in houses or in different types of dwellings. Shanties account for 17% in Africa and 13% in Asia, and the inclusion of respondents from these areas in the ICVS sample may also reflect on victimisation rates.

However, it should be noted that the ICVS classification by types of dwelling was meant to identify the type of housing rather than assessing the residential status of the respondent. Obviously, different types of dwelling require different crime prevention devices.

The concept of an isolated or semi-detached house may represent different realities in developed and developing countries. For example, high-income areas

Table 1
Type of Dwelling of ICVS Respondents, by Regions (1996)

	Western Europe	New World	Countries in Transition	Africa	Asia	Latin America
Apartment	29.3	21.2	62.6	9.2	19.9	25.6
House	69.2	73.4	33.1	70.7	66.3	70.4
Other	1.5	5.4	4.3	20.1	13.8	4.0

in some developing countries often consist in compounds that are extremely well protected from the outside by fences, watch dogs and patrols. It was reported by some ICVS national co-ordinators that it was sometimes difficult for the interviewers to obtain access to houses selected for the survey because of the high level of security at the entrance of the compound. The corresponding type of housing will most probably be less protected and patrolled in Western Europe or the New World, where this type of security is less common.

III. BURGLARY

Burglary is the typical household crime. The ICVS questionnaire included questions on victimisation experiences for burglary and attempted burglary. Table 3 shows one-year prevalence victimisation rates at the country and regional levels for burglary and attempted burglary.

The regions in which survey respondents were often affected by these types of crime were Latin America and Africa. Medium risk was observed in the New World and countries in transition, while Western Europe and Asia showed the lowest levels of risk. In most regions, the 1996 one-year burglary rates were either equal to or lower than those observed in 1992. At the country level, both types of crime increased in The Netherlands, Georgia, Russia, India, and in all three Latin American countries which were involved in both sweeps of the ICVS. Rates for burglary and attempted burglary are very close to each other in most regions.

People who live in rural contexts apparently run lower risks of housebreaking in comparison with city dwellers. Higher percentages of residents of urban areas were victims of burglary than respondents from villages and rural areas. However, as van Dijk observed with reference to the 1992 sweep of the ICVS[4], the type of housing, more than the surounding context, is correlated with burglary. Actually, a positive correlation was found between being a victim of burglary and living in a house rather than an apartment. As Table 3 shows, in all regions - with the exception of countries in transition - respondents living in a house run risks of burglary higher than the average.

Very often a break-in also involved damage to doors, locks or windows. This happened more frequently in Western Europe, in Africa and in the New World. A possible explanation for the lower frequency of damage found in countries in transition, Asia and Latin America is that households are less often protected by crime prevention devices, thus making it easier for the burglar to access the house.

Another aspect which was taken into account was whether anything had actually been stolen when the burglary occurred. Actual theft during burglaries happened more frequently in countries in transition and in developing countries. This finding may suggest that the type of objects stolen is different in Western Europe and the New World to those in other regions. According to national co-ordinators from developing countries, stolen goods often included money, food and simple household objects such as cutlery or linen, which were most probably stolen for the personal use of the burglar. In rural areas, cattle were often stolen.

[4] J.J.M. van Dijk "Opportunities of Crime: A Test of the Rational-Interactionist Model", in *Crime and Economy - Reports Presented to the 11th Criminological Colloquium* (1994), Council of Europe, Criminological Research, Vol. XXXII, 1995, pp. 97-145.

Table 2
One Year Prevalence Rates for Burglary and Attempted Burglary, by Countries and by Regions, 1992 and 1996, and Risk of Burglary for Type of Area and Type of Dwelling, by Regions, 1996

	Burglary	Attempted Burglary	Burglary	Attempted Burglary	Burglary Rural Areas	Burglary Urban Areas	Burglary Apartment	Burglary House
	1992	1992	1996	1996	1996	1996	1996	1996
Austria	n.a.	n.a.	0.8	0.6				
Belgium	2.3	1.8	n.a.	n.a.				
England and Wales	3.2	3.0	3.0	3.4				
Italy	2.4	1.7	n.a.	n.a.				
Finland	0.6	0.5	0.6	0.7				
France	n.a.	n.a.	2.2	2.1				
N. Ireland	n.a.	n.a.	1.6	1.1				
Netherlands	2.0	3.0	2.6	3.2				
Scotland	n.a.	n.a.	1.5	2.4				
Spain	2.7	4.9	n.a.	n.a.				
Sweden	1.5	0.8	1.4	1.2				
Switzerland	n.a.	n.a.	1.7	1.3				
Western Europe	2.1	2.2	1.7	1.8	1.5	2.0	1.6	1.7
Australia	4.1	4.0	n.a.	n.a.				
Canada	3.4	2.9	3.4	2.8				
New Zealand	4.4	3.6	n.a.	n.a.				
USA	3.2	3.9	2.7	3.5				
New World	3.8	3.6	3.0	3.2	2.8	4.0	2.4	
Albania	n.a.	n.a.	3.5	2.9				
Czech Republic	4.7	1.6	2.2	2.7				
Estonia	5.9	3.1	4.0	3.9				
Georgia	2.5	2.0	4.0	3.1				
Hungary	n.a.	n.a.	2.6	1.9				
Kyrgyzstan	n.a.	n.a.	4.6	4.3				
Latvia	n.a.	n.a.	2.6	5.3				
Macedonia	n.a	n.a.	2.0	1.6				
Mongolia	n.a.	n.a.	9.3	6.1				
Poland	2.2	2.7	2.0	1.7				
Romania	n.a.	n.a.	1.2	2.0				
Russia	1.8	3.6	2.9	4.6				
Slovak Republic	3.4	1.6	n.a.	n.a.				
Slovenia	1.8	2.5	n.a.	n.a.				
Yugoslavia	n.a	n.a.	2.9	2.7				
Countries in Transition	3.2	2.4	3.4	3.3	2.8	3.5	3.3	2.6
Egypt	3.0	3.8	n.a.	n.a.				
South Africa	7.2	3.9	6.8	3.7				
Tanzania	21.2	13.3	n.a.	n.a.				
Tunisia	7.4	4.5	n.a.	n.a.				
Uganda	14.2	13.0	8.1	10.4				
Zimbabwe	n.a.	n.a.	10.2	7.2				
Africa	10.6	7.7	8.4	7.1	5.5	8.5	5.8	9.0
China	1.5	0.4	n.a.	n.a.				
India	1.2	1.3	2.2	3.0				
Indonesia	4.6	2.0	4.5	2.9				
Philippines	2.9	2.1	1.7	0.9				
Asia	2.6	1.5	2.8	2.3	3.2	2.7	2.1	2.8
Argentina	2.9	3.9	7.5	6.9				
Bolivia	n.a.	n.a.	7.1	9.0				
Brazil	1.4	2.4	2.6	3.5				
Costa Rica	4.4	6.1	7.6	9.3				
Latin America	2.9	4.1	6.2	7.2	5.4	6.3	5.2	6.3

Table 3
Percentages of Burglaries Involving Damage and Actual Theft, by Regions - 1996

	Western Europe	New World	Countries in Transition	Africa	Asia	Latin America
Apartment	58.4	50.0	42.2	55.7	28.9	32.8
Objects Stolen	74.9	72.6	77.9	89.1	91.5	85.9

Vice versa, in the more affluent regions, where most people keep their money in the blank, and often jewelry and other valuable objects are kept in safes and security lockers, burglars take what is available and give preference to objects which are easily re-sold. In this respect, the most frequently stolen objects are those which are easier to place on the market of stolen goods, such as electrical appliances, TV and radio sets, VCRs, hi-fi equipment, as well as furniture and objects of art. The difference in objects stolen between the affluent and poor regions is opportunity determined, in terms of the type of objects available, or the level of protection.

A. Fear of Burglary

The respondents were asked whether they felt that a burglary was likely to occur in their household in the next twelve months. Table 5 shows that the majority of the respondents from Western Europe, the New World and Asia were not concerned about the possibility of a break-in in the near future, while the opposite was the case with the majority of the respondents from Latin America and more than 40% of those from countries in transition and Africa. The higher the rates of victimisation for burglary and attempted burglary, the higher the fear of this type of crime. There is a strong correlation at the regional level between the perceived likelihood of burglary and burglary (0.8232), and even more with attempted burglary (0.9111). Within the regions, similar levels of fear of burglary were perceived by those living in houses and those living in apartments.

B. Crime-prevention at the Household Level

The costs related to burglary may greatly be increased if a household is protected by crime prevention devices. Deterrence is put in place by creating physical or psychological barriers between the offender and the target.

It appears that the patterns of committing burglaries in isolated houses or flats in condominiums are different. An apartment may be better protected from attacks from outside than a house, but once a burglar gets in, he/she is more likely to work undisturbed because of the higher level of anonymity which is found in a condominium.

Crime prevention measures suggested for the two types of dwelling are also different: while a burglar alarm can be advisable in both situations, its effectiveness can be greatly reduced if the house is isolated and the alarm is not connected, for example, to the local police station. Otherwise, if the alarm consists of an acoustic deterrent, it can only work if it is likely to be heard by somebody in the neighbourhood.

Three main types of crime prevention measure are commonly used to protect households and were identified by the ICVS questionnaire. The first type consists of behaviours adopted by the household members in order to prevent crimes. For example, keeping a watch dog, making the house look and sound occupied while away by leaving curtains and shades in their

Table 4
Likelihood of Burglary in the Next Twelve Months, by Regions (1996)

	Western Europe	New World	Countries in Transition	Africa	Asia	Latin America
Very likely/likely	29.6	26.8	41.1	43.7	21.3	56.6
Not likely	63.0	67.5	35.6	33.2	51.7	31.4
Don't know	7.5	5.7	23.3	23.1	27.1	12.0

normal position or lights on, or asking a neighbour or a caretaker to look after the house. In many cultures, households are rarely left unattended and relatives or friends may come along and take care of the home.

A second type consists of physical devices which are put in place in order to make access of unauthorized persons to the household more difficult. This type includes the simplest and more diffused crime prevention devices such as door locks, window grills and fences. Burglar alarms installed to protect the household from break-ins also belong to this category.

Finally, a third type exists at the community level and consists of the establishment of community-based initiatives involving other parties in crime prevention (such as other citizens, but also the police, the municipality or the schools). For example, "neighbourhood watch" schemes involving the residents of a particular area.

Table 5 shows the rates of crime prevention measures observed by the 1996 ICVS. It should be noted that the adoption of crime prevention measures very much depends on the type of dwelling (a correlation of 0.835 was found between an aggregate index of crime prevention measures and living in a house rather than an apartment). In fact, most of the devices or precautions listed in Table 6 are more suitable for a house than an apartment. It therefore appears that crime prevention measures are least used in countries in transition, the region in which most respondents lived in apartments. In addition, the cost of crime prevention devices that are more suitable for apartments (e.g, burglar alarms) are higher and therefore less in use in less affluent countries even if apartments are more diffused dwelling places for city inhabitants.

It should also be noted that the percentage of those who declared that they did not use *any* of the measures listed by the ICVS ranged from 11.9% in the New World to 36.5% in the countries in transition, reflecting both the suitability of types of devices for types of dwellings, as well as the level of expenditure for crime prevention.

The ICVS revealed that various types of crime prevention measures exist in all world regions, although their use is more frequent where affluence is higher. The most popular crime prevention measure was asking the neighbours to look after the house in case of absence. A minimum of 25% of the respondents in Russia to a maximum of 83% in Northern Ireland and India normally ask their neighbours to look after the household when away.

The second most diffused method was the use of door locks and ownership/use of watch dogs. Keeping a watch dog was mentioned by approximately a quarter of

Table 5
Crime Prevention Measures at the Household Level, by Regions (1996)

	Western Europe	New World	Countries in Transition	Africa	Asia	Latin America
Ask neighbours to look after the house	59.2	97.1	48.6	47.7	76.7	60.5
Door locks	46.2	54.7	26.9	31.9	42.0	41.8
Watch dog	20.4	34.7	20.7	18.9	19.7	39.7
Windows grills	14.5	20.9	8.6	34.2	30.0	34.2
Neighbourhood watch	17.7	36.2	8.4	10.3	22.9	12.1
Fence	16.2	17.5	5.2	38.6	4.2	20.7
Burglar alarm	13.4	20.5	4.4	5.9	1.7	12.3
Caretaker	4.0	8.3	0.9	7.5	10.6	10.4
None	27.5	11.9	36.5	27.2	21.3	15.4

the respondents, with peaks of 65% in Bolivia, 39% in the USA and 38% in The Philippines.

Asking the neighbours and keeping a watch dog are two widely used types of protection by the respondents from all the regions, including more than 20% in countries in transition. It is interesting to observe that watch dogs are not only frequently found in houses, but are also frequently kept in apartments: it appears that even a pet might do some crime prevention work.

Employing a caretaker to prevent crime was indicated by 10% of the respondents in Asia and Latin America. This measure is very much related to the urban and social structure of the country, as well as its habits. It therefore appears that rates vary depending on the local situation. In a few countries, including Costa Rica, Argentina. India, Zimbabwe, Finland and France, rates of employment of caretakers are much higher than in the rest of the participating countries. In all regions, respondents who declared the presence of a caretaker showed a significantly lower fear of burglary than the average.

Data from the ICVS reveal that "simple" crime prevention measures such as door locks and window grills are used in all the participating countries. The countries in which such devices are less used are those in which there is a low incidence of crime prevention measures in general, as is the case in Finland, Estonia, Albania, Latvia, Poland, Russia, Mongolia and Yugoslavia. As regards Finland, low crime rates may be a possible explanation for a lesser use of household protection. In the other countries, all belonging to the group of countries in transition, it appears that the process of increased protection of residence is much slower than the spread of property crime.

As expected, window grills and fences are very frequent in all regions where the most popular type of dwelling is a house, with the exception of Asia. An aggregate index of crime prevention measures reveals that they are more frequently used in the regions in which burglary rates are higher. These findings suggest that crime prevention measures are adopted where

Table 6
Burglar Alarms, by Countries - 1992 and 1996

	1992	1996	% Difference
England & Wales	22.1	27.2	+5.1
The Netherlands	7.6	10.1	+2.5
Finland	1.0	1.0	0.0
Sweden	5.4	6.7	+1.3
Canada	13.0	20.0	+7.0
Estonia	0.8	3.1	+2.3
Poland	1.4	1.4	0.0
Russia	5.9	7.2	+1.3
Georgia	3.7	3.5	-0.2
Czech Republic	2.9	6.9	+4.0
India	2.7	1.7	-1.0
Indonesia	3.9	0.9	-3.0
The Philippines	2.3	1.8	-0.5
Uganda	5.5	4.6	-0.9
South Africa	9.4	8.0	-1.4
Costa Rica	9.1	8.3	-0.8
Argentina	15.8	26.7	+10.9
Brazil	2.9	0.1	-2.8

and when burglary occurs more frequently. Once adopted, the crime prevention devices tend to reduce the feeling of insecurity, at least initially: the respondents who adopted crime prevention measures more frequently perceived that burglary in the next twelve months is unlikely.

It therefore appears that respondents from high-crime regions feel safer (unlikelihood of burglary) if they use crime prevention measures, while the same feeling of safety is expressed by respondents from low-crime areas who did not adopt any of the crime prevention measures identified by the survey.

C. Burglar Alarms

Table 6 shows the percentages of respondents who owned burglar alarms in 1992 and 1996 in the participating countries. In general, burglar alarms are more frequently installed to protect houses than apartments. Alarms are more diffused in the more affluent regions, i.e, the New World and Western Europe. However, within these regions they are not very popular in Switzerland, Finland, Sweden and Austria, which are also the countries with the lowest burglary rates. The apparently high incidence of burglar alarms in Latin America is mostly due to their spread in apparently high incidence of burglar alarms in Latin America is mostly due to their spread in Buenos Aires, where 26% of the respondents owned such a device in 1996.

Between 1992 and 1996 the use or installation of burglar alarms increased in

most countries in Western Europe, the New World and countries in transition. It is hard to tell whether a wider use of burglar alarms can be related to the increase or decrease of burglary rates, although it appears that the majority of the respondents who owned an alarm in 1996 were not victims of burglary in the past five years. Respondents with a burglar alarm who were *not* victims of burglary in the past five years showed the percentages of fear of burglary were markedly lower than the average for the sample.

It thus appears that the respondents believe that alarm systems actually deter burglars. Nevertheless, in ten industrialised countries participating in the 1996 ICVS, an experimental question was posed to victims of burglary who were also owners of burglar alarms to assess whether their alarm was installed before or after the burglary occurred. Results show that the majority of victims who declared that their household is protected by a burglar alarm decided to install it only after the burglary occurred.

Finally, for comparative purposes, it should be taken into account that in several countries insurance companies encourage a wider use of burglar alarms by offering reductions on the cost of household insurance if an alarm system has been installed.

D. Neighbourhood Watch Schemes and Examples of Partnership in Crime Prevention

Neighbourhood watch schemes are quite popular in the New World, Asia and Western Europe, but much less so in the other regions. These schemes imply a certain level of social cohesion and that all the participating residents share the objective of preventing and reducing crime by increasing the level of "natural surveillance" in a specific area, thus promoting informal crime control. This approach, if co-ordinated with the police, helps to limit the use of self-defense and to improve the quality of life in the area.

The ICVS identified huge differences in the country-by-country rates of the use of neighbourhood watch schemes within the six observed regions, and even at the sub-regional level between countries that are otherwise similar to each other. For example, while in England and Wales more than 48% of the respondents said they belonged to such schemes, this was the case with only 28.3% in Scotland and 1.6% in Northern Ireland. This data suggest that "neighbourhood watch" very much depends on programme implementation at the local level.

IX. POSSESSION OF FIREARMS FOR CRIME PREVENTION

The perception that a gun can be considered an effective crime prevention device is frequent in some countries and many people depend on a firearm for protection.

Table 7 shows that rates of ownership of firearms very much vary from region to region. The highest ownership rates were observed in the New World and Western Europe, followed by Latin America and countries in transition. However, the reasons for gun ownership are different and vary very much from country to country. Not all the firearms are meant to be used for crime prevention purposes.

In countries in transition and developing countries hand guns were more widespread than long guns. It should be observed that handguns - which are mostly owned for crime prevention purposes - were more frequently found in large cities than in rural areas and in some cities, especially in Latin America, they represented the

absolute majority of the firearms owned by the respondents.

In the United States, 57% of the respondents said they owned a weapon for hunting, while another 39% said that the purpose of ownership was self-protection and prevention of crime. Although it was possible to provide multiple responses, this proportion of respondents believing in guns for crime prevention is among the highest reported to the survey.

In countries such as Canada and Finland, the relatively high ownership rates were explained by the respondents as being for hunting purposes as they sometimes need to be ready to face wild animals which may attack isolated houses. In these countries, ownership with the purpose of crime prevention was mentioned in less than 1% of the cases.

In Switzerland, 64% of the respondents declared that a firearm was in their household because they belong to the army. This is because the military system in Switzerland envisages that all male citizens remain enrolled with the army until they are 55 years old, thus participating in periodical re-training and taking care of their own military weapon, which is normally kept in the household. The purpose of crime prevention was mentioned by 7 % of the owners only.

The Federal Republic of Yugoslavia represents a different situation. There is a tradition of ownership of firearms in this country and furthermore it has recently emerged from a period of disintegration of the former Yugoslavia. War was spreading all around and contributed to increased feelings of fear, on the one hand, and to more availability of weapons on the other. According to the Yugoslav survey co-ordinator, the ownership rate of 30% is an underestimate of the actual number of weapons existing in Belgrade. The main purpose for ownership was reported as being for the prevention of crime, followed by the statement that a weapon has always been in the respondent's family.

Finally, in Argentina the large majority of gun-owners (65%) declared that they owned it to protect themselves from crime. This was the case with most of the firearm owners from Latin America, Asia and Africa, although actual rates of ownership varied, the lowest being in Asia and Africa.

The above examples show different patterns of ownership and use of weapons. While it appears that there is no correlation between burglary and gun ownership as such, a strong correlation was found between both burglary and attempted burglary and ownership with a purpose of crime prevention (.962 and .926 respectively).

Finally, respondents who declared owning a weapon for crime prevention purposes also perceived high chances of burglary (very likely and likely) within the next twelve months (correlation = .728419).

Table 7

Firearms: Rates of Ownership and Crime Prevention Purpose, by Regions (1996)

	Western Europe	New World	Countries in Transition	Africa	Asia	Latin America
Gun ownership	17.8	36.5	11.7	63.6	4.1	15.9
c.p. purpose	8.6	21.8	28.7	79.4	34.6	65.7

V. CRIME PREVENTION STRATEGIES: BETWEEN FORMAL AND INFORMAL

The ICVS data shows that crime prevention measures at the individual level was not a major concern of the respondents from the participating countries. Although burglary in the next twelve months is perceived as likely or very likely by more than 40% of the respondents in most developing countries and in countries in transition, only some basic measures to prevent crime are put in place by those who fear that their household will be broken into soon.

It is hard to assess whether this means that there is not enough protection put in place by individuals or whether crime prevention policies in different countries are based on different strategies which give more or less room to "self-help". "Self-help" may be considered the most informal type of crime control, and is therefore individualised. The "social" mechanisms for crime prevention, such as nighbourhood watch schemes, require the citizens to participate in crime prevention activities organised by groups of peers who work in agreement with the agencies of formal control for the benefit of the community.

It therefore appears that a desirable development would include a broader participation of citizens in crime prevention programmes which would involve several counterparts and tackle various aspects of everyday life.

A. International Work

Within the framework of the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Cairo, Egypt, in 1995, a workshop on "Urban Policy and Crime Prevention" was organized. Its final report reflected the indissoluble links established between urban policies and crime prevention, and stressed that only a global and partnership-based approach may be effective in embracing all the causes of crime, with the participation of all the agents concerned.[5]

The principle of sharing crime prevention responsibilities with the community has been widely accepted and many governments place crime prevention programmes involving citizens, law enforcement and all relevant components of society among the highest national priorities. This implies a significant effort to be jointly undertaken by all the partners involved, including setting an agenda which should focus on local needs without loosing track of the experience gained at the national and international level, clearly identifying its objectives and timing, assigning roles and appointing leaders to co-ordinate action, adopt common standards and include proper evaluation of the results achieved.

Long-term plans may not be primarily aimed at the reduction of crime, which is a desirable side-effect. For example, improving the design of the urban environment by providing more street illumination is likely, primarily, to improve the quality of life and secondarily, reduce opportunities for crime.

The International Centre for the Prevention of Crime (ICPC) has promoted a review of best practices in the field of urban crime prevention.[6] This resulted in a collection of model programmes put in place in various cities and local

[5] United Nations, *Report of the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders*, A/CONF. 169/16, 12 May 1995, p. 82.

[6] The collection of best practices is accessible from the Internet at the ICPC World Wide Web address <www.crime-prevention.org/ipc.>

communities around the world. Three main areas for effective prevention have been identified:

(a) reducing risks of victimization and re-victimization of citizens by increasing formal and informal control;

(b) preventing offending and re-offending, by targeting groups at risk and providing them with educational and recreational opportunities, as well as possibilities for housing and employment;

(c) specific target-hardening, through the encouragement of a broader use of self-precautionary measures.

It should be noted, however, that the vast majority of crime prevention programmes have been established in Western Europe and the New World.[7] Very few cases have been found in developing countries and countries in transition. Among them, one has been reported from Colombia[8] and consisted of setting up groups of "peace promoters" who assisted in the identification of problematic situations and potential offenders, thus leading to the creation of programmes in law enforcement, public education and social development.

The ICVS is not only useful for providing an informed overview of the international situation and trends in crime prevention. It also provides an opportunity to analyse particular contexts and to make suggestions as to specific crime prevention programmes. In 1994 UNICRI, in co-operation with the Research Institute of the Ministry of the Interior of the Russian Federation, recommended a model crime prevention programme for the city of Moscow.[9] A comprehensive model of the components of crime prevention highlighted the particular problems of a country in transition towards a market economy. The transition process involves higher rates of crime (in particular property crime), whilst there are scarce financial resources to combat it. The crime prevention strategy should include seven elements:

1. The promotion of active crime prevention policies to accompany law enforcement and criminal justice, based on international experience obtained through effective projects developed by the United Nations and other relevant international organisations.

2. The development of long-term plans, even though public opinion might ask for short-term responses to crime.

3. Improved coordination of crime prevention activities at the national, regional and local levels.

4. The encouragement of the public to be involved in crime prevention, by strengthening the community's confidence in the police.

5. The promotion by law enforcement and criminal justice of the safety and

[7] For a comprehensive collection and analysis of crime prevention programmes in Europe and North America, see J. Graham, T. Bennett, *Crime Prevention Strategies in Europe and North America*, European Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI), 1995.

[8] The programme is called DESEPAZ, *Programma Desarrollo Seguridad y Paz* (Urban Development, Safety and Peace Programme) and is based in Cali, Colombia.

[9] M. Alexeyeva, A. Patrignani (eds.), *Crime and Crime Prevention in Moscow*, UNCRI Publ. No.52, 1994.

security of persons and property.

6. The treatment of victims with respect and understanding of their needs, and the provision of prompt assistance and information about their rights.

7. The regular monitoring of crime prevention programmes, based on reliable information, analysis and public discussion with all parties involved.

The Moscow model, which was also based on the extensive analysis of the results of the 1992 ICVS in Moscow, confirms the potentials of the ICVS as a tool to promote community and victim-centred crime prevention strategies.

Furthermore, improved police-community relations, which may result from a better knowledge of victimisation experiences, will lead to an increased use of crime prevention measures at the individual/household level, as well as within the framework of "social" crime prevention programmes.

CITIZEN'S APPRAISAL OF SECURITY AND CRIMINAL JUSTICE: AN INTERNATIONAL PERSPECTIVE

*Ugljesa Zvekic**

I. INTRODUCTION

People tend to appraise security and criminal justice on the basis of their own experience or by stories told, written or seen on TV. This appraisal is a mixture of rational and irrational elements, including fear for security and moral values as to what is just and what is not. This paper discusses people's reactions to crime, to police, victim support and punishment. In other words, reactions, expectations and values as related to different components of the crime process based on the results of the International Crime Victim Survey (ICVS).

Several interrelated considerations and experiences prompted the launching of the International Crime Victim Survey (ICVS). First, an increased interest in and concern with the victims of crime both at the national as well as the international level (the United Nations (UN) in particular). Second, increased scepticism about the reliability of official criminal justice statistics, mainly in terms of their focus on criminal justice system concerns, its operation and offenders. Third, a perennial criminological concern with dark figures. Fourth, the official criminal justice statistics provide quite a restricted measure of the functioning of the criminal justice agencies, excluding performance appreciation by the citizens, and thus, the accountability issue. Fifth, on the one hand, difficulties with international comparisons based on official criminal justice statistics (as evidentiated by the United Nations Survey of Trends in Crime and the Operation of Criminal Justice Systems and INTERPOL), and on the other, a wealth of experience gained through national victimisation surveys carried out in a few industrialised countries, gave impetus for an attempt to provide an alternative international measurement of crime.

The ICVS started in 1989 by the Ministry of Justice of the Netherlands, and subsequently (1991) was further developed with the involvement of UNICRI. It reached its third "sweep" in 1996-97. It received major financial support from the Ministries of Justice and Foreign Affairs of The Netherlands, the UK Home Office Research and Statistics Directorate, and the UNDP for selected countries, as well as from local funding as regards the developing countries and countries in transition, and on a self-funding basis for the majority of the participating industrialised countries.

It can be stated without exaggeration that this was one of the major empirical international comparative projects in the area of crime prevention and criminal justice, with particular emphasis on victimisation risks and experiences of citizens all over the world. This is evident from the number of participating countries with an average sample ranging from 1,000 to 2,000 respondents from each participating site, resulting in more than 130,000 people from all over the world being interviewed about their victimisation experience, contacts with law enforcement and evaluation thereof; patterns and

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Countries Participating in the Three Sweeps of the ICVS: 1989; 1992-94; 1996-97

Industrialised	Countries in Transition	Developing
Australia	Albania	Argentina
Austria	Belarus	Bolivia
Belgium	Bulgaria	Botswana
Canada	Croatia	Brazil
England & Wales	Czech Republic	China
Finland	Estonia	Colombia
France	Federal Republic	Costa Rica
Germany	of Yugoslavia	Egypt
Italy	FYR of Macedonia	India
Japan	Georgia	Indonesia
Malta	Hungary	Papua New Guinea
The Netherlands	Kyrgyzstan	Paraguay
New Zealand	Latvia	The Philippines
Northern Ireland	Lithuania	South Africa
Norway	Mongolia	Tanzania
Scotland	Poland	Tunisia
Spain	Romania	Uganda
Sweden	Russia	Zimbabwe
Switzerland	Slovak Republic	
USA	Slovenia	
	Ukraine	

methods of crime prevention; and attitudes towards punishment.

The 1989 sweep involved 15 industrialised countries, one developing country (Indonesia) and one Eastern-Central European country (Poland). The second round of the ICVS involved: 12 industrialised countries, 13 developing countries and 7 countries in transition. The third sweep of ICVS included: 11 industrialised countries, 14 developing countries and 20 countries in transition. All together, 58 countries participated in the sweeps of the ICVS, with 7 participating three times, 22 participating twice and 19 participating for the first time in 1996-97. It should be noted that the participation of developing countries and countries in transition increased from 2 in 1989 through to 20 in 1992-94 to 34 in 1996-97. It should be also noted that in all industrialised countries, the ICVS was carried out on a national level by using CATI, while in almost all developing countries and countries in transition it was carried out on a sample of population from the largest city through face-to-face interviewing. International comparative analysis was thus restricted to urban areas only. The results of the ICVS are presented in numerous publications and at various

international *fora*, including the two major international conferences held in Rome in 1992 and 1998 respectively : Understanding Crime: Experiences of Crime and Crime Control, and Surverying Crime: A Global Perspective.

II. CRIME CONCERNS

Fear of crime is one concern. In this study it was measured by two indicators: feeling safe after dark and avoiding going out alone. Only data related to feeling safe after dark is presented here. The respondents were asked how safe they feel when walking alone in their area after dark.

The data reveals that street safety is perceived to be highest by citizens in Asia, followed by Western Europe and the New World. In Africa a bit less than 60% of the citizens feel safe. Just about half of the citizens in Latin America feel very and fairly safe when walking alone after dark. The citizens that feel least safe are those in countries in transition, where 46% say they feel safe, while 54% say they feel a bit unsafe or very unsafe. Among the world regions, the lowest percentage of citizens from countries in transition (13%) say they feel "very safe" in streets after dark.

III. REPORTING TO THE POLICE

The "police crime story" is the amount and type of crime known to them. It will differ from the "real crime story" depending on citizens' propensity to inform the police about crime. To this reported crime, the police can add crimes detected by them but not reported, and they can deduct some criminal activities which do not figure in the "police crime story" because of specific investigative, technical, procedural, social and political reasons. There are, however, important variations across countries as to the volume and type of crime known to the police and admitted into police administrative records.

Not surprisingly, the propensity to report to the police depends heavily on the seriousness of the crime, whether tangible or intangible. However, reporting is also influenced by other factors: previous personal experiences of reporting; other acquired experience with, or attitudes to the police; expectations; factors related to the particular victimisation experience at hand; the existence of alternative ways of dealing with this; the relationship with the offender; and the "privacy" of the issue.

Crime reporting, as mentioned above, differs according to the crime in question.

Table 2
Street Safety in World Regions

	Very safe	Fairly safe	A bit unsafe	Very unsafe	Do not know
Western Europe	28.0	42.2	19.6	9.6	0.6
New world	26.9	40.7	18.5	13.5	0.4
Countries in Transition	13.2	33.3	35.8	17.1	0.6
Asia	25.2	53.5	13.6	7.7	0.0
Africa	24.4	33.9	22.0	19.2	0.4
Latin America	18.9	32.5	26.6	21.7	0.3

It is evident that car theft is more reported than any other crime, while sexual incidents, corruption and consumer fraud are, on average, the least reported. However, reporting rates also differ from country to country, as well as depending on the developmental level. It is also claimed that the reporting rates have to do with the crime level in the society irrespective of the above-mentioned factors or as a baseline from which other factors influence the levels of reporting. For illustrative purposes, reporting rates for burglary, robbery and assault based on all sweeps of the ICVS are presented in Table 3.

Among the three crimes, the highest reporting level is for burglary, followed by robbery. Less than one third of the victims of assault reported it to the police. For all three crimes, the highest reporting levels are in the industrialised world, both Old and New. From among the group of non-industrialised countries, burglary is reported the most in countries in transition and in Africa, and the least in Asia; while from among the non-industrialised group less than one third of the victims reported assault and somewhat more than a third reported robbery to the police. Therefore, in terms of the "reporting ranks", countries in transition rank third on burglary, fifth on robbery and fourth on assault. There is then a clear difference in reporting levels between, on the one hand, the industrialised world and, on the other, the rest of the world.

Comparing the two data sets (victimisation rates and reporting rates) it becomes clear that the highest level of correspondence between the victimisation and reporting rates for all three crime types is found in Asia. From a comparative perspective, Asia has both the lowest victimisation as well as the lowest reporting rates. On the other hand, the highest reporting rates of the New World do not correspond to the victimisation levels reported for the New World. Generally speaking, it appears that the reporting levels do not reflect the victimisation levels. This seems to support the hypothesis that the victimisation level is not the most important factor in conditioning the reporting practice, and that it cannot be considered even a solid baseline for predicting propensity to report to the police. High crime does not automatically and necessarily lead to high disclosures of crime. Other factors appear to have more weight on the propensity to report to the police.

Table 3
Percentage of Burglary, Robbery and Assault Reported to the Police in Six Global Regions, 1989, 1992 and 1996 ICVS (1 year)

	Burglary	Robbery	Assault
Western Europe	79.6	45.5	28.5
New World	85.3	75.9	45.3
Countries in Transition	63.2	25.1	20.4
Asia	40.8	33.3	31.0
Africa	57.7	33.5	20.4
Latin America	44.1	20.7	23.6
Total	61.8	39.0	28.2

Why do people report crimes to the police? The reasons are divided into: sense of civic duty ("should be reported"; "to stop it"); need for assistance ("to get help"); recovery/compensation of damage ("recovery of property"; "insurance"). "Want the offender caught/punished" lies somewhere between means for recovering property and damage, and expectation for the law enforcement agency to effectively deal with offenders.

Civic duty related reasons are prominent across the board independently of crime type and developmental groupings. While this is true for "should be reported", reporting crime for preventive purposes "to stop it happening again" is of particular significance for threats/assaults or robbery, while less so for burglary. This is quite a rational attitude on the part of the victims who also consider that reporting violent crimes has more chance of inducing preventive action by the police while burglary prevention is becoming much more the citizen's own prevention activity. "To get help" as a reason for reporting is more frequently mentioned with relation to threats/assaults and robbery.

Recovery of property and insurance are both mentioned with respect to burglary and robbery. It is interesting to note that reporting for the reason of recovering property for both crimes is much more present among victims from countries in transition and the developing world than from the industrialised world. Inversely, insurance reasons are much more important in the industrialised world. There is a very clearly established pattern, according to which high insurance coverage results in high reporting rates in order to get the insurance premiums. Where insurance coverage is low, expectations related to reporting are to "recover" stolen property. Since the level of insurance coverage is much higher in the industrialised world than in countries in transition, the reasons for reporting in order to compensate for damage will reflect this discrepancy. *"At the individual level, those without insurance are less likely to report burglaries to the police... At the aggregate level, there is always a strong association between the insurance coverage and reporting of burglaries to the police"* (van Dijk, 1994). Indeed, the countries and regions with low insurance coverage tend to display low reporting rates of burglaries to the police.

"Want the offender caught/punished" as a reason for reporting figures prominently for all three crimes. However, differences in the importance of this particular reason between the regions are less pronounced when it comes to assault and robbery, and more pronounced when it comes to burglary. Most probably, the level of insurance coverage again is at play in a sense that for the victims of insured households to get the offender caught/punished is of less importance in terms of reporting to the police. On the other hand, if there is no household insurance, in order to recover property it is also important to find and punish the offender. In addition, there is a more punitive orientation in the developing countries and countries in transition (Zvekic, 1997), which also indicates the importance of this reason for reporting crime to the police.

It was noted that, on average, there are more non-reported crimes - in particular robberies and threats/assaults - in all the regions of the world and especially in countries in transition.

That the "police could do nothing" was frequently given as a reason for not reporting property crimes - thefts of personal property, thefts from cars, etc. This may signify a belief that the police would be unable to recover property, find

Table 4
Reasons for Reporting Crime to the Police, 1996

	Recover property	Insurance reasons	Should be reported	Want offender caught	To stop it	To get help	Other reasons
Burglary							
Western Europe	32.2	43.2	46.0	31.9	18.2	8.4	11.9
New World	17.4	22.8	51.1	27.2	13.0	8.7	15.2
Countries in Transition	57.5	15.0	37.4	51.4	27.0	12.5	2.5
Asia	82.2	4.4	48.9	64.4	64.4	26.7	-
Africa	72.6	13.1	26.8	53.9	20.8	16.7	1.2
Latin America	53.2	26.2	19.5	42.9	34.8	8.6	3.1
Total	52.4	20.8	38.3	45.3	29.7	13.6	6.8
Robbery							
Western Europe	35.2	13.6	40.9	36.4	21.6	17.0	18.2
New World	23.3	13.3	56.7	46.7	26.7	20.0	16.7
Countries in	43.2	12.4	33.9	54.1	33.6	21.1	7.7
Transition							
Asia	80.6	2.8	47.2	69.4	41.7	25.0	2.8
Africa	57.6	10.1	36.4	55.6	20.2	17.2	2.0
Latin America	39.0	32.0	23.0	54.0	40.5	17.0	3.0
Total	46.5	14.0	39.7	52.7	30.7	19.6	8.4
Assault/Threat							
Western Europe	4.5	5.6	35.0	32.2	31.6	22.0	23.7
New World	6.9	6.9	36.2	39.7	39.7	24.1	22.4
Countries in Transtion	8.5	12.2	31.8	41.1	44.0	25.6	7.5
Asia	16.2	10.8	43.2	48.6	73.0	40.5	-
Africa	3.5	-	34.1	56.5	45.9	1.6	3.5
Latin America	18.0	42.4	18.7	38.8	44.6	22.3	7.2
Total	9.6	15.6	33.2	42.8	46.5	25.4	12.9

	Not serious enough	Solved it myself	Inappropriate for the police	Other authorities	My family solved it	No insurance
Burglary						
Western Europe	26.2	21.4	4.8	-	7.1	4.8
New World	30.8	15.4	7.7	-	-	7.7
Countries in Transition	27.0	13.3	13.2	6.6	9.0	6.5
Asia	52.4	13.3	14.3	2.9	3.8	2.9
Africa	17.4	12.3	10.7	7.1	5.5	2.4
Latin America	24.0	10.8	2.9	-	5.9	5.3
Total	29.6	14.4	8.9	5.5	6.3	4.9
Robbery						
Western Europe	35.7	10.7	17.9	1.8	5.4	-
New World	5.9	41.2	11.8	11.8	-	-
Countries in Transition	23.4	12.7	10.3	1.7	6.4	8.0
Asia	30.4	10.1	18.8	4.3	10.1	1.4
Africa	14.7	9.6	10.9	-	1.9	0.6
Latin America	18.1	6.3	5.5	0.5	0.5	2.0
Total	21.4	15.1	12.5	4.0	4.9	3.0
Threat/Assault						
Western Europe	38.6	13.6	8.0	4.7	2.7	-
New World	25.6	17.9	7.7	6.4	2.6	-
Countries in Transition	26.2	19.5	14.5	6.3	6.8	6.7
Asia	36.4	33.9	8.3	8.3	17.4	0.8
Africa	22.5	18.1	25.2	2.5	6.0	-
Latin America	17.4	30.7	21.8	0.7	4.2	1.6
Total	27.8	22.3	14.3	4.8	6.6	3.0
	Police could do nothing	**Police won't do anything**	**Fear/ dislike of police**	**Didn't dare**	**Other reasons**	**Don't know**
Burglary						
Western Europe	16.7	2.4	-	2.4	21.4	8.1
New World	-	15.4	-	-	38.5	-
Countries in Transition	28.4	16.7	5.6	6.8	8.6	9.4
Asia	14.3	5.7	11.5	-	3.8	3.8
Africa	35.2	12.3	2.8	6.3	14.2	4.3
Latin America	21.1	42.1	7.7	2.6	13.7	2.4
Total	23.1	15.8	6.9	4.5	16.7	5.6
Robbery						
Western Europe	25.0	7.1	5.4	7.1	16.1	2.7
New World	5.9	-	11.8	17.6	23.5	-
Countries in Transition	30.9	27.7	13.5	9.9	9.7	6.5
Asia	30.4	17.4	9.1	10.1	4.3	-
Africa	46.8	14.7	5.1	12.2	16.7	1.9
Latin America	34.0	53.9	24.4	3.9	3.9	0.9
Total	28.8	24.2	11.6	10.1	12.4	3.0
Threat/Assault						
Western Europe	15.0	10.9	2.9	7.4	16.5	2.4
New World	6.4	15.4	5.1	5.1	28.2	5.1
Countries in Transition	21.1	18.2	23.1	9.6	7.8	3.8
Asia	31.4	20.7	33.3	20.7	3.3	3.9
Africa	19.9	12.7	2.7	15.2	9.4	1.6
Latin America	14.9	26.1	6.9	9.6	6.2	1.8
Total	18.1	17.3	12.3	11.3	11.9	3.1

the offender, or do anything else of benefit. It could also signify a fairly realistic judgement about the liability of the police to do much about something on which they have little information to act. In essence, though, it is an expression of resignation. In contrast, "the police wouldn't do anything" may carry a more explicit criticism that the police would be reluctant to take action, even though they might be expected to do so. "Fear/dislike of police" certainly signifies a negative attitude towards the police, either of a general nature, or related in some way to the particular offence in hand. As might be expected, fear and/or dislike of the police was often mentioned in relation to violent crimes and sexual incidents. These might involve a close relationship with the offender(s), or sometimes even a lifestyle that may lead the police to treat the victims as accomplices, or people "who deserve what they got". That women victims of sexual incidents are often treated unsympathetically by the police is also now well recognised.

Table 4 presents reasons for not reporting. Crimes are mainly not reported because they are not considered "serious enough". Since this section deals with the police, it is worth looking more clearly at police related reasons: "police could do nothing"; "police won't do anything" and "fear/dislike of police".

It should be noted that around 30% of the victims of burglary from the New World and even 52% from Asia thought that the burglary which took place in their household was "not serious enough". This reason, together with "inappropriate for police", indicates the characteristics of the event itself. As regards robbery, "not serious enough" is mentioned as a reason for not reporting by 36%, 30% and 23% of the victims from Western Europe, Asia and countries in transition respectively. On the other hand, 22%, 26% and 15% of victims of assault/threats from Latin America, Africa and countries in transition mentioned the "inappropriateness" of the case for the police as reasons for non-reporting.

The resigned attitude towards the police ("police could do nothing") is particularly prominent among the victims of all three crimes dealt herewith from all but the industrialised world. As will be seen later, this has much to do with the expectations citizens have about the police, as well as with the satisfaction with the police in controlling and preventing crime.

The two more implicit criticisms of the police are also more pronounced reasons for not reporting the three crimes provided by victims from countries in transition. This is, however, more related to "police won't do anything". It should be noted that the implicit criticism that the police would be reluctant to take action is, on average, more highly related to robbery and assault/threats than to burglary. "Fear/dislike" of police is mentioned significantly as a reason for not reporting robbery in Latin America and the New World, as well as for assault/threats in Asia.

A. Satisfaction with the Police

The ICVS also indicates the strength of police-community relations in showing:

(i) the degree of satisfaction victims feel when they report to the police; and
(ii) the reasons why victims were dissatisfied with the way the police handle cases once reported.

Among the reasons for dissatisfaction with the police once burglary was reported, the most frequently mentioned were "the police did not do enough" and "were not interested". The first reason was identified by more than 40% of the burglary victims

Table 5
Reasons for Dissatisfaction with the Police (1996)

	Did not do enough	Were not interested	Did not find offender	Did not recover goods	Gave no inform-ation	Incorrect /Impolite	Slow to arrive	Other reasons	Do not know
Burglary									
Western Europe	44.0	34.7	30.7	18.7	28.0	10.7	16.0	14.7	-
New World	75.0	25.0	25.0	20.0	25.0	10.0	20.0	20.0	-
Countries in Transition	41.5	34.0	46.8	46.4	16.0	12.8	11.2	7.1	1.0
Asia	50.0	20.6	52.9	55.9	14.7	17.6	17.6	2.9	-
Africa	51.5	21.8	38.4	44.1	20.5	5.7	18.8	6.1	-
Latin America	55.8	41.4	34.5	32.1	26.1	20.9	4.8	3.6	0.8
Total	53.0	29.6	38.1	36.2	21.7	13.0	14.7	9.1	0.9
Robbery									
Western Europe	50.0	41.2	14.7	20.6	8.8	20.6	11.8	11.8	-
New World	40.0	40.0	40.0	6.7	13.3	20.0	13.3	6.7	-
Countries in Transition	38.7	41.1	44.3	32.5	18.0	20.1	12.0	11.9	2.2
Asia	46.7	33.3	73.3	73.3	33.3	13.3	33.3	6.7	-
Africa	40.0	21.7	40.0	38.3	18.3	11.7	16.7	6.7	1.7
Latin America	56.0	53.6	44.0	26.4	29.6	18.4	9.6	0.8	-
Total	45.2	38.5	42.7	33.0	20.2	17.4	16.1	7.4	2.0
Assault/Threat									
Western Europe	21.1	15.3	9.3	1.0	9.4	5.8	7.8	13.6	-
New World	23.4	14.3	10.0	-	14.3	-	10.0	12.2	-
Countries in Transition	45.3	42.1	24.2	9.5	13.5	21.7	12.7	9.8	0.6
Asia	31.3	25.0	37.5	12.5	31.3	25.0	18.8	-	-
Africa	44.7	17.0	34.0	10.6	14.9	17.0	12.8	19.1	-
Latin America	50.0	44.9	34.6	6.4	25.6	29.5	11.5	2.6	-
Total	36.0	26.4	24.9	8.0	18.2	19.8	12.3	11.5	0.6

in countries in transition and up to 75% of those from the New World. Disinterest on the part of the police was mentioned by 41% of the victims in Latin America and one third of the victims in countries in transition and Western Europe.

A substantial portion (ranging from one third to more than a half) of the victims of burglary from the countries in transition also highlighted that the police "did not find the offender" or "did not recover goods". Indeed, in countries in transition, "want offender caught/punished" and "recovery of property" were among the principal reasons for reporting burglary to the police. Therefore, if these expectations are not met by the police, victims who reported burglaries express dissatisfaction, highlighting unmet expectations. As mentioned earlier, in this part of the world, where insurance coverage is low, victims will have a substantial economic stake in reporting in order to retrieve stolen property or receive some compensation from the offender who needs to be identified and brought to justice.[1]

Victims of burglary from the developed world are more sensitive to other indicators of police performance, such as providing appropriate information and speed or slowness of the police in arriving at the place of the crime.

Victims of robbery across the globe tend to emphasise that the police "did not do enough" (ranging from 40% in the New World and in countries in transition up to 56% in Latin America) and "were not interested" (from a peak of 54% in Latin America to 22% in Africa). More than 70% of the victims of robbery in Asia are dissatisfied with the police because the offender was not found and the goods were not recovered. Around 40% of the victims of robbery from Africa, Latin America and countries in transition express the same view. These two reasons for dissatisfaction are less prominent among the victims of robbery from Western Europe and the New World, although the latter give more importance to the offender being caught rather than to the goods being recovered.

The victims of assault/threats, particularly in countries in transition, single out that the reasons for dissatisfaction with the police reaction to reporting crime have to do with the police not doing enough and not finding the offender. In addition, victims complain that the police were incorrect/impolite, which is more characteristic of the victims' evaluation of police attitudes in countries in transition. This factor indicates certain features of police culture that lack respect for the particular needs and expectations of the victims of violence.

On the global level, less than half of the respondents are satisfied with the police in controlling crime locally, even though those who are satisfied are more than those who are not (Table 6). In the New World, a large majority of the respondents (76%) are satisfied with the police in controlling crime; this is also the case with citizens from Western Europe (54%) and Asia (58%). On the other hand, more than half of the respondents from Africa (52%), 40% from countries in transition and as many as 70% from Latin America are not satisfied with the police job in controlling crime locally.

It should be noted that the lowest levels of citizens' satisfaction with the police are exhibited in Latin America and in countries in transition. However, it should also be noted that the largest percentage of "don't knows" is found in countries in transition. This can be explained by the fact that, during the period in which the 1992 ICVS

[1] For the preliminary analysis related to a restricted sample of countries in transition, see Zvekic (1996).

Table 6
Satisfaction with Police in Controlling Crime Locally, by Regions (1996)

	Yes, good job	No, not a good job	Don't know
Western Europe	54.0	25.6	20.4
New World	76.0	15.1	8.9
Countries in Transition	23.2	40.0	36.7
Asia	58.3	30.7	11.0
Africa	41.1	51.7	7.2
Latin America	21.9	69.6	8.5
Total	45.8	38.8	16.8

was carried out, and - in some countries - also during the period when the 1996 ICVS was administered, the police were undergoing changes as to their mandates and organisation.

Other factors related to police performance also have a lot to do with citizens' satisfaction. There is a moderate positive correlation between satisfaction with the police in controlling crime locally and the frequency in local patrolling (0.349), although it is higher in both the developing world (0.382) and countries in transition (0.376) than in the industrialised world (0.165). In all likelihood, respondents in those parts of the world attach more importance to the presence of police locally in eveluating their performance in controlling crime locally. It might be the case that the citizens of the developing world and countries in transition consider that frequent police patrolling would deter crime and meet a number of their expectations, such as finding and arresting offenders, recovering stolen goods and arriving speedily at the place of the crime.

In addition, the citizens in countries in transition (to a larger extent than citizens from the industrialised world) are concerned that a burglary will occur within the next year. Therefore, fear of burglary in the near future also contributes to dissatisfaction with the police in controlling crime locally, and supports the view that more frequent patrolling might be both a deterrent, as well as effective in "stopping crime", finding the offender and recovering the stolen property.

B. Victim Assistance

Victims of crime who had reported these crimes to the police were asked whether they received support from a specialised victim support scheme. Furthermore, they were asked whether a specialised victim support agency would have been useful.

As expected, on average, only a few victims obtained any assistance, which was given mainly to victims of sexual offences and robbery in the New World and Western Europe. In the developed world, victims also expressed greater appreciation for the establishment of specialised victim support agencies. Such support is more evident in Latin America than in countries in transition and the rest of the developing world.

C. Punishment Orientation

Punishment is at the end of the criminal justice system. It can be seen as indicating societal reactions to crime; whether these are those of the state or people's notions of when, how and who should be punished.

Yet, the range of sanctioning options in a given society is usually limited to a few that are selected by the legislator and a few which may fall outside the official sanctioning range (e.g. various forms of moral condemnation, or other forms of punishment which are neither recognised nor approved by the official penal code). Some of these alternatives may be harsher and some milder than those applied by the state-centred criminal justice system.

The ICVS asked respondents about sanctioning options, which are *usually* present in most criminal justice systems.[2] However, some options were not available in all the countries, and some that were available were not offered for comment. Another major limitation in measuring people's attitudes towards punishment stemmed from the hypothetical burglary scenario use. It contained sufficient elements to help form a lay opinion, but lacked the most important details to provide for informed professional opinion.[3] Yet, it was felt that for the public at large, the particular details that may mitigate or aggravate the offender's position were unnecessary. There were, however, problems of interpretation linked with the target of theft: namely, a colour TV set, the value of which varies across countries. Indeed, as noted, the recovery of stolen goods is one driving factor in the evaluation of the police performance in less affluent economies. Nonetheless, certain patterns in punishment orientation emerged, in particular regarding differences between the more and less affluent societies.

On a regional level, more than half of the respondents in the New World and Latin America, and almost three-quarters in Asia and Africa, opted for imprisonment. On the other hand, some 40% of the respondents from countries in transition and somewhat less than a third from Western Europe favoured imprisonment.

Following imprisonment, the next most preferred sentencing option was community service, which was favoured by almost one third of the respondents. In Western Europe, community service was the preferred sentence by almost half of the respondents, followed by approximately one third each in Latin America and in countries in transition. Only 10% of the respondents from Asia and Africa opted for some sort of community service.

Regional variations regarding a fine as a favoured sentencing option for a young recidivist burglar are not pronounced and average 9% of the respondents. A suspended sentence is thought to be the most approprate sentence by 5% of the respondents; ranging however from 2% in Asia and Africa respectively, to 7% in the countries in transition and Western Europe.

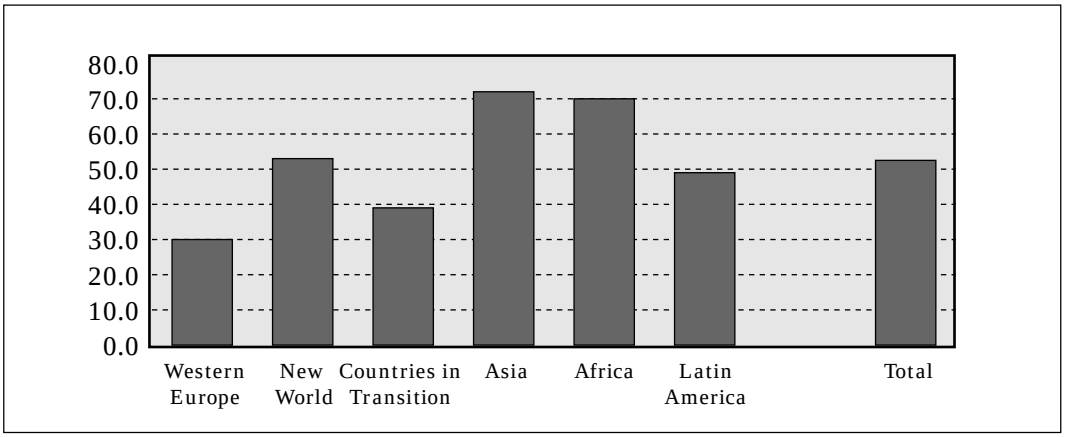
Both the 1992 ICVS (Kuhn, 1993) and 1996 ICVS (Zvekic, 1997) support Kuhn's finding that those who had been victimised were no more in favour of a prison sentence than others, both at the global and regional level. There is no significant difference in preferences for sentencing options between victims and non-victims of any crime. A

[2] The question was as follows: "People have different ideas about the sentences which should be given to offenders. Take for instance the case of a man 21 years old who is found guilty of a burglary for the second time. This time he stole a colour TV. Which of the following sentences do you consider the most appropriate for such a case: fine, prison, community service, suspended sentence or any other sentence". If the interviewee opted for imprisonment, he/she was asked to specify the length.

[3] There are serious doubts as to whether a professional judge would be able to state what would be the most appropriate punishment based on the elements provided by the ICVS questionnaire.

Figure 1

Attitudes to Punishment, Imprisonment as Preferred Sanction, by Regions



group of special interest as regards the punishment of the burglar is that of those who had been burgled themselves. However, there is no substantial difference between the victims and non-victims of burglary, with the exception of burglary victims from the New World who appear to be stronger supporters of imprisonment than non-burglary victims, still within the prevaling prison-centric orientation in that part of the world. Further analyses carried out on victims and non-victims of contact crimes and vehicle-related crimes also confirmed the above-mentioned finding.

The demand for severe punishment, then, is stronger in the more crime-ridden nations or in those in which there is a lack of alternative solutions, including adequate insurance coverage. There, ideas about preventive approaches to sentencing may appear less appropriate. Deterrent sentencing, regardless of whether or not it is effective, may have more appeal.

There is a certain level of correspondence in the regional patterns based on public attitudes to punishment, on the one hand, and the predominant actual use of non-custodial sanctions and imprisonment, on the other. This seems to indicate at least two things: first, a degree of independence in types of sentencing from the geo-political and development position; second, that public attitudes do reflect, to a certain degree, the actual availability of sentencing options and their use in practice.[4] In other words, public attitudes are influenced by penal systems and penal practice, although neither exclusively nor in a clearly pre-deterministic manner (Zvekic, 1997b).

In many countries much work is still needed to promote credible non-custodial sanctions and in particular, to overcome difficulties in implementation following conviction. In fact, public attitudes often lag behind sentencing reform and time is needed to convey the message that punishment is implemented seriously, in order to ensure public acceptance. Support

[4] H. Shinkai and U. Zvekic. "Punishment" in G. Newman (Ed.) Global Report on Crime and Justice. New York-Oxford, UN & Oxford University Press. 1999.

for imprisonment is often formed by vicarious information, traditional belief systems and socio-legal heritage. Fear of crime also appears to support harsher sentencing. All of this is not an irrational response to urgent crime problems. Where the replacement of stolen property is relatively easy, either through insurance coverage or through the ability to buy new commodities, severe punishment is not the obvious cure. However, where - as is the case in the majority of countries in transition and in the developing world - hardship precludes replacing stolen property, calls for more severe punishment, bringing offenders to justice and the recovery of stolen goods are rational responses to crime problems.

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INCLUDING VICTIMS IN THE AMERICAN CRIMINAL JUSTICE PROCESS

*Heather L. Cartwright**

I. INTRODUCTION: WHY DO WE NEED VICTIMS' RIGHTS LAWS?

> "*I will never forget being raped, kidnapped, and robbed at gunpoint. However, my sense of disillusionment of the judicial system is many times more painful. I could not in good faith urge anyone to participate in this hellish process.*"

A victim (as quoted in the President's Task Force Report at p. 5 (1982)).

> "*To be a victim at the hands of the criminal is an unforgettable nightmare. But to then become a victim at the hands of the criminal justice system is an unforgivable travesty. It makes the criminal and the criminal justice system partners in crime.*"

Robert Grayson (as quoted in the President's Task Force Report at p. 9 (1982)).

Dire descriptions of the American criminal justice system such as these and others were heard at public hearings conducted by the Presidential Task Force on Victims of Crime in 1982. The hearings and subsequent report issued by the Task Force motivated a dramatic change in the way the criminal justice system in the United States treats victims of crime at the Federal and local level. Although we have made some progress in the past 17 years in making the criminal justice process more responsive to victims of crime, we in the United States still think we have some ways to go to become a system that treats all participants in the process fairly.

The United States has a very serious crime problem. Millions of citizens become victims of crime every year. We are still learning what long term impacts crime victimization has on individuals and communities. Crime victimization can negatively affect a victims' views of their government and community, their sense of safety, and mental health. Indeed, with some types of victimization, especially crimes against children, there is some link between those who have been victims and those who become victimizers. For the health and safety of our communities therefore, it is important to treat crime victims in a manner that will promote healing and recovery from the experience.

For the health and future of our criminal justice system it is also important to treat victims well. Victims who survive their experience, and are brave enough to report the crime, turn to their government expecting it to do what a good government should do, protect the innocent. The American criminal justice system is absolutely dependent on crime victims' cooperation. Without the cooperation of victims and witnesses in reporting and testifying about crime it is impossible in a free society to hold criminals accountable. When victims come forward in our country to perform this vital service, however, they often find little assistance and protection. There is a sense experienced by many

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victims that the system is out of balance, that there are many rights and protections for offenders, but none for victims. To continue to encourage victim participation in the system, and to make that participation as helpful as possible both to the victim and the system, it is vital that certain essential victims rights are incorporated into the process.

Finally, providing basic victims rights is the right thing to do. Our justice system must be fair to all involved to really dispense justice. If victims walk away from the experience feeling that they were not respected, listened to, consulted, or protected, the system really has failed them in a significant way. Regardless of what moral code we as individuals adhere to, the way our systems treat crime victims, some of the most wronged members of our societies, is a true measure of the morality of our societies.

II. WHAT DO VICTIMS WANT?

Of course, as with all people, victims want to be treated with dignity and respect. This is difficult to legislate, but should be used as a guiding principle. In terms of actual, enforceable rights, victims generally report that they want to be informed and participate. Being informed usually encompasses getting notice of what is happening in the case and having some ability to observe proceedings. Participation centers around having the victims' side of the story heard and validated, especially the extent of the harm caused by the crime. Another very important need for victims, and indeed the most urgent one I encountered as a public prosecutor, is the need to feel safe as the victim participates in the criminal justice process. Victims more than anyone know how destructive the offender can be and are understandably concerned about their safety as they participate in the process.

The one thing victims want more than any other, however, we have no power to give. Ultimately, victims want the crime not to have happened. Because this is impossible for the criminal justice system to provide, many victims are going to be disappointed at the end of the process. If the process has been fair, however, most victims will eventually be satisfied with the system, even if the result is not what they wanted.

III. VICTIMS' RIGHTS IN THE AMERICAN SYSTEM

As you may already know, we have two major justice systems in our country: the states and the Federal government. Each state has its own system, with its own constitution, laws, and governmental structure. States have jurisdiction over all crimes occurring in that state. The Federal system encompasses only certain limited crimes, usually those having an impact beyond a single state. In our country, the states have really been the leaders in the area of victims' rights, although those rights vary from state to state. The Federal system's first victims' rights statute was passed in 1982, in the aftermath of the President's Task Force on Victims of Crime. Since that time, several additional laws have been passed that have expanded and strengthened the Federal crime victims' rights. Even today, we have new legislation pending in our Congress to further expand the rights of Federal crime victims. In addition, for several years our Congress has been debating adding a provision for victims rights to our Federal constitution. That constitutional amendment is supported by the President and the Attorney General.

IV. TYPES OF VICTIMS RIGHTS LAWS

A. Definition of Victim

Interestingly enough, one of the most contentious issues when establishing victims' rights laws is deciding who should qualify as a victim. Some suggest that the rights, or at least stronger or more comprehensive rights, should be limited to violent crime victims. This policy excludes victims of economic and property crimes like fraud. Some of the states limit victims' rights to situations involving physical injury to the victim, however, the Federal stature includes victims of all crimes. It should be noted that some economic crimes have devastating impacts on their victims, especially if the victim is particularly vulnerable like an elderly person.

In the case of a homicide, incapacitated or child victim, most statutes allow for a family member such as a spouse or parent to be considered the victim. It is important to make sure that anyone who is culpable for the crime is not designated the victim under this provision.

This raises another difficult issue, whether someone who is culpable in some way for the crime being investigated or prosecuted, or some other crime, is entitled to receive victims' rights. Although our Federal statutory definition of victim is silent about this question, as a policy matter our Federal Justice Department has decided that those individuals who are culpable in the crime being investigated or prosecuted will not be treated as victims. This means that victims who may be culpable for some other crime are treated as victims. Examples of such persons are: illegal aliens who are involuntary servitude victims, inmates who are victimized in prison, and victims of witness intimidation. This policy prevents someone who is an injured participant in the crime from being considered a victim for purposes of receiving victims' rights.

One final important issue that any drafter of victims' rights provisions needs to consider is the line to draw between direct and indirect victims. There must be some point at which a person's injury from a crime is too attenuated to entitle them to victims' right. Certainly, most people who are physically injured should be considered victims. In addition, some people who suffer emotional harm and trauma should be included, but it is more difficult to draw a line when you talk about emotional harm. Take the example of a bank robbery crime.

Typically, the bank, which suffers the financial harm, is considered the primary victim. The question presented is whether the tellers, bank employees, and customers present in the bank at the time of the robbery are also "direct" victims of the crime. The answer to this question will depend to a great extent on the facts of each specific case. If, for example, a robber points a gun at a teller as part of the robbery and, as a result, the teller suffers psychological trauma (and may be a trial witness), the harm is a direct result of the crime and the teller probably should be treated as a victim, even though s/he may not have suffered any physical injury (the teller is actually the direct victim of an armed assault which may not be separately charged).

In comparison, a bank employee who was in another room and only heard people talking about the robbery may also suffer some trauma, but is much more indirectly harmed and usually should not be considered a victim for purposes of victims' rights and services. In between those two examples are a variety of different factual situations requiring law enforcement personnel to use their judgement and draw lines just as they do in other contexts.

There may be cases that involve hundreds or even thousands of direct victims. For example, in a terrorist bombing or a mass violence shooting, there may be a large number of persons who are killed, injured, or suffer extreme emotional harm such that they would be considered direct victims. Indeed, in a terrorist incident, the terrorist targets a large number of people with the intent of inducing fear and other emotional harm. Just because there is a large number of victims does not mean that victim services should not be provided. It just means that you have to be more creative about how to provide them.

B. Right to Notice

Perhaps the most fundamental right of a crime victim is the right to be kept informed by the criminal justice system. The other rights and services that may be available to a crime victim are meaningless unless the victim knows they exist. For example, a victim's right to attend proceedings or to be heard at proceedings can have no effect unless the victim is notified in advance of those proceedings. The right to be notified can be divided into two classifications: the right to general information which is of interest to all crime victims, and the right to be kept informed about proceedings and events relating to the offense against that particular victim.

Our state criminal justice systems often provide much general information of interest to all victims. Such general information includes: notice of the availability of crime victim compensation money; referrals to victim services such as rape crisis centers, homicide survivor groups, and general victim service agencies; information about the steps involved in a criminal prosecution; and notification about victims' rights. In the Federal system, many of our investigative agencies have brochures which they hand out to victims containing some of the same information. Our Federal prosecutors have a book called the "Victim Witness Handbook" which contains information about the stages of the criminal justice process.

The other type of notice, notice of events and proceedings in the criminal justice process, is one of the most time consuming and expensive of the victims rights for government to provide. Keeping victims informed throughout the criminal justice process, however, is a very important right because it is a recognition that victims are more than mere pieces of evidence in the government's case; that they as individuals have a real interest in the progress of the criminal case and the current status of the offender. There are dozens of events or proceedings in the ordinary criminal justice process for which notice may be required by our state and Federal statutes. The types of proceedings and events that are most frequently included are: scheduled court proceedings and any cancelled or rescheduled dates, dismissal or dropping of case, plea bargains, appeals, release from prison (including conditional releases), and parole hearings. In the Federal system we provide victims with notice of the status of the investigation, the arrest of the offender, the filing of charges, the scheduling of public court proceedings, the release or detention status of the offender, the acceptance of a plea of guilty or the trial verdict, the sentence, any scheduled parole hearing, any release of the offender (including escape, work release, and furlough), and the death of the offender if s/he dies while in custody.

The procedures that the state and Federal governments use to notify victims vary widely. In the Federal Justice Department, we encourage personal contact with and notice to victims if possible. Many notifications are

accomplished through phone calls and letters. With some notices, such as a notification that an offender has escaped from prison, immediate notification by telephone can be a matter of life or death. Increasingly, states are using technology to assist with victim notification. With automated notification systems, victims' names and addresses are entered into a computer that can automatically issue notification letters when some particular event occurs. These systems also have the capability to call a victim in an emergency, such as when an offender escapes from prison. The Federal system is presently considering adopting such a system.

Notification presents a particular challenge in cases with large numbers of victims. Some cases may involve thousands of victims. Our Federal Justice Department's policy provides that in cases with large numbers of victims, Department employees should use the practical means best calculated to achieve actual contact with and notice to victims. A variety of techniques are available to enable law enforcement personnel to provide adequate notice and assistance to victims in larger cases. The determination of what efforts are sufficient and what types of notice and assistance are appropriate depends largely on the anticipated needs of the crime victims. In addition, law enforcement personnel need to carefully evaluate the type of information relayed and the method of communicating the information to see that notification efforts do not compromise investigations or inadvertently invade victims' privacy.

Identifying the nature of the harm suffered by crime victims is essential to determining the appropriate method of effectuating notice and providing assistance. Victims of violent crimes, for example, may have a high level of need for a wide range of victim services in almost every instance, and so in almost every instance a substantial effort to identify and personally contact victims of violent crime will be warranted, regardless of the number of victims involved. Indeed, law enforcement field offices should consider assessing the possibility of a large scale violent crime occurring within their jurisdictions, identifying the resources currently available to provide victim assistance (government resources and private resources such as the Red Cross) and those resources needed but not available, and developing contingency plans for contacting and providing assistance to mass crime victims should the need arise.

As another example, victims of financial crimes such as telemarketing fraud often suffer significant (to them) harm and have a high degree of need for notice and referral services. Names and addresses of victims of financial crimes can often be obtained from offenders' records, and even in situations where thousands of victims exist it may be appropriate to send individual victims an initial notification letter informing them of the nature of the offense and assessing their interest in receiving future notice and consultation services. Under one Federal law, defendants who have been convicted of offenses involving fraud may be ordered by the court to spend up to $20,000 to provide notice to victims explaining the conviction (18 U.S.C. §3555). Offices that frequently deal with cases involving large numbers of identifiable fraud victims may wish to develop the ability to conduct mass mailings in-house, while offices that do not should locate private companies who can handle sensitive government information and who can assist with the provision of such services when needed.

In other cases involving large numbers of victims, circumstances may require other

methods to provide notice and assistance to the victims. When a crime results in a large number of victims who are likely have suffered significant harm and cannot be readily identified, but who reside in a limited geographic area, a well-publicized town meeting may be an effective way to identify victims, provide victims with notice and pertinent information, and consult with victims concerning the crime and the government's investigation. Still other cases may present a situation where a very large number of victims (spread out over a large geographic area) have likely suffered only minor (to them) financial losses. Under theses circumstances, the use of representative victims, victim proxies (such as organizations that represent the interests of the victim class or actual class-action representatives) or even the general media may be the most efficient method to provide victims with notice and information concerning the crime.

Other techniques, beyond those mentioned above, also exist that can, in certain situations, assist law enforcement personnel to provide large numbers of victims with information concerning the ongoing status of an investigation, prosecution, or detention. For example, toll-free telephone numbers can be established that not only permit victims to call in and get recorded information concerning the status of a matter, but that actually call the victims to alert them to a change in status. With individuals' increasing ability to access the Internet, web sites can be created that contain information concerning the progress of investigations and prosecutions (keeping in mind, of course, that any information that is not for public dissemination should not be posted on the Internet. Items that would normally be appropriate for a press release, such as dates for public court proceedings, are appropriate for the Internet.) Also, private groups that have within their membership a significant number of victims of a particular violation may have newsletters or other methods of informing their members that can be used to provide information about the ongoing progress of a case. Some victims themselves may be willing to assist with preparing and disseminating a newsletter or participating in a phone tree.

C. Right to Attend the Trial

The ability of victims to attend trial proceedings is one of the most significant in the eyes of victims, and one that is very important to ensuring victim satisfaction with the system. In the American judicial system, however, this is a very troublesome right if the victim will also be a trial witness. Under most rules of evidence, there is a rule commonly referred to as the "rule on witnesses". The rule provides that witnesses should be excluded from the courtroom during trial proceedings except when they are testifying. The rule is designed to prevent witnesses from hearing other evidence in the case and then intentionally or unintentionally changing their testimony to conform with the other evidence. Defendants are exempt from this rule.

The states and the Federal government have taken a variety of approaches to try to harmonize the rule on witnesses with the victims' right to attend trial. Some states mandate the exclusion of all witnesses from all proceedings. On the other extreme, some states specifically exempt victims from the rule on witnesses in much the same way that the defendant is exempt. Some states take a middle route, for example, allowing the victim to sit in on the trial after the victim has testified. Overall, the majority of states that give victims the right to attend the trial also give the judge discretion to exclude the victim, either as a witness or to preserve the defendant's right to a fair trial

generally. The defendant's right to a fair trial is guaranteed by the US Constitution, the highest law of the United States, while the victims' right to attend is a matter of subordinate state law. In the Federal courts, victims have a "qualified" right to attend that is, they have the right to be present at all public court proceedings related to the offense, unless the court determines that testimony by the victim would be materially affected if the victim heard other testimony at trial. In 1996, new legislation gave Federal victims an additional attendance right. Federal law now provides that a Federal judge can not exclude any victim from trial if the victims' only role as a witness is testifying at the sentencing hearing. Interestingly enough, this statute was passed specifically to address the attendance issue in a high profile case, the Oklahoma City bombing trial. In that case the victims hired their own attorney and lobbied Congress for permission to attend the trial, even though some of them planned to be sentencing witnesses.

The Oklahoma City bombing trial also was the first to use a closed circuit television link to broadcast the trial to an auditorium so that any victims who wanted to could watch proceedings. That case involved over 2,000 victims and there wasn't enough room in the courtroom for all the victims to observe the trial. In addition, the trial venue was moved from Oklahoma City to Denver, Colorado, some distance away. Many of the victims could not afford, nor did they want to, travel to attend the trial in Denver. So the judge authorized a closed circuit television link between the courtroom in Denver and an auditorium in Oklahoma City. The auditorium was treated like a courtroom and was presided over by a retired magistrate. Grief counselors were available at the site. By all accounts this procedure was highly successful.

D. Right to be Heard

The primary proactive way victims can participate in the criminal justice process is by speaking or submitting a written statement to the court. The most important proceeding for this participation is at the sentencing hearing. Generally, all states recognize that victim input has a proper place in the sentencing process. Our United States Supreme Court, the highest court in the land, has stated:

> "*It is an affront to the civilized members of the human race to say that at sentencing ... a parade of witnesses may praise the background, character and good deeds of the Defendant ... without limitation as to relevancy, but nothing may be said that bears upon the character of, or the harm imposed, upon the victims.*"

Payne v. Tennessee, 111 S. Ct. 2597, 2609, quoting *Payne v. Tennessee,* 791 S. W. 2d 10, 19 (Tn. 1990)

As of 1995, every state allows victim impact evidence at sentencing, either through input into the presentence report or through presentation of a written or oral statement at the sentencing hearing in fact, most states allow both forms. The majority of those states also require the court to consider the victim's statement in making the sentencing determination. Federal statutes require probation officers to prepare presentence investigation reports which include a section on the impact of the crime on the victims.

In a few states, allowing a victim to testify at sentencing rests solely with the discretion of the trial judge, while in the vast majority of states, victim participation through oral impact statements is a matter of right. Many states specifically delineate the information to be included. Typically, states allow evidence of the physical,

mental/emotional, social and economic harm caused to the victim and/or the victim's family. They may also allow the inclusion of the victim's of family's views concerning both the offense and/or offender, in addition to their opinions regarding the appropriate punishment.

In general, victim impact statements may be given by the victim, homicide survivors, or the parent or guardian of a minor victim. Children can submit victim impact statements in a format that is age and developmental level appropriate. Some courts have developed forms for children to fill out with places for children to draw pictures and circle smiley faces or sad faces.

Other stages where states provide for victim impact include the parole release decision, pretrial release decisions, and plea bargain acceptance proceedings. Most states allow victims to present a written or oral statement to the parole board for consideration at the parole hearing. A few states specifically authorize the use of audio or videotaped statements at the parole hearing. Victims' rights to participate at the other stages are much more limited. One of the more controversial proceedings is the plea bargain acceptance proceeding. It is important to note, moreover, that victims' rights laws only afford victims a voice at such proceedings, not a veto.

E. Right to Confer with the Prosecutor

In 1982, the President's Task Force on Victims of Crime recommended that prosecutors consult with the victim during the various stages of the prosecution as one of the objectives included in its proposed guidelines for fair treatment of crime victims and witnesses. Whether it involves the reduction of charges to a lesser offense, dismissal of the case, consideration of pretrial diversion or entry into a plea agreement, giving the victim an opportunity to offer his or her views and concerns assists the prosecutor in formulating an appropriate disposition.

The definition of the term "consultation" anticipates an interactive dialogue between two parties. Its usage by the Task Force reflects an intention that victims be provided with more than just information concerning developments in their cases; it instead encourages prosecutors to actively solicit and consider victims' input before taking dispositive action. Many, but not all states, have attempted to address this issue by adopting statutory provisions mandating meaningful interaction through consultation in accordance with this broader Task Force objective. For example, several states have adopted laws requiring the prosecutor to obtain the views of the victim before a disposition is final and even go so far as to require the prosecutor to certify to the court that he or she has complied with the consultation mandate. However, almost as many states have chosen to limit the prosecutor's responsibilities to informing, notifying, or advising a victim of the action to be taken. It should be noted, however, that in no state has the right to confer been equated to the right to direct the prosecution of the case or veto prosecutorial decisions.

In the Federal system, Federal prosecutors are to use their "best efforts" to see that victims are accorded their right to confer with an attorney for the government. New Justice Department policy, which will go into effect this summer, requires Federal prosecutors to use reasonable efforts to notify victims of and consider their views about proposed plea bargains. In deciding what is reasonable, prosecutors can look at a series of factors including whether the plea bargain contains confidential provisions

such as a cooperation agreement, the number of victims, public safety, and whether the victim may be a witness in the case if the plea bargain falls through.

Hopefully, these guidelines will encourage prosecutors to consult with victims in more cases, while preserving the discretion to withhold that information for a legitimate law enforcement reason.

F. Child Victims and Witnesses

Unfortunately, children are direct victims of a variety of crimes including physical abuse, sexual abuse, exploitation and pornography. Additionally, children witness a broad range of crimes including violent crimes. Too often in the past our criminal justice system has not paid sufficient attention to the needs and welfare of child victims and witnesses, causing serious consequences. Contact with the system aggravated the trauma that the child had already experienced, making it more difficult for the child to participate in the investigation and prosecution of the case and ultimately, making it more difficult to prosecute the case. Basic victims' rights laws apply equally to child victims. In addition, many states and the Federal government have enacted laws to specifically address the issues raised by children's participation in the criminal justice process.

Children receive enhanced protection in some states and the Federal system. For example, in many jurisdictions, the name and identifying information about a child victim is confidential and is not to be disclosed, except in limited situations. All court papers identifying a child victim must be filed under seal. It is a crime of misdemeanor contempt to violate this rule. In some jurisdictions the court may appoint a guardian *ad litem* for a child victim or witness. A guardian *ad litem* may attend all the depositions, hearings, and trial proceedings in which a child participates, and make recommendations to the court concerning the welfare of the child.

Most states have multidisciplinary child abuse teams. These teams are professional units composed of representatives from heath, social service, law enforcement, and legal service agencies to coordinate the assistance needed to handle cases of child abuse. The purpose of multidisciplinary teams is to maintain the credibility and reliability of the child's testimony, as well as to monitor the child's safety and well-being throughout the case. The goals of the multidisciplinary team are:

(1) to minimize the number of interviews to which the child is subjected, to reduce the risk of suggestibility in the interviewing process;
(2) to provide needed services to the child; and
(3) to monitor the child's safety and well-being.

In some situations, the trauma of participating in the trial process can be so great that the child is unable to testify or there is a substantial likelihood that the child would suffer emotional harm from testifying in open court. Technology can come to the rescue in such a situation. In Federal courts, there are two alternatives to live, in-court testimony that can be used when a child is unable to testify because of fear or emotional trauma. In some situations, a child can testify by 2-way closed circuit television. The attorney for the government and the attorney for the defendant are present with the child in a room outside the courtroom. The child's testimony is transmitted into the courtroom for viewing by the defendant, jury, judge and public. The defendant is provided with the means to/of communication with their attorney and the

television transmits the defendant's image into the room where the child is testifying. Another alternative to live, in-court testimony is a videotaped deposition of the child. A judge presides at the deposition and rules on all questions of law just like at trial. The defendant is permitted to be present unless the court finds that the child is unable to testify with the defendant there and orders that the defendant be excluded. The tape can then be played at trial.

G. Restitution

In 1982, the President's Task Force on Victims of Crime called for mandatory restitution in all criminal cases, unless the presiding judge could offer compelling reasons to the contrary. As the Task Force noted, "*the concept of personal accountability for the consequences of one's conduct, and the allied notion that the person who causes the damage should bear the cost, is at the heart of civil law. It should be no less true in criminal law.*" Studies indicate that restitution is one of the most significant factors influencing victims' satisfaction with the criminal justice process. Although restitution has always been available via statute or common law, it remains one of the most underutilized means of providing crime victims with a measurable degree of justice.

Restitution laws have been broadened in recent years and made more mandatory. Historically, only those persons who have suffered physical injury or financial loss as a direct result of a crime have been eligible to receive restitution from the perpetrator for their out of pocket expenses. But as restitution statutes have evolved, definitions of who qualifies and the kind of losses covered have broadened considerably. Today, not only do victims themselves qualify for restitution, but, in some states, family members, victims' estates, private entities, victim service agencies, and private organizations who provide assistance to victims can seek restitution as well. Definitions for compensable losses under state restitution laws have also expanded to include psychological treatment, sexual assault exams, HIV testing, occupational/ rehabilitative therapy, lost profits, moving and meal expenses, case-related travel expenses, and burial expenses.

Most states are making restitution mandatory as part of a criminal sentence. Aside from the direct benefits to crime victims and society that come from restoring the victims' financial losses, there is a growing recognition that holding offenders directly accountable to their victims as part of a sentence has a rehabilitative effect on the offenders themselves. In a recent revision to its restitution laws, the California Legislature noted that "*Restitution is recognized to have a rehabilitative effect on criminals ... [and] restitution is recognized as a deterrent to future criminality.*" The Federal system now has mandatory restitution for most Federal crimes.

Although the law has been in effect since 1996, it has been a challenge to get Federal prosecutors and judges to comply with it. In fact, a recent report by the US General Accounting Office found that less restitution was being ordered in Federal courts after the Mandatory Victim Restitution Act than before the Act. The reason for this situation is not clear but presents us with a challenge for the future.

H. Right to Protection from the Offender

In recent years, reports from the media and law enforcement officials suggest that intimidation of victims and witnesses is on the rise. In addition, the proliferation of youth gangs appears to directly correlate to a dramatic rise in acts of intimidation, as well as acts of violence, against those victims and

witnesses who testify against fellow gang members. Prosecutors and victim advocates have recognized the relationship between measures to enhance a victims' feelings of security and greater willingness of crime victims to cooperate with criminal justice officials and criminal prosecutions. Measures to protect crime victims take varying forms. Many states grant victims a right to protection from the offender, or they provide information regarding the protective measures available. Other approaches include amendment of bail provisions, providing separate or secure waiting areas in court, and various measures to protect victims through the discovery process. Recent bail provisions now include danger to a victim or to the community as a reason to deny release pending trial. In addition, prosecutors have historically requested high bail as a means of keeping intimidators behind bars.

In addition to these legislative measures, many law enforcement and prosecution agencies have developed comprehensive witness security programs. These programs evaluate threats and take actions to improve the security of the victim or witness. It should be noted that the government can not guarantee anyone's complete safety. The government can, however, take steps designed to reduce the risk of intimidation and harassment. Some of these steps include relocating an intimidated witness, preventing intimidation in courtrooms and jails, and reducing community-wide intimidation, In addition, there are many steps that victims and witnesses can take themselves to enhance their security, such as getting an unlisted phone number. Government personnel can assist victims and witnesses with identifying actions that will help.

Relocating intimidated victims and witnesses is one of the more extreme measures that the government can take, however, it is also considered to be one of the most effective. Relocation programs generally fall into three categories: long term, short term, and emergency. Probably the most secure program that exists is the Federal Marshal's Service's Witness Security Program. The Program has very strict entrance requirements and entails a complete change in the participant's identity. Many victims and witnesses are unwilling to enter this program because it may mean that they can never contact family members again. Other permanent measures include relocating a victim's residence. If the victim lives in public housing, the government can request that the public housing authority transfer the victim to another location far away from the victim's present home. If the victim does not then return to the original abode, some measure of safety is achieved. Short term relocation procedures include placing a victim in a hotel, motel, or with out of town family or friends for the duration of the investigation or trial (or perhaps even longer). Emergency relocation usually involves an immediate placement of a victim or witness into a safe house or hotel until more permanent location is secured. The relocation program should be tailored to the individual and the nature of the threat. It is very important that the victim understand that once relocated, he or she can not return to the area where the threat exists.

Gang members and associates of defendants often appear in court to frighten witnesses into not testifying. Because the threat may be very subtle and because judges often feel that the constitutional requirement of a public trial prevents them from removing such individuals from the courtroom, it is often difficult to stop this kind of intimidation. Nevertheless, a number of judges have taken steps to remove gang members from the courtroom, to segregate gang members and other

intimidating spectators, or to close the courtroom entirely to spectators.

Incarcerated witnesses who are targets for intimidation in gang, drug-related cases require special protection, including separation from the defendant within the same correctional facility or transfer to a nearby correctional facility, and separate transportation to court to testify.

V. COMPLIANCE

All of these victims' rights statutes are meaningless, however, if law enforcement personnel and the courts do not follow them. States and the Federal government have struggled with the issue of ensuring compliance with the victims' rights laws. Two unique state programs, the audit program and the ombudsman program offer some ideas about how to encourage compliance.

A. Audit Program

The State of Arizona has a victims' rights State constitutional amendment as well as several victims' rights statutes. The State Attorney General's Office has a component called the Office of Victim Services which is responsible for distributing State victims' rights funds monies and monitoring state and local compliance with the victims' rights laws. By statue, the State Attorney General's Office must report to the Governor and the State Assembly each year on the status of the victims' rights program, the Attorney General's compliance with the program, including the level of service, and the expenditure of all monies. To satisfy this reporting requirement, the Arizona Attorney General's Office developed an audit system to gather compliance information.

The Audit is designed to examine:

(1) the policies and procedures in place in a particular criminal justice office;
(2) check on case file documentation;
(3) evaluate the level of services provided;
(4) resolve any outstanding victim complaints;
(5) gather any available statistics from any tracking or reporting systems in place; and
(6) review the background and training of personnel who are in direct contact with victims.

The Audit process begins with a notice letter sent to particular agency informing it of the date and expected length of the audit (usually one day). Enclosed with the notice is a "pre-audit packet" which asks detailed questions about the agency's policies and procedures, personnel, training and other matters. The agency is required to complete the packet before the day of the audit. The actual audit is conducted at a site visit to the agency. During the site visit, the auditors meet with personnel, conduct file reviews, and perform an exit interview where they discuss their findings. In conjunction with an audit, the Attorney General's Office sends a Victims' Rights Survey to selected victims who have been assisted by the agency. The Survey asks the victims, the consumers of the agency's "product", to indicate whether they received all the victims rights to which they are entitled. Any problems identified through the survey can be addressed during the audit meetings. Finally, the Attorney General's Office prepares an audit report that can be provided to the Governor to satisfy the monitoring requirement. The report also contains recommendations on improving services from that office.

B. Compliance Committee or Ombudsman

Another interesting example are the compliance programs in Colorado, Minnesota, and Wisconsin. Each state has

a slightly different approach to accomplishing the same task; providing recourse to crime victims who feel that their rights have been violated. The differences in the three States' programs are found in their structure and powers. Colorado uses a Victims' Compensation and Assistance Coordinating Committee, which receives complaints from victims. The Committee has power to investigate violations of victims' rights under the State's constitutional amendment and to recommend action with which the agency at issue must comply to rectify victims' complaints. The Committee may also monitor the implementation of the suggestions. When agencies do not comply with the Committee's directives, the matter may be referred to the Governor and/or the State Attorney General for review.

Minnesota has placed oversight in the Office of the Crime Victims Ombudsman. The ombudsman investigates both statutory violations of victims' rights laws and alleged mistreatment by criminal justice practitioners. The ombudsman approaches the enforcement of victims' rights in a neutral and objective manner; acting not as victims' advocates but as advocates of fair government. In addition to responding to requests for investigations by citizens, the ombudsman has the discretion to inspect the actions of agencies on its own initiative and may pursue cases based on reports in the press. The ombudsman's power is limited to investigating alleged abuses and proposing remedies when appropriate. The ombudsman may make public - to both the press and the legislature - his or her findings after an investigation.

Wisconsin has a State level victims service office called the Victim Resource Center. One of the Center's charges is to act as a liaison between criminal justice agencies and victims in resolving complaints concerning unlawful or inappropriate agency action. Center officials may not prescribe remedies for violations of victims' constitutional protections. The scope of their ability to act allows them to investigate complaints and present the victims' concerns to the official whose actions are in question.

VI. VICTIM ASSISTANCE PROFESSIONALS

In addition to the statutory victims' rights that legislatures have been focusing on, the emergence of victim assistance professionals has really improved victims' treatment in the criminal justice process. Many government agencies, especially law enforcement, prosecutor's offices, and parole agencies have created victim and witness assistance units, whose mission is to assist victims through the criminal justice process. Some private agencies also perform this function, particularly in sexual offenses, domestic violence, and homicide cases. There is a real effort in this country to professionalize the victim assistance positions and make sure that the personnel have adequate training to provide needed assistance. A further improvement in child cases includes the hiring of a child interview specialist who can assist law enforcement and prosecutors in a forensic interview of a child that takes into consideration the child's developmental level and psychological state.

VII. THE OFFICE FOR VICTIMS OF CRIME

In 1982, the United States Congress created the Office for Victims of Crime (OVC) to be the national advocate for crime victim's issues. Congress also created a fund, composed of fines from convicted Federal offenders, special assessments and forfeited bail bonds. This money is administered by OVC and primarily

distributed back to the states pursuant to a Congressional formula. Part of the states' money goes to pay direct compensation to victims of violent crime for medical expenses, lost wages, and burial costs. The other part of the states' money goes to support state level victim assistance programs such as rape crisis centers, child advocacy centers, domestic violence shelters and homicide support groups. The remaining money that is not sent to the states is used by OVC to support the Federal government's victim assistance programs in Federal law enforcement agencies and for discretionary grants by the OVC Director. Recently, Congress created a special terrorism fund for use in providing emergency services for terrorism victims which also came out of the fund. These programs are vital as a supplement to the victims' rights provisions that govern the criminal justice system.

VIII. CONCLUSION

Although we have made great strides in the past 17 years in incorporating victims' rights into our criminal justice system, we still have far to go to make the system fair for crime victims. Some provisions work well and some need much more improvement. The task is an important one, however, and essential to maintaining a fair and just criminal justice system.

PARTICIPANTS' PAPERS

THE FRAMEWORK AND CURRENT SITUATION OF CHINA'S CRIME PREVENTION

*Wang Ping**

I. INTRODUCTION

The increase of crimes is a challenge the world faces today. How to prevent and reduce crimes is also an important issue for the Chinese government to tackle. It is also an important issue regarding how to make the offenders, who are under punitive sanction due to their violation of law, completely correct their deviant behavior and conscience, and help them take on the correct ideological and life track to return to society, so as to prevent them from recommitting crimes. This not only requires the government's effort but also the participation of the whole society.

China has 580 million juveniles under the age of 25, accounting for about half of the country's population. The problem with adolescents has always been a focal point in overall control of social public security. Juvenile delinquency has made up 70-80% of all the criminal crimes, which is very serious. Surveys indicate that at the begining of the 1990s, the age of the subject of crime has tended to become younger. Juveniles aged around 18 have become the main body of offenders, most of whom band together to commit crimes and employ similar means to those of adults. How to take effective measures and prevent juvenile delinquency is an urgent problem the Chinese government should solve. Therefore, this paprer shall also discuss the prevention of juvenile delinquency and protection of adolescents in China.

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II. THE PREVENTION OF CRIMES AND PUBLIC PARTICIPATION

China mainly executes the policy of overall control of social public security in the prevention of crimes. That is preventing, controlling and punishing criminal crimes, under the leadership of the government and participated in by all the people of society, by using economic, administrative, legal, cultural and educational means.

To mobilize society to prevent crimes, the most important thing is to have a common understanding. People are prompted to be aware that crimes occur due to extensive social causes. The sole effort of law enforcement is by no means enough to prevent and curb crimes. Only by mobilizing the whole society can this work be done effectively. Second, China has established a complete, systematic and effective mechanism of overall social public security at various levels of the administrative jurisdiction. As a mechanism, it is a macro-social project involving various systems and departments. The departments concerned, which are relatively independent but inter-related, have specific work targets, tasks and methods.

The overall control of social public security is a theory which is promoted by the Chinese government and has been proved correct in practice. An operational framework has been formed on the basis of this theory. Naturally, the great importance attached to this policy by the governments at the central and lower levels, and the extensive participation of

the people, are the premise and basis for establishing and improving this mechanism.

III. MOBILIZING SOCIETY

Joint efforts of the police and the masses, China's judicial system is composed of the public security bureaux, procuratorates and courts. The public security bodies are most closely connected with society. The grass-roots organs of the public security bureaux are the local police stations and the police, which are most closely linked with the local people.

Each street community and village have neighbourhood (villagers') committees, which are the grass-roots public order-maintaining organizations joined in by the people. The residents of these organizations co-operate with the police and are jointly responsible for social stability. In case any sign of crime is detected, most of the initial information of it is provided by these residential organizations. At the same time, legal publicity and law promotion education, especially for youngsters, are done by these grass-roots organizations in co-operation with the public security organs, procuratorates and courts. As a result, the efforts of the police and the participation of the whole society are more systemized and legalized in China.

A. Strengthening Culture and Ethics

Moral education, strict control of social order and purpose management make an important line of defence to prevent crimes. Various measures should be taken to conduct moral education on the premise that persistent efforts must be put on the reform policy and the building of the socialist market economy, in a bid to overcome the negative effect and factors of the market economy, reduce its unfavourable impact on society and optimize the social environment. Methods to do this are:

(i) Intensify control over the cultural market to prevent vulgar, low-taste and pornographic books and journals from flowing into society, while developing and building healthy cultural establishments;
(ii) Strengthen the management of the artistic market, conduct a clean-up and rectification of the ballrooms, film and video halls, game halls and billiard halls;
(iii) Mobilize the whole society to show concern for the growth of youngsters; organize outstanding figures in the older-generation to form associations or groups caring for the younger generation; make use of various forms to enhance the moral education of them;
(iv) Improve the control of over-population. The judicial organs shall obtain information about school dropouts, students with misdeeds, juvenile delinquents and offenders released from labour camps; keep a record about them and determine the key targets who are to be helped and educated on preventing crimes. The transient population shall also be included in this management.

B. Strengthen Education and Management of Adolescents

Effective prevention of crime begins with the prevention of juvenile delinquency. The education of adolescents is a matter concerning the country's future and the flourishing or decline of a nation. Everyone bears his/her share of the responsibility for educating adolescents. One's growth cannot occur without the family, schools and society, which affect early education and growth. Good work in these three aspects would result in the effective

prevention of juvenile delinquency.

1. Attach Importance to the Role of the Family

The Chinese government has been attaching great importance to family construction and improving the quality of parents. The family is what a child first encounters and forms the first line of defence for juvenile delinquency. Family background and parents' speech and image exercise invisible and formative influence over the child's psychology, character, hobbies and even morality. Therefore, the parents should undertake their first responsibility to society, i.e learning how to become good parents and teachers of their children. Family ethical education is of important significance in preventing juvenile delinquency. The specific measures are:

(i) In the countryside, such activities shall be conducted as to encourage farmers to acquire elementary education, learn technologies and share with each other in performance and contributions. In the urban areas, activities to be carried out such as giving commendation to advanced parents and setting up typical model parents;
(ii) Social guidance shall be offered to parents' role in the family to encourage a civilized, healthy and scientific way of life;
(iii) Activities of rich variety are conducted for family ethical education;
(iv) Spare-time parent schools are built so parents shall receive training and learn the correct ways to educate children and have their sense of family education enhanced.

2. Emphasis on Legal Education in Schools

The function of schools is to educate the people. The cultural and ethical education in the schools is of especially important significance. Schools are the second line of defence to prevent juvenile delinquency. At present, most of the college and middle schools are devoting much attention to intensifying legal education and increasing the legal awareness of the students. Legal knowledge has become an indispensable part of the moral education and curricula in the colleges and universities. The purpose of spreading legal knowledge is not only to let the youth know what constitutes crime, but to encourage them to fight against crimes and unhealthy habits and practices. The State Education Commission required that the schools should transfer their purposes of education from examination-oriented to quality education. Now schools have began to stress the students' ethical and moral education in a bid to publicize legal knowledge and prevent and reduce juvenile delinquency.

Through contact with various types of juvenile delinquents, we know that a large number become 'the accused' as a result of their complete ignorance of the law. The people's courts, at various levels, have actively participated in the work of overall control of social public order and publicizing legal knowledge, and exert great efforts in preventing juvenile delinquency in the following two aspects:

(i) Judicial personnel have gone to the schools and communities to give lectures. In Beijing alone, the adjudication personnel of the juvenile courts have given more than 300 lectures to more than 170,000 people in middle and primary schools in the past decade. Some of them have also gone to the parks and streets during holidays to answer people's questions concerning law.

(ii) Courts take part in the activities of broadening and enriching the students' legal knowledge in schools. The schools invite judicial functionaries as the judicial propagandists to explain legal knowledge, help and educate the students involved in illegal activities. The courts offer legal consulting on an irregular basis to assist schools in organizing and drafting plans for law publicity work.

IV. PUBLIC PARTICIPATION IN THE CRIMINAL PROCEEDINGS

A. The Improvement and Perfection of China's Criminal Procedure Legislature

In 1996, China made necessary revision of the Criminal Procedure Law passed in 1979, so as to probe criminal facts more accurately and timely. The revision was made on perfecting enforcement measures, investigative measures, terms of custody and for guaranteeing the rights of participants in proceedings. The revision further clarifies the position and role, division of work and restrictions of public security bodies, procuratorates and courts in the criminal proceedings.

The court hearing methods have been perfected to intensify the defence of the two parties so that the three functions of the procedure - accusing, defending and adjudication - can be better played and ensure that the facts are objectively and fairly judged, and that laws are applied accurately. Let us take a look at the revision of the 1996 Criminal Procedure Law on the system of advocacy. According to Article 33 of the Criminal Procedure law:

> *"A criminal suspect in a case of public prosecution shall have the right to entrust persons as his defenders, from the date on which the case is transferred for examination before prosecution. A defendant in a case of private prosecution shall have the right to entrust persons as his defenders at any time. A people's procuratorate shall, within three days from the date of receiving the file record of a case transferred for examination before prosecution, inform the criminal suspect that he has the right to entrust his defenders. A people's court shall, within three days from the date of accepting a case of private prosecution, inform the defendant that he has the right to entrust his defenders."*

Article 96 stipulates:

> *"After the criminal suspect is interrogated by an investigation body for the first time or from the day on which enforcement measures are adopted against him, he may appoint a lawyer to provide him legal advice, or to act as his attorney to file complaints or charges. Whenever the criminal suspect is arrested, the appointed lawyer may apply on his behalf for obtaining a guarantor and awaiting trial out of custody."*

In accordance with these stipulations, the lawyer may, in a case of public prosecution, be involved in the procedure as a defender as early as on the date the procuratorate receives the file record of a case transferred by the public security body or its investigation organs. While in a case of private prosecution, the lawyer may be involved in the procedure within three days from the date of the people's court's accepting the case. In addition, the lawyers in a public prosecution can also be appointed by the criminal suspects to be the legal adviser, so that s/he may be involved at the stage of investigation and offer legal aid to the criminal suspects.

This is greatly advanced compared with the 1979 Criminal Procedure Law. These revisions push a great leap forward for China's system of advocacy. From the legislative point of view, we can see the current law has greatly enhanced openness and transparency in the pre-adjudication activities such as crime detection, case review and decision-making for prosecution; and has increased the possibilities for public participation to meet the purpose of punishing criminals and protecting the innocent.

B. Mobilizing the Public to Control Crimes

China's Criminal Procedure Law stipulates that: the governmental departments, organizations, enterprises, institutions and critics have the right and are obliged to find out the criminal facts or criminal suspects and bring charges against them to the public security bodies, people's procuratorates and people's courts. These three bodies should accept the charges, accusations and voluntary surrender of the offenders. In each city, and even each district in China, there are mail boxes for accusation reports and hotlines. Once the public discover criminal phenomena, they can report it to the public security bodies, procuratorates and courts in the most convenient way. Since this measure was adopted, many major cases have been detected and adjudicated thanks to reports from the public. At the same time, the strict policy and measures to protect witnesses have guaranteed the safety of witnesses to a maximum degree.

In China, few cases have been reported concerning witnesses' injury by the clients. The departments have been set up in the public security bodies, people's procuratorates and people's courts to accept the reporting of information from the public. If the information is found true, investigation shall begin right away. The reporters shall be given an award. In this way, all the people are encouraged to prevent and punish crimes.

C. Openness and Impartiality of Administration of Justice

According to the current Criminal Procedure Law, the people's courts shall review cases in public. What China's criminal adjudication stresses is the principle of impartiality of the administration of justice and a public trial system. All the criminal judicial proceedings and all the processes and details are open to the public. Residents, with their identity cards, can present at the court as an observer to hear any case being trialed (except those which are not heard in the public). This move, placing China's judicial proceedings under the supervision of the public, is beneficial to judicial openness and impartiality. It is also a good way to spread legal knowledge among the public, which plays an indirect role in preventing crimes. The open trial has increased the transparency of trial work, helped enhance the legal awareness of the citizens and helped democratize the country's judicial system. Reporters can also cover the cases being tried in public.

D. The Trial Procedure for Juvenile Delinquents

The prevention of crimes shall now focus on juvenile delinquency, which has been recognized in many countries of the world. Much has been done and good results have been achieved in this regard in China. This part deals with the participation of courts, society and parents in the trial of juvenile delinquents.

The basic principle of China's dealing with juvenile delinquency is "stressing education while making punishment as the subsidiary measure." This principle has been reflected in Chinese law and the special provisions concerning cases of

juvenile delinquency. China's Supreme Peoples Court in its Provisions on Dealing with Juvenile Criminal Cases emphasized that "*if the appearance in court of a juvenile defendant's adult relatives is beneficial to the trial work and education of the juvenile defendant, they shall be permitted or invited to the court upon approval of the President of the Adjudication division.*" These relatives shall participate in the education of the juvenile defendant. The Judicial Interpretation of the Supreme People's Court on the Applicable Laws on Handling Criminal Cases Involving Juveniles stipulates that for juvenile offenders who are sentenced to criminal detention or imprisonment of less than three years, if they: behave and mend their ways after committing crimes; their families have the conditions for guardianship or the social education measures can be carried out; and the offenders are believed not to harm the society after probation, probation shall be applied to these delinquents. It is quite clear that the public is playing a decisive role in the criminal procedure for juvenile delinquents. The specific measures are:

(i) Set up special adjudication division to handle juvenile criminal cases;
(ii) The trial of the courts shall reflect the principle of "stressing education while making punishment as the subsidiary measure";
(iii) Make trials a medium of education, which runs through the trial process;
(iv) Guarantee to appoint defenders and try to invite the agents *ad litem* to take part in the procedure.

The agents *ad litem* are usually the juvenile defendant's parents, adopted parents or guardians, who bring up or have custody of the juvenile defandants. They mostly have blood relationships or guardianship. They care about the possible punishment the defendants may receive and are keen on saving and educating the defendants. In the trial of a theft case involving a juvenile, one defender said to the defendant: "*You turn around and take a look at your father who has pined away because of you.*" Hearing this, the defendant sobbed too bitterly to speak. Then, the legal agents educated the defendants with strong affection. The education during the trial achieved good results.

V. SOCIETY'S PARTICIPATION IN THE REHABILITATION OF OFFENDERS

A. Widening the Way to Their Return to Society

How to help an offender get back on the right track of life mentally and physically when they are released from the prison (after serving the full term of a sentence) is an important aspect for preventing and reducing recommitted crimes. Since China adopted a reform and opening-up policy, the economic and social structure has undergone great changes. This has brought both opportunities and new challenges to the released prisoners. The challenge is mainly reflected in their employment and the form and content of their education. Merely relying on governments to find them jobs can no longer suit the new situation under the market economy. New channels must be found for employment.

It is the experience of China that, in light of the principle of educating, rehabilitating and redeeming the offender, the released personnel's dignity, morality through education and ability to solve their problems in life are improved. Take Beijing for example, the settlement rate of the returned prisoners has reached 84.6%. The rate in Tianjin is 90%, while in Liaoning Province, the rate is more than 90%. The 'education through helping' has greatly reduced the recommittal rate.

1. Perfecting Legislature and Offering Guarantees

Starting from the 1950s, China has worked out clear stipulations on the employment of returned prisoners. In the 1990s, China established very complete legislative provisions in this respect. Not only has the central government worked out a series of regulations in this respect, the provincial and municipal government also have done the same according to their respective situations. Many townships and villages have also formulated their own rules on settling the released prisoners. The State enterprises have also set rules on employing them. All these measures have provided legal guarantees to the settlement and education of the returned prisoners.

2. Leaders Assume Responsibility to Ensure Participation of Departments

The Chinese government regards the settlement and education of the released prisoner as an important part of work evaluation for regional and department leaders. A leaders' responsibility system has been adopted, linking their performance with their promotion, award or punishment. In Liaoning Province alone, more than 2,500 leaders above the county and division level are engaged in this work. So far, 16 provinces in the country have built provincial-level competent departments to settle and educate returned prisoners.

3. Exploring New Ways for Employment

Under great employment pressure, the government is still requiring local governments to explore new ways for the employment of released people. The main measures are:

(i) Intensifying technical training before they return to society, so that they can acquire one or two practical skills for employment;

(ii) Build bases for the temporary settlement of returned prisoners. In Shanghai, two transportation companies have been built, settling more than 5,000 returned prisoners;

(iii) Give proper preferential treatment to these people;

(iv) Use market fairs to offer employment opportunities. For example, Shenyang has fully employed market fairs as the main channel for offering employment to the returned prisoners. The industrial and commercial administration departments have actively provided convenience and conditions for them to find jobs. In the past three years, the city's various types of markets have employed 2,408 such personnel, who have since then lived a self-reliant and 'getting-rich-through-labour' life.

B. Relatives' Participation in the Rehabilitation of Offenders

The offenders' relatives are encouraged to and supported in keeping contact with the offenders serving a sentence; and co-operate with the educators so that those offenders, especially the juveniles, can feel the warmth of the family. Lots of cases indicate that the family factor is an important factor that leads youngsters to commit crimes, and that also reforms the young offenders. As families emerge in the human society, the attachment to the family has become a common psychological characteristics of human beings; the degrees varying among people of different age groups as well as individuals of the same age group. After being imprisoned to serve a sentence, they lose their freedom and are separated from their families, leading to stronger attachment to their families. Whether the family members care about or visit them will, to a great extent, affect their feelings and psychological state. Therefore, to correct

their anti-social psychology, the prisons and reformatories shall try their best to encourage, support and instruct the offenders' relatives to join in the rehabilitation work, to keep close contact with their children, who would feel this concern and warmth from them.

This is greatly beneficial to weakening and eliminating anti-social psychology. Many persistent offenders and recommitters have thus mended their ways and started new lives. Gao, a young farmer, was sentenced to a three-year-and-six-month imprisonment for theft, later eight years imprisonment was imposed on him for the offence of fleeing and theft. His wife divorced him after he was imprisoned, leaving him a one-year old child, and married another man living far away from her native village. At the time of extreme despair, Gao's brother and his wife frequently came to see him, encouraging him to actively reform himself. They also helped him raise his child, although they had already had two children. Later, his brother died in a traffic accident. His sister-in-law, the widow had to foster the three children on her own. She kept on visiting her brother-in-law confined in prison. Moved by the care from the relatives and educators, Gao devoted himself heart and soul to his reform. In the prison, he was awarded as "excellent cook," "excellent stockman" and "reform activist." According to the verdict of the intermediate people's court, he was released on probation and later married his sister-in-law. With the help of the villagers, he was hardworking and became well-off. They said: "Gao has changed to a hardworking, honest and helpful man."

C. Proper Penalty Methods for Juvenile Offenders.

1. Penalty is Not the Aim

When conditions permit, probation is more frequently adopted in juvenile delinquency cases so the juvenile offenders can return to society after serving part of a term of sentence and reduce unfavourable factors. The probation system is a method to execute punishment on the offenders according to the Criminal Law. Probation is applied to the offenders who are sentenced to criminal detention or to a fixed-term imprisonment of less than three years. Probation may be granted to offenders according to the circumstances of their crime and extent of repentance, and the condition that they shall not do any harm to society after they are put under probation.

Probation for juvenile delinquents can yield more positive effects than for adult offenders. First, they are not isolated from society and their families so that they can adapt themselves to society after long-time imprisonment. Second, families, units, enterprises and communities can also be mobilized to educate and help them. Third, they shall be free from "cross-infection" in the prison, which is helpful to their rehabilitation. From 1987 to 1997, the courts at various levels in Beijing sentenced 9,045 juvenile delinquents. A total of 2,014 of them, who were sentenced to criminal detention or a fixed-term imprisonment of less than three years, were put under probation. They accounted for 22% of the sentenced juveniles, which was more than 10 percentage points higher than the adult offenders.

2. Mobilize Society in Follow-up Education of Juvenile Delinquents

During probation, the courts at various levels shall continue to educate juvenile delinquents, although they are not within the jurisdiction of the courts. Most of the courts have set up files for education and regularly hear reports about the progress of their rehabilitation. By way of practice, not a single case of recommitment of crime has occured if the rehabilitation of juvenile

delinquents is reported to the court monthly.

Before the verdict for probation is given to the juvenile delinquent, the courts shall contact the school and community where the juvenile is to settle in their employment or schooling. At the same time, they shall help the receiving units to build education organizations so that the juveniles under probation can study or work in a good environment. According to the statistics for the past 10 years, of the courts in Beijing, with the help of juvenile courts, 75 of the delinquents under probation were enrolled in colleges or academic schools, and one became a postgraduate student. 207 went to senior high schools, vocational high schools or secondary professional schools.

3. Joint Efforts In and Outside Prison to Educate Juvenile Delinquents

In light of the policy of educating and redeeming young offenders and helping them to change, the courts and prisons co-operate with each other to do educational work. The adjudication personnel also pay regular visits to the prisons and award good deeds done by the offenders in the course of their rehabilitation. In 1991, a major flooding occurred in East China. More than 60 juvenile delinquents at Beijing's Qinghe Farm each donated RMB 30 yuan to the victims there. The people's court of Xicheng District in the city of Zhengzhou held a meeting where local leaders had a good talk with the juvenile delinquents and encouraged them to become useful persons in society. The 12 juvenile offenders were moved to tears and said: *"We committed crimes, but the court and people from our hometown have not abandoned us. They cared about us and arranged visits for us. We shall redouble our efforts in reform and try to perform meritorious service so we can get commutation and probation, and return to society as soon as possible, to make our contribution to the four modernizations of our country."* On the occasion of festivals and public holidays, the adjudication personnel send the juveniles stationary and other gifts to help them to change. As a result, the juvenile offenders are more confident about their rehabilitation now that society has not forgetten about them. The crime recommitment rate in the past ten years in Beijing is around 2%.

V. AID TO VICTIMS AND VICTIMS' PARTICIPATION IN CRIMINAL PROCEEDINGS

China's Criminal Procedure Law regards the victim as a party who is bestowed an independent position in the proceedings. This is to ensure the victim's procedural rights are completely protected. The victim's procedural rights are characterized by independence, transformation, completeness and restriction.

A. Independence

The right to prosecute is an important procedural right of the victim. This right is relatively independent in the criminal procedure. The public prosecution body exercises the power to prosecute so as to safeguard the interests of the State, society and the victim. But it cannot exclude the right of the victim to independently safeguard their own interest on the basis of their individual stand. This point is of great significance to the judicial bodies intensifying the protection of victim's procedural rights.

B. Transformation of the Right

In a case of public prosecution, the right of action rests with the people's procuratorate. The victim has the right to request the bringing of an action. This right means that the victim enjoys the right to, over the facts of crime which infringes upon their personal and property rights, bring a charge and request the judicial

organ to investigate the criminal responsibility of the suspect. If the victim has any objection to the judicial body bringing an action in a case, the victim may use their legal capacity to sue for the right of applying for reconsideration; right to supervise the filing of a case; and direct right of bringing an action. This transformation can be regarded as transforming the right of public prosecution to the right of private prosecution.

C. Completeness of the Right

Whether a victim's procedural right is completely bestowed is an important aspect in evaluating the criminal procedure mechanism. China's current Criminal Procedure, Law reflects the procedural right of the victim all through the criminal procedure, and embodies the completeness of the right. For instance, the law has clear stipulations on the victim's reporting of a case, accusing and private prosecution; bringing supplementary civil action; applying for withdrawal; appointing an agent *ad litem*; appearing in court; lodging an appeal and requesting a counterappeal. China adheres to the principle of State prosecution, and the principle of victim's prosecution is concurrently adopted so that the victim's right to prosecute is guaranteed. At the same time, a mechanism was set up for the right of private prosecution to supervise the right of public prosecution. The stipulation on application for withdrawal can ensure the impartiality of the criminal procedure. The agent *ad litem* system not only further improves China's legal system, but also plays an important role in protecting the victim's legal rights.

D. Restriction of the Right

The Criminal Procedure Law has, necessarily, restrictive stipulations over the victim's procedural rights. In a case of public prosecution, if the victim does not agree with a judgement made at the first instance of the local people's court, s/he has the right to request the people's procuratorate (at the same level) to propose a counterappeal, but has no right to lodge an appeal to the people's court at a higher level.

E. Strengthening Protection of the Victim's Procedural Rights

The victim's independent rights to prosecute are guaranteed in the following aspects. First, in the court hearing, the victim may make a procedural request and proposals different from that of the public prosecutor. The reason is; the victim's independent right make a litigant claim embodies their status as a party in the criminal procedure. Now that the victim is recognized as a party in the procedure and enjoys the independent right to prosecute, therefore s/he shall be permitted to independently make litigant claims favourable or unfavourable to the defendant if s/he believes the public prosecutior makes improper accusations against the crime. This is an important aspect for the victim to completely exercise their power to prosecute. In this way, the victim can join the public prosecution to expose and accuse the crimes more effectively.

Second, an independent seat is arranged for the victims. This not only reflects the victim's procedural position, but also guarantees the victim full exercise of their procedural rights. The victim is seated to the right of the public prosecutor, facing the bar. They are seated on the side of the public prosecutor, not the defendent, to indicate the confrontation between the victim and the accused. Finally, in the private prosecution cases of our country, the victim is responsible for giving evidence. The burden of proof for private prosecution lies with the private prosecutor. This is of positive significance

to increasing the confrontation between accuser and defender, and ensuring that the adjudication body is in the middle.

F. Right to Obtain Legal Remedy

In China, the victim can entrust the lawyer to offer legal remedy. The agent of the victim can fully enjoy the right to act as an agent *ad litem*. This is one of the important ways for the victim to obtain legal remedy. In reference to the Criminal Law concerning the rights and duties of the defence lawyer of the accused, the agent of the victim can consult, extract and duplicate the materials concerned at the people's procuratorate. Upon approval of the witness or other units or individuals, s/he can also collect the materials relating to the case from them. They can also apply to the people's procuratorate and people's court for collecting and obtaining evidence, or requesting the people's court to notify a witness to appear before court.

In China, the attorney-in-fact of the victims, especially the attorney at law, attach great importance to the work of an agent *ad litem* for the victim in cases of private prosecution. Their work helps to ensure the realization of the protection of the victim's rights granted by the Criminal Procedure Law and plays an important role in enhancing the activities of the criminal proceedings.

G. Right of the Victim to Take Part in the Court Hearing

China's Criminal Procedure Law allows the victim to exercise their procedural right during the court hearing. According to the law, the people's court shall, within at least three days before a court is opened, serve a summons to the victim and a notice of appearance is also served to the attorney-in-fact of the victim. As for the right of the victim to apply for withdrawal, application can be made to the Chief Judge for the withdrawal of members of the collegiate bench, the clerks, public prosecutor, appraisers and interpreters. As for the victims' right of *locus standi*, statement can be made on the crime accused by the indictment. As for the victims' right to ask, the victim may, upon approval of the Chief Judge, address questions to the accused, the witness and appraisers. As for right of the victim to air their views over evidence, s/he may put forward their views on; the testimony of the witness who fails to appear before the court; conclusion of the appraisal; record of investigation and other evidentiary documents; apply for obtaining new evidence through appearance at the court by a new witness or apply for reappraisal or investigation. In a private prosecution cases, the victim also enjoys the right to reconcile with the accused on their own or to withdraw the private prosecution.

VI. CONCLUSION

To sum up, this paper, in four parts - crime prevention, criminal proceedings, rehabilitation of the offenders and guaranteeing the rights of the victim - deals with crime prevention, corrections and protection of the offenders, public participation and the joint effort of the whole society in China. The aim is to inform you of the framework and current situation of crime prevention in China, and to study and discuss issues of common interest with friends from various countries, to improve public security.

COMMUNITY INVOLVEMENT IN CORRECTIONS IN HONG KONG

*Tai Kin-man**

I. INTRODUCTION

This paper proposes to outline and evaluate the current community involvement in corrections in Hong Kong. It will focus on corrections under the penal jurisdiction i.e. the Correctional Services Department, and the community based corrections like probation and community service orders, which come under the Social Welfare Department in Hong Kong.

There are at any time over twenty Non-Government Organizations involved in the work of the correctional system in Hong Kong. They are dominated by religious organizations which mostly engage in evangelistic activities. There are others which provide reintegration support, prison visits and counseling services. The Society for the Rehabilitation of Offenders in particular is dedicated to help ex-prisoners' reintegration. It bridges a service gap for adult prisoners most of whom, unlike the young offenders or drug addicts, do not have the benefit of statutory aftercare supervision. The Prisoners' Friends' Association on the other hand is dedicated to providing prison visits primarily to those prisoners who do not receive visits from relatives or friends. There are some 80 members, of whom some two-thirds come from the expatriate community. They can only cater for a fraction of the total demand.

Apart from Non-Government Organizations, private individuals from the community also involve themselves in diverse ways. Services and activities range from evening education classes, hobby classes, sports training, recreation, presentation of certificates and character training. Most involve the young offender programmes which place great emphasis on character training and reintegration. The powerful media has a role too. It has a lot to contribute in promoting public awareness of and influencing public attitudes towards the goals of offenders' rehabilitation. The Hong Kong Correctional Service does recognize the potential for the community to become involved in the work of corrections. It welcomes and actively seeks such involvement.

A. Background

The Correctional Services Department in Hong Kong now operates 21 penal institutions of all types. These include male and female prisons, reception centres, training centres for boys and girls, detention centre for young males, and drug addiction treatment centres. There are currently some 11,423 inmates in all categories.

Inmates discharged from training centres, detention centres and drug addiction treatment centres, as well as young prisoners discharged from prison, are subject to statutory supervision. Aftercare officers provide throughcare during custody and supervision. Aftercare service is available to adult prisoners on a more limited basis under two statutory schemes.[1]

Welfare officers are available in every

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prison and reception centre to look after the welfare needs of all convicted and remand prisoners. Apart from the limited minority who are placed under statutory supervision schemes, adult prisoners having completed their sentence do not have the benefit of an aftercare service. The service gap is basically filled by non-government organizations.

II. COMMUNITY INVOLVEMENT IN CORRECTIONAL WORK

A. Non-Government Organizations (NGOs)

There are at any time over twenty NGOs involved in the work of the correctional system in Hong Kong. A few are dedicated to providing services to offenders. Many have a religious background. A list of the NGOs currently involved is annexed to this paper. Services provided by the NGOs range from practical reintegration support to prisoner visits, or evangelistic activities.

It is noteworthy that the field is dominated by religious bodies. They include various Christian, Catholic, Buddhist and Islamic denominations. After all, offenders are more in need of spiritual guidance for their reform, as well as the spiritual strength, to cope with life in custody. These religious bodies primarily engage in evangelistic activities, their members visiting various institutions on a regular basis to hold religious services and seeing individual prisoners. Some also organize recreation and entertainment for the general prison community on holidays and festive occasions.

One of the largest NGO's dedicated to the field of corrections is the Hong Kong Society for the Rehabilitation of Offenders (SRO). This is a government subvented organization with a long history of association with the system of corrections. Its stated aims are to provide a professional social work service for offenders and discharged prisoners, as well as to establish and maintain centres for case work, counseling, accommodation, employment rehabilitation and recreation for its clientele. Its workers regularly visit various penal institutions to introduce its service to prisoners, especially those prior to discharge. It is by far the single most important NGO filling the service gap in the reintegration of adult prisoners.

B. Prison Visitors

Under the Prison Rules, the Commissioner of Correctional Services may, from time to time, appoint any person interested in the welfare, reform and aftercare of prisoners to be a prison visitor. Indeed, regular visitors from the NGOs are so appointed and issued with prison passes. Worthy of mention are members of the Prisoners' Friends' Association. The Association was first established in the early eighties with the support of the Correctional Services Department. The object was to provide a service of regular visits for prisoners who are in need of friendship with members of the outside community; basically those who do not receive visits from relatives or friends.

Members of the Association come from different walks of life. Interestingly, some

[1] One is the Release Under Supervision Scheme, a parole scheme, which came into operation in 1988. So far, less than 300 have been released under this scheme. The other is the Post Release Supervision Scheme, which has come into operation since December 1996. This scheme is aimed at helping the reintegration of certain categories of prisoners who have completed their sentence. The prisoners have either been sentenced to six years or more, or to a shorter term for specific gang related or sexual or violent offences. A total of 1,142 prisoners have been brought under this scheme as at 15/3/1999 and the success rate of those expired cases is 97.46%.

two-thirds are expatriates of different nationalities. This in part has to do with its history. It more or less began with concerns for expatriate prisoners who had no visits and who were socially handicapped amongst the local prisoners because of the language barrier. The key founding members also came from the expatriate community. With an active membership of some 80 persons, they can still only meet with a fraction of the total demand.[2]

There is perhaps also a cultural factor in the lack of enthusiasm in the local community for this kind of voluntary work. Prisons and prisoners are still taboo to many local people, let alone to go on prison visits. Nonetheless, members of the Association have been doing a commendable service in providing desolate prisoners a link with community, and a friendship that helps ease the deprivations of prison life. Such interactions are perhaps of greater benefit to the social and psychological bearing of the prisoners than one may readily recognize.

Another kind of prison visitor is the more officious Justices of the Peace. It is provided in the Prison Rules that two visiting justices (one official and one unofficial) shall visit each prison at least once a fortnight. The official justices are appointed by virtue of their public office, normally of at least assistant director level in various government branches and departments. The unofficial justices are people of good character and social standing, appointed from a wide spectrum of the community.

Visiting justices are charged with duties to promote the efficiency of the service, to report abuses, to hear and investigate complaints, to protect the general well being of prisoners and to advise on the industrial employment and occupation, with particular relation to their employment on discharge.

The regular visits by justices have become an established part of prison life. Not only do they present a channel for prisoners to ventilate grievances, they also demonstrate a kind of community interest and presence. Given the diverse background and experience of the justices, their advice is highly valued and often provides the spur for improvement in the work of corrections.

C. Personal Encounters with Prisoners

The objectives of the scheme of personal encounters with prisoners are two-fold: through exposure to personal experiences of serving prisoners, the "youth at risk" may develop insight which will become new guidelines for their behaviour. The project may also serve the reciprocal purpose of inducing positive changes amongst the prisoners concerned and may, in the long run, facilitate their rehabilitation.

Target groups participating in this project include students between Form 2 and Form 6, or aged between 13 and 18; clients of outreach social work teams; and youngsters displaying maladjusted behaviour. The project represents a concerted effort in preventing juvenile delinquency. The support of schools, youth centres and parents to the project are determinant factors to its success.

D. Community Services

Other activities to encourage community involvement include community service programmes for young inmates, such as the

[2] A survey towards the end of 1998 found some 1,781 prisoners were not receiving visits from their relatives or friends, and about a third of this number were catered for by members of the Prisoners' Friends' Association.

Duke of Edinburgh Awards Scheme, Outward Bound, Scouting, etc. Continuous efforts are being made to involve more training centre inmates in these activities as community reintegration programmes of the department. In addition, CSD has been arranging for more inmates to take part in personalised social services for the elderly and the mentally or physically disabled before discharge. The Department has also sought assistance from the Hong Kong Council of Social Services to identify more interested welfare agencies for support. The scouts training was set up a decade ago with the personal and financial support of a few dedicated individuals who have maintained their sterling support to this date.

III. CREATING AND SUSTAINING THE INTEREST OF THE COMMUNITY AND GOVERNMENT IN CORRECTIONS

A. General

Correctional services in Hong Kong aims to provide a disciplined but humane environment where inmates can receive appropriate counseling, educational and vocational training, and where they can prepare themselves to return to society as law-abiding citizens upon release. Since it takes time for the community to see how much the correctional programmes can achieve, the positive aspects of correctional work has often been under-assessed, if not totally ignored. In the worst case, correctional work often encounters adverse criticism where the public tends to associate correctional services with media reports on prison riots and escapes.

There are some ideas on soliciting public interest and support for correctional services in Hong Kong. This has a lot to do with promoting public awareness of and influencing public attitudes towards the objective of rehabilitating offenders. Means of achieving this end include the development and enhancement of rehabilitation based programmes, adopting measures to improve corrections-community relations and encouraging community involvement in correctional work.

B. Development and Enhancement of Rehabilitation Based Programmes

The commitment on the part of the Correctional Services Department (CSD) of the Hong Kong Special Administrative Region to rehabilitation is clearly demonstrated by the level of resources that has gone into prison workshops, educational and vocational training, and parole systems. In the financial year 1997-1998, HK$434.1 million has been allocated to rehabilitation programmes, representing 17.4% of the total expenditure of the Department.

1. Rehabilitation Programmes of CSD

The Department has developed a whole range of rehabilitation programmes and services for offenders which are being implemented. Different rehabilitation programmes and supervision schemes address the rehabilitative needs of offenders in different kinds of institutions, such as prisons, detention centres, training centres and drug addiction treatment centres. Education programmes not only provide intellectual training to prisoners, but also serves as a channel for them to touch base with the community. These programmes include evening education classes, correspondence courses and self-study programmes which lead to accredited academic qualifications. Aftercare service is another major aspect of the rehabilitation programmes which facilitates released inmates' smooth transition from custody to freedom, through strict supervision conditions, job placement and guidance to strengthen the

confidence of the offenders. At present, the rehabilitation programme is carried out by 200 professionally qualified CSD officers in different institutions. Over the years, the rehabilitation programmes have evolved and developed. The Department also has its prison chaplains who pay regular visits to prisoners to provide them with spiritual guidance and reintegration support.

2. Research on the Effectiveness of Rehabilitation for Young Offenders

In April 1996, the City University of Hong Kong was commissioned by the Standing Committee on Young Offenders (SCOYO) of the Fight Crime Committee (FCC) to conduct a one-year evaluation on the effectiveness of rehabilitation programmes for young offenders, an area of considerable public interest. The evaluation covers rehabilitation programmes currently run by CSD and the Social Welfare Department (SWD). Areas of study relating to CSD includes detention centres, training centres, youth prisons and halfway houses. The overall objectives are:

- to estimate the functions, characteristics, content, duration and resource input of existing rehabilitation programmes for young offenders;
- to measure the programmes' effectiveness upon the young offenders' completion of treatment;
- to identity factors relating to the success or failure of the programmes;
- to find out favourable or unfavourable conditions in the implementation of rehabilitation programmes; and
- to assess the quality, effect and service gaps in existing rehabilitation programmes based on the responses of young offenders and the professionals involved in providing the programmes and in sentencing offenders.

The research found, on the whole, high satisfaction levels in areas including aftercare services and officers, throughcare services, education, vocational/pre-vocational training, physical, social and mental health. The research has, nevertheless, recommended 30 sets of recommendations to strengthen areas, including educational training, vocational training, services for the families of young offenders, community reintegration, throughcare, half-way houses and a proposed short-term residential programme. These recommendations are now being followed through by the newly established Rehabilitation Division of the CSD, which formulates strategies for the long-term development of rehabilitation programmes and aftercare services, and to better co-ordinate the provision of these programmes and services for both young and adult offenders.

C. Measures to Improve Corrections-Community Relations

1. The Public Relations Unit

The inception of the Public Relations Unit (PRU) in CSD has played a significant role in improving corrections-community relations. A better public information service, with greater transparency, has become the norm in the public sector. It is recognised that the public has the right to know, though sometimes only out of curiosity, the process of rehabilitation. On the other hand, the department is also making use of every opportunity to inform the public of its operations in order to enhance departmental image.

The functions of the PR Unit include disseminating information to the media via press releases, arranging interviews with senior management staff on specific topics relating to the Department, and organising press visits to penal institutions. Media contribution in shaping public opinion,

values and attitudes (towards creating a positive image of the Department) are notable. CSD is well aware of this potential and so works closely with the local media through its PR Unit.

Press conferences, press statements and media visits to penal institutions are the means to inform the community on the work of corrections, and help promote a more positive public image of the Department. On the other hand, major PR events such as the Department's annual parade, autumn fair, scout rally and Staff Training Institute (STI) open day, which forms part of the recruitment campaign, are organised for the public. The opening of new facilities, education certificate presentation ceremonies, and prison visits by prominent public figures also provide good publicity. These activities assume profound significance in linking the community with the Department and help to shape public attitudes towards the nature and goals of correctional work.

Since January 1998, information about CSD ranging from historical events, facts and statistics, news and events of individual institutions on special topics relating to prison development projects can be accessed through the Department's homepage on the Internet. This provides an additional channel to communicate with the public who may be interested in the work of the Department.

2. The Complaints Investigation Unit

On the operations side, the setting up of the Complaints Investigation Unit (CIU) as the Department's independent mechanism to redress grievances from inmates, staff and the public, is another measure to enhance corrections-community relations. The creation of the Unit, which is headed by an Assistant Commissioner and staffed by teams of trained officers, is expected to inspire greater public confidence in the impartiality of complaints investigation.

IV. SERVICES FOR OFFENDERS PROVIDED BY THE SOCIAL WELFARE DEPARTMENT

A. Objective

Offenders' rehabilitative measures, to be effective, should incorporate means to guide them onto the right track, prevent them from committing crimes again, and assist them to start afresh so that they can become not only lawful citizens, but also contributing members of society. The overall objective of the services for offenders is to help them become law-abiding citizens and reintegrate into the community. This is achieved through both community-based and residential services, adopting social work approaches. It is hoped that through proper supervision, counseling, academic, pre-vocational and social skills training, the offenders will be equipped with the necessary skills to deal with life demands.

B. Means

This objective is achieved through the following means :

- discharging statutory responsibility;
- probation service;
- administering community service orders;
- community support services;
- remand home services;
- residential training services;
- improvement measures; and
- assisting the magistrates through the Young Offender Assessment Panel.

C. Statutory Responsibilities

The Department is responsible for discharging statutory functions within the framework of the following ordinances :

- Juvenile Offenders Ordinance, Cap. 226

- Probation of Offenders Ordinance, Cap. 298
- Community Service Orders Ordinance, Cap. 378
- Reformatory Schools Ordinance, Cap. 225
- Protection of Children and Juveniles Ordinance, Cap. 213
- Immigration Ordinance, Sec. 35(1) of Cap. 115

D. Probation Service

During 1996/97, 162 probation officers served all the magistracies, the District Courts and the High Court, as welfare agencies. The Department prepares social inquiry reports on offenders, long term prisoners and petition cases. These reports provide information on the offender's background to facilitate the court's and concerned parties' decision on suitable sentencing options for disposal of the offenders.

Probation officers also supervise offenders (of all ages), who are placed on probation, to comply with the requirements of the probation order. 12,520 probation officer's reports were produced and 7,643 clients were served in 1996/97. Out of the 3,659 cases completed, 2,779 probationers (75.9%) satisfactorily complied with the conditions of the order. The 880 probationers who failed to comply with the requirements of their probation orders were referred back to the courts for re-sentencing.

To promote greater community involvement in the rehabilitation of offenders, volunteers (under the Volunteer Scheme for Probationers) befriended 71 probationers/residents of correctional homes and helped them carry out activities and programmes to serve the community.

E. Community Support Service Scheme

A pilot community support service scheme was introduced in December 1994 to help rehabilitate juvenile offenders through a community-based treatment programme. The programme provides structured day-training, such as social groups, community service projects, job training packages and counseling groups, to stimulate young offenders' interest in school or work and to develop their social skills. During 1996/97, groups were formed for 312 probationers/dischargees of residential homes for juvenile offenders, and 155 family members.

F. Community Service Orders

A community service order may be made against an offender of or over 14 years of age convicted of an offence punishable with imprisonment. The offenders perform unpaid work of benefit to the community for a number of hours, not exceeding 240, within a period of 12 months. The probation officers will assess the suitability of the offenders for performing such work, as a rehabilitation/sentencing option.

During 1996/97, 2268 social inquiries were conducted and 882 orders were made. Out of 745 cases completed, 662 (88.9%) offenders satisfactorily rehabilitated themselves through the 105 group projects and 15 single placements organized in 112 centres of NGOs and government departments.

G. Post-Release Supervision of Prisoners Scheme

The Post-Release Supervision of Prisoners Scheme commenced operation in December 1996. It is implemented jointly by staff from the Correctional Services Department and the Social Welfare Department to provide statutory supervision for certain categories of discharged adult prisoners. The officers

conduct interviews with the prisoners in penal institutions well before their discharge to prepare them for their return to the community, and to pay regular visits to the supervisees at their home/workplace to help them rehabilitate and reintegrate into society. Employment, accommodation, financial assistance, and counseling are rendered. During 1996/97, 141 ex-prisoners have been placed on supervision.

H. Remand Home/Place of Refuge Service

Children and juveniles who require short-term remand/place of refuge facilities are now accommodated in Pui Yin Juvenile Home, Begonia Road Boys' Home, Pui Chi Boys' Home and Ma Tau Wei Girls' Home, which provided 281 places and had a total of 3746 2new admissions in 1996/97.

These homes provide temporary custody, assessment and care to offenders aged 7 to 16, illegal immigrants aged 8 to 18, and children/juveniles in need of care or protection aged 8 to 18, including children/juveniles with a physical disability aged 9 to 18, and those with a mental disability aged 5 to 18.

Various kinds of developmental and therapeutic activities, e.g handicrafts, domestic skills, family life education, social skills, etc, are arranged to keep the residents meaningfully occupied during their stay in the homes. Young offenders requiring residential training are accommodated in the below-listed homes.

I. Residential Homes for Offenders

The period of placement in probation homes/hostels ranges from six to twelve months, with a period of aftercare supervision in the community. The period of reformatory school training ranges from twelve to eighteen months, followed with eighteen months of aftercare supervision in the community. Counseling and training programmes in academic studies, prevocational and social skills are provided. There were 305 new admissions in 1996/97. The reprovisioning project for Begonia Road Boys' Home (to improve service standards) is under smooth progress. The construction work is anticipated to be completed in 1998/99.

J. Young Offender Assessment Panel

The Young Offender Assessment Panel is a special board with panel members drawn from the Department and the Correctional Services Department to provide co-ordinated professional views to magistrates in the sentencing of young offenders aged 14 to 25.

In 1996/97, 55 magistrates and seven judges made a total of 473 referrals to the Panel. 462 panel cases were disposed of by magistrates and the panel's recommendations to the courts had an acceptance rate of 84.2%.

Nature	Name	Capacity
Probation Home	Begonia Road Boys' Home	80
	Fanling Girls' Home	20
	O Pui Shan Boys' Home	48
Probation Hostel	Kwun Tong Hostel	60
Reformatory School	O Pui Shan Boys' Home	48
	Castle Peak Boys' Home	75

V. SUMMARY

The benefits of community involvement in corrections are manifold. First and foremost is the tapping of community resources. They include not only the direct human resources, but also the professionalism and the organization which allows such resources to be used to best effect. Without community involvement, the government will either have to directly or indirectly provide resources, or accept that such services will not be provided at all, or provided on a reduced level or scale. Even if the government is prepared to substitute community resources, it may not be as cost effective because it is not geared to provide particular kinds of services.

Secondly, the very nature and diversity of community involvement is not what government officials and money can deliver. The effects on, and acceptance by, prisoners are peculiar to the people involved, by the very fact of their being members of the community or particular sectors of the community. Thirdly, the more extensive community involvment in corrections, the greater the community awareness of issues of corrections, and the more likely community attitudes will support offenders' rehabilitation.

The Hong Kong Correctional Services is well aware of the benefits of community involvement. It welcomes such involvement and it does everything possible to support and facilitate such involvement. It is also constantly watching out for new opportunities to enlist greater community involvement. Having said all that, it must be conceded that the current extent of involvement by the local community is still relatively limited. What can be done is limited by the community resources actually available and to a far greater extent, the prevailing attitudes of the community at large. Hong Kong is renowned for its materialism and brisk pace of life, rather than for its community spirit. Doing voluntary work for offenders is not the dream of many and community attitudes do not change overnight.

Looking ahead, the Hong Kong Correctional Services should continue to build on the community involvement it has already secured and to actively promote community awareness of the goals of corrections and the role the community can play.

List of NGOs involved in the Correctional System in Hong Kong

1. The Society for the Rehabilitation of Offenders Hong Kong
2. Prisoners' Friends' Association
3. Caritas Lok Heep Club
4. The Hong Kong Christian Kun Sun Association Limited
5. International Social Service Hong Kong Branch
6. Shuval Israel Centre
7. The Alliance Bible Seminary Student Evangelistic Band
8. Christian Prison Pastoral Fellowship
9. Hophzibah Evangelistic Centre
10. Aberdeen East Congregation Jehovah's Witnesses
11. Mother of Good Counsel Parish
12. Lotus Buddhist Association
13. Hong Kong Buddhist Association
14. Hong Kong Ling Yan Pentecostal Holiness Church
15. Good Shepherd Siaitere
16. Buddhist Library of China
17. Pentecostal Church of Hong Kong
18. Christian & Missionary Alliance Church Union of Hong Kong
19. The Leprosy Mission
20. The Islamic Union of Hong Kong
21. Land of Virtue Buddhist Centre
22. St. Augustine Youth Association
23. Canossian Micsrons

PARTICIPATION OF THE PUBLIC AND VICTIMS FOR MORE FAIR AND EFFECTIVE CRIMINAL JUSTICE ADMINISTRATION

*Ghazali bin Hj. Md. Amin**

I. INTRODUCTION

In any civilized society of today, the word justice (or injustice) refers to the rules and procedures that characterize social practices which are applied to the actions of individuals who participate in these practices. When we speak of a breach of the rules of 'natural justice', we are referring to arbitrariness suffered by an individual in a ruled-governed process (Barry P. Norman, 1955; An Introduction to Modern Political Theory; p.149). Thus, when we talk about justice, it implies equality before the law, otherwise certain forms of inequality are arbitrary and unjust.

As Rawls himself says, *"Justice is the first virtue of society"* (Rawls, J.; 1972, The Theory of Justice p.3) and most people would agree that, although a society may exhibit other moral values than justice, a society characterized by injustice would be especially blameworthy. Not only is it right to act justly, it is also specifically wrong to act unjustly.

II. DEFINITIONS OF JUSTICE

The Webster dictionary defines justice as the administration of law, authority or jurisdiction in conformity with moral principles or law. According to Barry, the conventional accounts of justice normally begin by stating a fundamental rule that derives from Aristotle. The theory is that justice means treating equals equally and unequals unequally, and that unequal treatment should be in proportion to the inequality (Barry P. Norman; Modern Political Theory; 1995; p.153).

III. DEFINITIONS OF THE CRIMINAL JUSTICE SYSTEM

Newman D.J defines the criminal justice system as, *"a system that enforces traditional systems, analysis of which includes describing the structural inter-relationship of legislative, appellate court, enforcement and administrative agencies, as well as their corresponding process of decision making from the arrest of suspects through charging, adjudication, sentencing, imprisonment and release on parole"*. Reid (1982) defines the criminal justice system as, *"the agencies responsible for the enforcement of criminal law including legislation, police, courts and corrections. Their processes of decision making consists of the prevention, detection and investigation of crime; the apprehension, accusation, and detention and trial of suspects; the conviction, sentencing, incarceration or official supervision of adjudicated defendants"*.

IV. EQUALITY IN THE MALAYSIAN CONTEXT

In Malaysia, a similar expression is found in Article 8(i) of the Federal Constitution, which guarantees that: *"All persons are equal before the law and entitled to the equal protection of the law."* This expression of "equal protection of the law", was implanted in tote (derived form) from Art.14 and Art.4 of the Indian and

* Superintendent, Public Relations, Royal Malaysia Police, Malaysia.

Pakistani Constitution, respectively. It must also be mentioned here that although the Reid Commission in 1957 felt that fundamental individual rights were already established throughout Malaysia, nevertheless they felt that there should be a constitutional safeguard because of apprehensions about the future [Federation of Malaya (Constitutional Commission, 1956-1957 Report, Paragraph 161)].

V. POLICE ROLE IN THE CRIMINAL JUSTICE SYSTEM

Police are one of the integral components of a criminal justice system. The police are always refered to the "long arm of the law", "law enforcers", as well as "peace mediators". In the course of the execution of their official duties, there may be some shortfalls or flaws in police actions. Such police actions are pertaining to sections 3(3) of the Police Act, 1967; sections, 15, 28 and 117 of Criminal Procedure Code (Arrest); sections 54 and 62 CPC (Search); and sections 387 and 388 CPC (Bail). If police personnel, are '*ultra vires*' of their official jurisdiction in the course of performing their duties, or contravene any of the above mentioned sections of law, their actions, if done without due care and proper accountability, may result in a miscarriage of justice on the part of the persons concerned.

As Alan E. Ellis said about law and justice, "*The concept of law, using law and law enforcement, is only part of the large idea of justice.....Justice includes the use of law and it can't really exist in society without order. But the idea goes beyond both law and order. It is close to what might be called fundamental fairness, liberty or almost moral decency.....*".

As law enforcement is the most critical and visible component of the criminal justice system, the police, in executing their official duties, must ensure that any shortfall in police action does not result in "justice denied" to the person concerned. In order to ensure and guarantee that justice is neither delayed nor denied, Vincent Ng Kim Khoay, J.C. in *PP v Lee Eng Kooi* (1993) 2 AMR (Supp. Rep) 480 rightly said, "*Public interest consideration demands that criminals are apprehended, rightly charged, fairly tried, justly convicted and appropriately sentenced. It is only through an interplay of good law officers (police), honest and able DPPs, ethical lawyers and competent magistrates and judges that these essential links in the administration of justice and maintenance of law and order are ensured for society. A shortfall in any these links hardly serves the public interest*".

VI. PUBLIC ALSO HAS A ROLE TO PLAY IN CRIME PREVENTION

The surge in the crime rate last year, as revealed by the police, is a reminder that the people must never take safety and security for granted. According to statistics, the crime index rose from 87,902 cases in 1996 to 121,176 in 1997 (index crime is made up of violent and property crimes). Policing say the increase was significant, compared with the rise of 6,681 cases or 8.23% in 1996 from 81,221 cases in 1995. In 1997 property crime topped the list with 104,257 cases, an increase of 28,695 or 37.98%. The police had solved 17,824 property crimes and 7,916 violent crimes. In the wake of these statistics, questions have been asked as to whether we have done enough to prevent crime. While we recognise that the police have a major role to play, the responsibility is not ours alone. One leading newspaper recently pointed out that while Malaysia is a comparatively safe country to live in, its citizens and residents should remember that these are extraordinary times.

VII. COMMUNITY CRIME PREVENTION : WHY IS IT IMPORTANT ?

Community crime prevention means people sharing the responsibility for making the place where they live more secure. It doesn't mean taking on the role of the police, but using valuable police resource more effectively.

The premise for community crime prevention is the same as for any community endeavour - when people pull together to solve common problems, much is possible. Since residents know their own communities better than anyone, they can often find solutions ideally suited to the social and cultural identity of their community.

Obviously, for a community to undertake a successful crime prevention program, an organized approach and a strong sense of commitment are needed. In most communities, there are individuals and groups with a proven track record of organizing any number of local projects. Frequently these people are leaders and volunteers alike and will have a long-standing commitment to improving the quality of community life.

A growing number of community-based organisations are now taking action or looking for ways they can be involved in crime prevention programs. Some take part in programs such as Neighbourhood Watch. Others are creating new programs designed to meet the specific situation in their community.

VIII. COMMUNITY POLICING/ ACTIVITIES FOR ENHANCING PUBLIC AWARENESS

A. Malaysia Crime Prevention Foundation (MCPF)

The Malaysia Crime Prevention Foundation (MCPF) was established on 12 January 1993. The launching of the Foundation was officiated by the Honourable Prime Minister of Malaysia, Dato' Seri Dr. Mahathir Mohamed, who is also the patron of the Foundation.

1. Objectives

(i) The Foundation aims to contribute to the enhancement of effective measures for crime prevention and the treatment of offenders by way of survey, research and other programmes. This is the basis of solidarity and mutual co-operation among persons involved with criminal justice system in countries of the Asian region; pursuing the ultimate goal of peace and stability in the region.

(ii) The Foundation shall also promote public awareness of, and participation in, crime prevention efforts in tandem with the co-ordinated efforts of government and private organisations interested or involved in crime prevention and the criminal justice system.

(iii) The Foundation shall receive and administer all funds for the fulfilment of the above objectives for the benefit of all Malaysians, irrespective of race, creed or religion.

2. Activities

In furtherance of its declared objectives, the Foundation shall undertake the following activities:

(i) Organise, co-ordinate, promote activities and assist other organisations, institutions, bodies and persons for the purpose of crime prevention.

(ii) Organise or assist in organising public lectures, training sessions, symposia, seminars, exhibitions and other meetings concerning research, training and public enlightenment and awareness in connection with crime prevention and the treatment of offenders.

(iii) Conduct, assist or encourage such activities as surveys, research and related activities in the field of crime prevention and the treatment of offenders.

(iv) Publish and distribute pamphlets, periodicals and other relevant literature to expound the aims and objectives of the Foundation, subject to the prior approval of the relevant authority.

(v) Publish, exchange and distribute documents and source materials concerning crime and criminal justice, mainly in Asia.

(vi) Send, invite, assist in sending or inviting researchers and experts in the field of crime prevention and the treatment of offenders, regardless of their place of residence.

(vii) Assist the activities of those who work for the rehabilitation of victims, offenders and former offenders in Malaysia.

(viii) Collaborate and co-operate with other related organisations inside and outside Malaysia, particularly the United Nations Asia and Far East Institute for the Prevention of Crime and Treatment of Offenders (UNAFEI) and other similar regional organisations.

(ix) At least 70% of all income of the donations to the Foundation shall be utilised for the fulfilment of the declared objectives of the Foundation.

(x) Collect and receive grants, endowments, donations and legacies from individuals or organisations or from any other source for the promotion of the objectives of the Foundation.

(xi) Solicit funds to support and sustain non-commercial activities organised in fulfilment of its declared objectives.

(xii) Generate income by utilising not more than 30% of all income and donations to the Foundation in short-term investments, the profits of which shall be used solely to fulfil the objectives of the Foundation.

(xiii) Contribute towards the rehabilitation of and assistance to the victims of crime, where such assistance is considered by the Foundation to be appropriate according to the merits of each case.

3. Membership

(i) *Ordinary Members*: All individuals whose applications for membership have been approved by the Executive Council. A university or university college student may become a member with the prior approval of the vice-chancellor of the university concerned.

(ii) *Honorary Members*: Individuals who have been considered by the Executive Council to be appropriate because of their outstanding contributions to the activities of the Foundation.

(iii) *Corporate Members*: Duly constituted associations, clubs or other similar bodies interested in or contributing to the activities of the Foundation and considered by the Executive Council to be appropriate for the honour.

(iv) *Life Members*: The Executive Council may, in its absolute discretion, grant life membership to members who have made outstanding contributions to promote the activities of the Foundation.

The Executive Council may fix an entrance and subscription fee for members and may, from time to time, vary the same, subject to the approval of the Registrar of Societies. The entrance fee shall be RM20.00 and the annual subscription fee shall be RM30.00. Corporate members shall pay an entrance fee of RM2000.00 and annual subscription fee of RM2000.00.

The Executive Council shall have full power and discretion to approve or refuse applications for membership to the Foundation. Only ordinary members, life members and representatives of corporate and associate members are eligible to vote and be elected or appointed to the Executive Council. Each corporate and associate member may nominate a number or representatives, as determined by the Executive Council, to participate in the activities of the Foundation. Corporate and associate members are each eligible to a single vote.

Membership sall be terminated on the following grounds:

(i) When the member resigns their membership from the Foundation;
(ii) On their demise;
(iii) When the member has been dismissed from being a member.

A member intending to terminate their membership shall submit a written notice of intention to the Chairmam of the Executive Council. The Executive Council may dismiss a member from membership in any one of the following circumstances:

(i) When a member has damaged the reputation of the Foundation or acted in a manner prejudicial to the objectives of the foundation;
(ii) When a member has acted against their membership obligations;
(iii) When a member is conspicuously in default of membership dues and continues to neglect the reminders for payment.

No subscription or part thereof, nor entrance fee, if any, shall be returned to a member upon ceasing to be a member by resignation, expulsion or termination of his membership. The Foundation is not under the purview of the police, even though it has police officers within it. It is an NGO.

B. Central Monitoring System (CMS)

The Malaysia Crime Prevention Foundation (MCPF) is going all out to reduce crime in the country. Two of its current projects are the Central Monitoring System (CMS) and Safe City Concept, which are aimed at making it more difficult for people hoping to embark on a life of crime.

One of the main projects of the foundation is the implementation of a crime-fighting tactic known as the Central Monitoring System (CMS) which will allow the public to actively in combating house break-ins. With the CMS, the government won't have to recruit more police personnel and incur extra cost, especially at a time when austerity drives are being adopted nation-wide. Even if the economy was still

bullish, the public must play its part in order for the police to effectively combat crime.

The public expects the police to be responsible for ensuring everybody's safety; it is impossible. With our nation's current population of 21 million, the ratio of police personnel to civilians is 1:273. The logistics of this ratio are indeed a handicap. There is no way everybody can be protected all the time. Based on limited human resources, the best that the police can do is introduce efficient crime-busting systems, step up patrols and quickly respond to distress calls.

At one time, we had neighbourhood watch groups such as *Rukun Tetangga*, but they fizzled out. People are either too busy with their daily affairs or do not want to spend time on such activities. The CMS will be implemented at the planning stage of a housing scheme or township and will represent a partnership between the developer, police and residents. The first scheme to go online with the system will be *Bandar Utama Damansara* in Petaling Jaya. When operational sometime this year, this upper-middle class residential estate will be the test-bed for an array of hi-tech equipment and newly devised laws. The CMS uses a sophisticated computer system with a control or operations room which is connected to the houses of subscribers. In the event of a beak-in, sensors or cameras trigger off a signal in the control room. The control room will be monitored by watch-constables who are trained to respond immediately to any intrusion.

The watch-constable won't be run-of-the-mill security guards. Under Section 9 of the Police Act, they will be empowered to arrest suspects. This will make it easier for them to carry out their duties. The police force will give support to the watch-constables. For example, if an alarm goes off in a house, a watch-constable will notify the police before rushing to the scene. But if he arrives first, he can apprehend the unauthorized intruder. The watch-constables will be under the direct employ of the security company operating the CMS on behalf of the housing developer. However, the police will monitor their selection. They will have to undergo training at the Police Training Centre (Pulapol) and come under the command and control of an area's OCPD.

As for the cost of the CMS, any service rendered will have to be paid for. The cost will be a nominal monthly fee, which will vary depending on the type of system installed. With wide usage, we believe the cost of installing a CMS will be reduced, as was the case with hand-held phones, which are much cheaper now than when they were first introduced. In time, it my become a necessity rather than a luxury. The CMS will give house owners total peace of mind. It is actually a system which provides on-line communication, protecting homes against intrusion by unauthorised persons.

State-of-the-art onsite sending devices will alert trained personnel who will monitor a control room 24 hours a day. They can then take immediate action should the need arise. Most CMS stations are also equipped with monitors to enable the controllers to view clients' premises, thereby helping to minimise the time taken to check the status of an alarm. Such monitoring can be done by installing special cameras with infrared sensors in strategic locations such as the living room, kitchen, staircase and study.

Every case will be investigated immediately, but only in genuine situations will clients be alerted and call the police for back-up. If the police come, watch-

constables will assist in giving them an account of the burglary progress and location in the house. This will help the police to act fast and accurately.

The government will be careful in the selection of firms participating in the CMS programme. Any security firms intending to appoint watch-constables will have to apply to the Home Ministry for a licence. Only when the Ministry is satisfied that the applicant fulfils all its requirements will it grant approval.

C. Safe City Initiatives

The MCPF, spearheading the move to ensure safety in the cities, was formed in 1993 to promote greater social and public involvement in crime prevention. Its current chairman is Education Minister, Dato' Sri Mohd. Najib Tun Abdul Razak.

1. Background

The Safe City Initiative is based on the principle "prevention is better than cure". This crime prevention approach is through environmental design. It is based on the principle that crime prevention is achieved by reducing the opportunity to commit crime. In the United States, crime prevention is by reducing the opportunity to commit crime. In the United States, criminal psychologists have proved that 75% of crime is from victims behaviour which encourages criminals to commit crimes against them. For instance, most of the robberies and highway crime happen because of opportunity, not because it was professionally planned.

Based on the above, it was decided that prevention requires a physical environmental design which can generate social behaviour that can deter criminals from committing crime. This physical environmental design is consistent with the predictable relationship between human behaviour and the environment in which that behaviour takes place. The Safe City Initiative is an approach that can be used to create a physical environment that can help in crime prevention in developing areas. It is a programme with integrated activities towards creating, or at least reducing the fear of, a city that is free from crime.

The Safe City Concept, involves the envelopment of a certain area. It involves how buildings and structures are to be built to prevent crime. Example: how advertising boards are put up on pedestrian crossings. If it is all blocked when you use the crossing, nobody can see you when you are robbed. Transparent advertisement boards should be used instead. This in just one small part of the Safe City Concept. Where trees are planted is also important- overgrown bushes should also be avoided because these can act as an ideal place for criminals to hide. Studies from some European countries and North America have shown that the way towns and estates are designed is seen to have an affect on the crime rate.

Besides that, it has been shown that the way a town is designed also results in families being more friendly with each other, reducing the rate of crime because they will watch out for each other. Under the Safe City Concept, safety lanes for bicycles and motorbikes, and safer roads will be built. It is holistic concept to make living in the city safer.

Experts within the MCPF, like the director of the Town and Country Planning Department of Selangor, who is an exco member, is working on the Safe City concept. Developers are also updated on the State City Concept.

The MCPF is also involved in researching the field of crime prevention, and sometimes invites experts from

different parts of the world to give talks on new insights on fighting crime. The foundation is not under the purview of the police, even though it has police officers within it. It is an NGO.

We hope that in the future the MCPF will almost be exclusively made up of non-police personnel, except for the post of duty chairman who must be the IGP. The latter's presence will ensure police support and supervision of its crime prevention project.

2. Characteristics
- Partnership between government and citizens, especially marginalized groups;
- Prevention of criminal behaviour through environmental design, community development and education;
- Combine citizens in crime prevention and instil neighbourhood spirit; and
- Urban safety as a catalyst for change.

3. Schedule of Activities
(i) Selection of project area, introduction to project area and target group;
(ii) Explanation of concept to target group;
(iii) Formation of the Safe City Committee for project area;
(iv) Identification of issues/problems/ crimes by target group and Committee;
(v) Solution to issues/problems by target group and Committee;
(vi) Engagement of consultant if necessary;
(vii) Implementation of solutions;
(viii) Monitoring effectiveness of solutions;
(ix) Modifications of solutions if necessary;
(x) Documentation of project activities; and
(xi) Continuous monitoring and feedback.

4. Safe City Initiatives of Bangsar Zone

The Malaysia Crime Prevention Foundation (MCPF), chaired by the Honourable Dato' Sri Mohd. Najid Tun Abdul Razak, has decided to implement the Safe City Initiative to combat crime in Malaysia. A special committee was formed to study in detail its implementation. On June 2nd 1998, the MCPF Exco meeting decided the two pilot projects, i.e in Bangsar and Cheras Flats in Kuala Lumpur, be implemented. Both projects will be made models for future implementation in all states.

Safe City Initiative' Bangsar Zone comprises of the following areas:

- Sri Hartamas Residence Area
- Bukit Bandaraya Residence Area
- Bangsar Baru Residence Area
- Lucky Garden Residence Area
- Bangser Park Residence Area
- Bangsar Baru Town Area

IX. PUBLIC PARTICIPATION & CO-OPERATION IN CRIMINAL JUSTICE PROCESSES

A. Investigation

1. Arrest by Private Persons (SEC. 27 CPC)

Any private person may arrest any person who, in their view, commits a non-bailable and seizable offence, or who has been proclaimed under section 44, and shall without unnecessary delay take the person so arrested to the nearest police officer or, in the absence of a police officer, take such person to the nearest police station.

2. Information (SEC. 107 CPC)

(1) All information relating to the commission of an offence, if given

orally to an officer in charge of a police station, shall be reduced to writing, or under direction, and be read to the informant.

(2) All such information shall be entered in a book to be kept by such officer, who shall append to such entry the date and hour on which such information was given, and whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it.

3. Police Power to Require Attendance of Witnesses (SEC. 111 CPC)

(1) A police officer making an investigation under this chapter may, by order in writing, require attendance before themself of any person being within the limits of the police district in which s/he is making an investigation who, from the information given or otherwise appears to be, acquainted with the circumstances of the case. Such persons shall be, required under this section to perform a journey of more than seven miles from their usual place of abode, exclusive of such portion of the journey as may be performed by train or motor car or other vehicle.

(2) If any such person refuses to attend as so required, such a police officer may report the refusal to a Magistrate who may thereupon in their discretion issue a warrant to secure the attendance of such a person as required by the aforesaid order.

(3) Any police officer requiring the attendance of any person employed on a railway shall send immediate information thereof to the person in charge of the nearest railway station. No person employed on a railway shall be required to leave their employment under such circumstances as to endanger the lives of persons traveling on the railway.

4. Examination of Witnesses by Police (SEC. 112 CPC)

(1) A police officer making a police investigation under this chapter may examine orally any person supposed to be acquainted with the facts and circumstances of the case, and shall reduce into writing any statement made by the person so examined.

(2) Such a person shall be bound to answer all questions relating to such a case as put to them by an officer. Provided that such a person may refuse to answer any question, the answer to which would have a tendency to expose them to a criminal charge or penalty or forfeiture.

(3) A person making a statement under this section shall be legally bound to state the truth, whether or not such a statement is made wholly or in answer to questions.

(4) A police officer examining a person under subsection (1) shall first inform that person of the provisions of subsections (2) and (3).

(5) A statement made by any person under this section, whether or not a caution has been administered to them under section 113 (1), shall, whenever possible, be taken down in writing and signed by the person making it or affixed with their thumb print as the case may be, after it has been read to them in the language in which s/he made it and after s/he has been given an opportunity to make

the corrections s/he may wish to make.

5. Omission to Assist Public Servant When Bound by Law to Give Assistance (SEC. 187 PC)

Whoever, being bound by law to render or furnish assistance to any public servant in the execution of their public duty, intentionally omits to give such assistance, shall be punished with imprisonment for a term which may extend to one month, or with a fine which may extend to four hundred ringgit, or both. If such assistance is demanded by a public servant legally competent to make such a demand (for the purpose of executing any process lawfully issued by a court, or for preventing the commission of an offence, or for suppressing a riot or affray, or for apprehending a person charged with or guilty of an offence, or of having escaped from lawful custody), they shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand ringgit, or both.

B. Prosecution

1. Form of Summons and Service (SEC. 34 CPC)

(1) Every summons to appear, issued by a court under this Code, shall be in writing and signed as provided by the Courts of Judicature Act 1964, or the Courts Ordinance 1948, and shall bear the seal of the Court.

(2) Such summons shall ordinarily be served by a police officer but the Court issuing the summons may, if it sees fit, direct it to be served by any other person.

2. Service Procedure (SEC. 35)

(1) The summons shall, if practicable, be served personally on the person summoned by showing them the original summons and by tendering or delivering to them a copy thereof under the seal of the court.

(2) Every person on whom a summons is served shall, if so required by the serving officer, sign a receipt for the copy thereof on the back of the original summons.

(3) In the case of a corporation, the summons may be served on the secretary or other like officer of the same.

(4) Where the person to be summoned cannot, in the exercise of due diligence, be found, the summons may be served by leaving a copy thereof for them with some adult member of their family or with a servant residing with them.

3. Procedure When Personal Service Cannot be Effected (SEC. 36 CPC)

When the person to be summoned cannot, by the exercise of due diligence, be found, and service cannot be effected as directed by sec.35 (4), the serving officer shall affix a copy of the summons to some conspicuous part of the house or other place in which the person summoned ordinarily resides. In such cases the summons, if the court so directs, either before or after such affixing, shall be deemed to have been duly served.

4. Allowances / Protection

All allowances are paid to witnesses attending court cases and protection is given on a selective basis, based on the seriousness of the case.

1. Payment of the Expenses of Prosecutors and Witnesses (Sec 427 CPC)

In every criminal case tried before the High Court, and in every criminal case tried before a Sessions Court or a

Magistrate's Court, such a court may, in its discretion, order payment out of the Consolidated Fund to the prosecutor and to the witnesses, both for the prosecution and for the defence, or to such of them as it thinks fit, of the expenses incurred by them severally in and about attending the High Court, or the Sessions Court or Magistrate's Court, and also as compensation for their trouble and loss of time, subject to such rules as are prescribed.

2. *Reward for Unusual Exertion (Sec 430CPC)*
Whenever it appears to any court that a private person has shown unusual courage, diligence or exertion in the apprehension of a person accused of having committed, attempted to commit or abetted an offence punishable with death or imprisonment, such a court may order payment to them, out of the Consolidated Fund, of any sum not exceeding one hundred ringgit.

3. *Compensation for Family of a Person Killed during Arrest (Sec. 431 CPC)*
If any person is killed in endeavouring to arrest or to keep in lawful custody a person accused as aforesaid, the Minister of Finance may order payment out of the Consolidated Fund to the wife, husband, parent or child of the deceased of such a sum or sums as appear reasonable in compensation for the loss sustained.

C. THE ATTORNEY-GENERAL

The *Yang di-Pertuan Agong* shall, on the advice of the Prime Minister, appoint a person (who is qualified to be a judge of the Federal Court) to be the Attorney-General for the Federation.

It shall be the duty of the Attorney General to advise the *Yang di-Partuan Agong* or the Cabinet or any Minster upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to by the *Yang di-Partuan Agong* or the Cabinet, and to discharge the functions conferred on them by or under this Constitution or any other written law.

The Attorney-General shall have power, exercisable on discretion, to institute, conduct or discontinue any proceedings for an offence, other than proceedings before a *Syariah* Court, a native court or a court-martial.

The Federal Government may confer on the Attorney-General the power to determine the courts in which, or the venue at which, any proceedings which s/he has power under clause (3) to institute, shall be instituted, or to which such proceedings shall be transferred.

In the performance of duties, the Attorney-General shall have the right of audience with, and shall take precedence over, any other person appearing before any court or tribunal in the Federation.

Subject to clause (6), the Attorney-General shall hold office during the pleasure of the *Yang di-Pertuan Agong* and may at any time resign and, unless s/he is a member of the Cabinet, shall receive such remuneration as the *Yang di-Pertuan Agong* may determine.

The person holding the office of Attorney-General immediately prior to the coming into operation of this Article shall continue to hold the office on terms and conditions not less favourable than those applicable to him/her immediately before coming into operation and shall not be removed from office except on like grounds and in a like manner as a judge of the court.

D. Judiciary

1. Justice of Peace

1. *Appointment of Justices of the Peace, Subordinate Courts Act 1948 (Sec. 98)*

The *Yang di-Pertuan Agong* may, by warrant under hand, appoint such persons as deemed fit to be Justices of the Peace within and for the Federal Territory, and may, in like manner, revoke any such appointment.

The State Authority may, by warrant under hand, appoint such persons as deemed fit to be Justices of the Peace within and for the State, and may, in like manner, revoke any such appointment.

All appointments and revocations of appointments made under this section shall be notified in the Gazette.

2. *Power of Justices of the Peace, Subordinate Courts Act 1948 (Sec. 99)* Justices of the Peace in West Malaysia shall have, and may exercise within the State for which they are appointed, such powers not exceeding the powers of a Second Class Magistrate as may be conferred upon them by any written law.

Justices of the Peace in Sabah shall have, and shall exercise and perform, such powers and duties as may be conferred or imposed upon them by any written law. They shall also have such other powers and duties as the Minister may, by regulations, confer or impose upon them, and the Minister may confer or impose the said powers and duties upon all or any of the Justices of the Peace.

Before exercising or performing any of the powers or duties conferred, a Justice of the Peace shall take and subscribe an oath in the presence of a judge in chambers.

Nothing in this section shall be deemed to require a Justice of the Peace to be satisfied as to the contents of any document, or that the proper stamp duty prescribed under any written law has been paid thereon, except to ensure that one or more stamps have been affixed to the document and that they have been cancelled in the manner prescribed by law prior to signature and attestation.

A Justice of the Peace, whilst exercising powers or performing duties as such, shall be deemed to be a public servant within the meaning of the Penal Code, and the Public Authorities Protection Act 1948; this shall apply to any suit, action, prosecution or proceeding arising therefrom.

E. Juvenile Court

A juvenile can only be tried in a juvenile court, which is very different in composition and procedure from other by courts. The juvenile court is presided over by a magistrate who is assisted by two advisors, one of the whom is usually a woman. It is not an open court, and only the court, court officials, parties to the case, parents or guardians, lawyers, witnesses and newspaper reporters are allowed to be present. The media cannot reveal the name, address or school or any other particulars which may lead to the identiffication of the juvenile.

F. The Legal Aid Scheme in Malaysia

1. Mission

Towards becoming an excellent agency, by providing caring and professional legal aid and advice services to persons

who qualify under the Legal Aid Act 1971.

2. Objectiive
The objective of the Bureau is to provide legal assistance to those who cannot afford legal fees and to uphold the principle of equality before the law.

3. Function
- To provide legal advice in all legal matters;
- To represent or provide legal assistance in proceedings in all courts in Malaysia in matters within the jurisdiction, as provided by law; and
- To educate members of the public on their rights under the law.

G. Conflict Resolution System Outside Trial: Plea Bargains

There is no governing law here, but it is not illegal and it is not unusual to have plea bargaining take place between the prosecution and the defence counsel only. The court does not take part in the bilateral agreement. The matter of sentencing is still up to the discretion of the courts.

Previously in a murder case, the defence and prosecution could have quick discussions at the bar table in court and come to an agreement that the charge under Section 302 of the Penal Code be reduced to Section 304. Not being able to do that could cause delays and backlog.

Public prosecutors have to put 'on record' all requests and discussions with lawyers who 'plea bargain' for a reduction of charges or for a review of a case. Any such application must be done in writing by the defence counsel (on record) to the Attorney General or the head of the Prosecution Division or State Legal Advisor.

X. PUBLIC PARTICIPATION & CO-OPERATION IN THE TREATMENT OF OFFENDERS

To date, 24,500 offenders are still under detention in 36 various prisons and rehabilitation centres all over Malaysia. The administration is run by the Prison Department, which is directly under the Ministry of Home Affairs. They were sentenced to prison by the courts for offences committed under the Penal Code, Dangerous Drugs Act, Firearms Act or other laws. Records show that public participation and co-operation in the treatment of offenders was overwhelming. There were so many programmes and projects being held. Two good example are as follows:

A. Religious Activities

There were more than 20 religious organizations conducting various religious activities and programmes in all 36 prison/ rehabilitation centres. The religious organizations represented not only Muslim organizations but also Christian, Buddhist and Hindu organizations.

B. Therapeutic Community (TC) - Role Model

1. Objectives
(a) To remind school children not to get involved in and to avoid committing crime.

(b) To remind parents of the importance of care and concern towards the social activities of their children in avoiding crime.

2. Activities
(a) Talks/lectures were conducted by offenders who were still serving their sentence, with the guidance of counsellors from the prison department to selected schools.

(b)Slides/video/film shows.

3. Target
(a) All secondary schools in Malaysia.

(b) Teachers and Parent Associations through out the country.

In 1998, the programme was conducted in 19 schools in the state of Selangor, while 34 secondary schools in the Federal Territory of Kuala Lumpur. About 11,000 students and 3,000 parents participated in this programme. So far 16 institutions (prisons) were actively involved in this TC programme.

XI. ASSISTANCE TO VICTIMS & VICTIM PARTICIPATION IN THE CRIMINAL JUSTICE PROCESS

A. Order for Payment of Costs of Prosecution and Compensation (SEC. 426 CPC)

The court before which a person is convicted of any crime or offence may, in its discretion, make either or both of the following orders against them, namely:

(a) an order for payment of the cost of prosecution or such part thereof as the court directs;

(b) an order for the payment of a sum to be fixed by the court by way of compensation to any person, or to the representatives of any person, injured in respect of their person, character or property by the crime or offence for which the sentence is passed.

The court shall specify the person to whom any sum in respect of costs or compensation, as aforesaid, is to be paid; and the provisions of section 432 [except paragraph (d) of subsection (1) thereof] shall be applicable to any order made under this section. The court may direct that an order for payment of costs, or an order for payment of compensation, shall have priority, and, if no direction be given, an order for payment of costs shall have priority over an order for payment of compensation.

To the extent of the amount which has been paid to a person or to the representatives of a person under an order for compensation, any claim of such person or representatives for damages sustained by reason of the crime or offence, shall be deemed to have been satisfied. The order for payment shall not prejudice any right to a civil remedy for the recovery of any property or for the recovery of damages beyond the amount of compensation paid under the order. Every order made under this section by a magistrate shall be appealable to the High Court.

B. Victim in the Criminal Justice Process

Until very recently, there was a striking lack of information about victims, and even now, knowledge is still fairly sketchy, limited to certain crimes and often, to certain types of victims. This ignorance is astonishing when one considers that the criminal justice system would collapse if victims were to refuse to co-operate. Some victims have found that their treatment by officals in the justice system - the police, lawyers, court officials, judges and compensation boards - is too stressful, demeaning, unfair, disregarding of their feelings, rights, needs and interests. Sometimes, they see the system as a second victimisation which can be more unpleasant than the original crime. In such cases, they may become disenchanted with the system and choose not to report or to co-operate in the future; their experiences may also affect friends and family, and even the general public,

spreading a general reluctance to co-operate. This syndrome is best known in rape cases were few women are willing to co-operate, but also exists in other areas.

Victims often feel they are being used by the courts. They are expected to report to the police but are not always made feel comfortable in doing this. For most victims the police station remains a fairly uninviting environment. This reduces the effectiveness of crime control, as it increases the offender's chance of getting away undetected. If victims are asked to identify offenders, they are rarely screened and may, through fear of facing the offender, fail to identify him or her. When called to give evidence, they are rarely permitted to relate their experiences in their own words but are forced to answer questions which may actually misrepresent their account of what occurred. Furthermore, if they refuse to co-operate, they may be prosecuted because they would be obstructing the course of justice. The proceedings are indeed mostly adapted to the needs of the State, which has also been victimised in that its peace and its rules have been broken. The State has an interest in the social control of offenders and therefore has a right to require anyone to give evidence, but not at the expense of victims' rights and interest.

C. Remedies

In recent years, more attention has been paid to victims. Systems of compensation and restitution have developed to repay victims for their losses.

1. Compensation

Compensation is a system in which the State repays victims for their financial losses or physical injuries. Under this system, it is not necessary to arrest and convict an offender for a victim to be compensated, nor does a convicted offender have to be financially solvent for the victim to be repaid for his or her losses.

Compensation has been justified in several ways. Some say that the State has an obligation to protect the welfare and safety of its citizen, and that when it fails to prevent crime, it should pay victims for their losses. Another rationale for compensation is that it may prevent victims from becoming angry at the criminal justice system and alienated from the political system (Schafer, 1968; Stookey, 1981). Even though compensation programs are sometimes aimed at public attitudes toward the criminal justice system and the government, research indicates that many victims who have sought compensation are disenchanted with the criminal justice system. Indeed, administrative obstacles to securing compensation, and the inadequate rewards provided to victims, seem to engender more discontent towards the legal system among applicants for compensation, than exists among people who do not apply for compensation (Elias, 1983, 1984).

Compensation programs must deal with the problem of the victim's contribution to the crime. Victims sometimes precipitate a crime or contribute to their own victimization, and in such cases, the State might choose not to compensate the victim. For instance, someone who first uses force against another person and then ends up badly injured in a fight might not be compensated if the State Compensation Board found that the crime would not have occurred without the victim's initiating actions. In Great Britain, compensation is limited to 'deserving cases', and this is determined in part by the degree to which the victim is to blame for his or her own victimization (Schafer, 1968).

2. Restitution

A system of restitution requires offenders to make monetary payment or

provide services, either to the victim or the community at large. Relatively, few criminal courts have used restitution extensively, but growing concern for victims' rights has led some judges to require offenders to repay victims for their losses.

Some claim that restitution makes offenders take responsibility for their behaviour and thus helps rehabilitate them (Denning, 1976). Others claim that offtenders who repay their victims may not feel guilty for their crimes if they believe they have corrected their wrongs, and that this may make it more likely that they will continue to commit crime. Restitution might improve crime reporting if victims thought they would be repaid for their losses. Moreover, by easing public hostility toward offenders, restitution might reduce the isolation of offenders from conventional society and make it easier to reintegrate them into society after they are released from prison. Restitution would also lighten the burden on taxpayers if it replaced a system of state compensation (Barnett, 1977; Bridges, Grandy and Jorgendon, 1979).

3. Others

Victims have also been given a greater voice in the sentencing of offenders, though defendants are usually allowed to respond to victims statements. In some jurisdictions, victims must be notified of hearings and trials and be informed when an inmate is being considered for parole or escapes from prison.

In America, district attorneys have started to pay more attention to the role of the victim in the criminal justice system. They can help to deal with a victim's fear of retaliation by the offender, frustration with delays in the court, and intimidation by a defence attorney's cross-examination. District attorneys can also impress on victims and witnesses the importance of testifying in court. In some jurisdictions, victims have even been included in plea bargaining conferences with the district attorney, the defence attorney and the defendant (Heinz and Kerstetler, 1981). One study found that victim-witness programs in prosecutors' offices contributed in an important way to keeping victims informed about the progress and outcome of cases, and that crime victims expressed more satisfaction with the criminal justice system when they knew the outcome of the case and thought they had influenced that outcome (Forst and Hernon, 1985).

Few judges learn directly from victims about the impact crime has on their psychological well-being, physical condition and financial situation. Usually, judges learn about this only from pre-sentence reports prepared by probation officers, who draw on secondhand information from police reports, medical records, or victim discussions with prosecutors. As a result, some courts have introduced victim impact statements, detailed written reports based on interviews with victims about the effects of crime on them (Forst and Hernon, 1985). In 1987, the US Supreme Court ruled that such victim impact statements could not be used in hearings on the imposition of the death penalty, arguing that those hearings should focus on the defendant's 'moral blameworthiness' rather than on the impact of the crime on the family of the victim.

Today, nearly all states (in the USA) permit victims to appear at parole board hearings or to file written statements with parole boards, in order to make their wishes known whether a prisoner should be released. This reform was introduced to the Federal Prison System in 1984. Many victims do not take this opportunity to make their wishes known, either fearing retaliation or not wanting to dredge up

unpleasant memories of past crimes.

However, those who oppose the use of victim's testimony to parole boards and victim impact statements in court fear that those reforms might introduce public pressure or vengeance into proceedings that should be more dispassionate. They claim that poor and uneducated offenders might be punished more severely if they are confronted with articulate victims who demand long sentences. These critics assert that sentencing and parole should be based on an offender's threat to society and behaviour while in prison, not on a victim's wishes.

Supporters of these reforms argue that they draw the victim into the criminal justce system in a direct way, thereby providing a new perspective to criminal justice administrators. They also point to the greater degree of satisfaction with the criminal justice system among victims who believe their wishes have been taken into consideration in meting out punishment, arguing that a satisfied victim is more likely to report crime in the prosecution of defendants in the future, and this may help deter crime.

XII. CONCLUSION

The criminal justice system would probably function more efficiently if it counseled victims and witnesses and tried to incorporate them more into the processing of defendants. Ultimately, the criminal justice system should achieve an equilibrium of justice for the victims, public and the State, as for well as for the defenders.

PARTICIPATION OF THE PUBLIC AND VICTIMS FOR MORE FAIR AND EFFECTIVE CRIMINAL JUSTICE ADMINISTRATION IN THE PHILIPPINES

*Donna Lynn A. Caparas**

I. INTRODUCTION

In the 1998 State of the Nation Address of His Excellency, President Joseph Ejercito Estrada, the President announced the adoption of a ten-point action program by his government. The first major task he cited pertains to the strategic theme of his government, which he declared as a governance of transparency. All decision-making processes are to be publicly disclosed and must be consultative. The immediate objective of the government is to restore public confidence and its long term objective is to establish an enduring partnership among government, the business community and civil society.

One of the major task of his government is reduction of criminality by effecting the "immediate arrest of the most notorious criminals and drug pushers". He has, in fact, created a Presidential Anti-Organised Crime Task Force to coordinate efforts as regard to the reduction of criminality.

The upsurge in crimes concerns not only public security and order or political stability, but also gravely affects the favorable economic gain of the country. The consequential repercussions of such crimes have compelled the Philippine government to launch a more intensified and more unified drive to involve law enforcement, prosecutorial, and judicial agencies. In fact, even the legislative branch has labored to prioritize legislation to curb the proliferation of crimes. The crime situation has evolved in such dimensions that that, in order to curb it, a systematized and effective crime prevention and control program is deemed imperative.

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II. PHILIPPINE STRATEGIES FOR CRIME PREVENTION

A basic condition for an effective and efficient criminal justice system is genuine trust and confidence of the general public. It is this trust and confidence that spells the difference between an actively supportive public on the one hand, and an apathetic community on the other hand. It is the building block of successful crime prevention strategies.

A. The Philippine Criminal Justice System: The 5-Pillar Approach

The Philippine criminal justice system has four (4) formally organized components namely: law enforcement, prosecution, courts and corrections. The formal components are the traditional series of agencies that have been given formal responsibility to control crime: the police, the prosecutors, the judges, prison and jail personnel, probation and parole officers.

The fifth component is made-up of the mobilized community and is outside this formal organization. If may be composed of public entities, private groups and individuals and local officials who are performing functions related to the prevention and reduction of crime.

The fifth pillar has a two-fold role. First, members have the responsibility to participate in law enforcement activities by being partners of the peace officers in reporting crime incidents, and helping in the arrest of the offenders. Second, they have responsibility to participate in the promotion of peace and order through crime prevention or deterrence, and in the rehabilitation of convicts and their reintegration to society.

B. The Holistic Approach

Over the years, crime has continued to be one of the major social problems and questions linger in the minds of the public as to the capability of the agencies concerned to respond effectively to the threat of crime. The failure to meet targeted goals, however, should not be totally construed as a failure of the system but rather, on the prevailing environmental conditions or foctors that may have precipitated the increase of crime incidence. These factors include increasing pressure from the family, peer groups, rural-to-urban migration, negative effects of mass media, impact of poverty, unemployment and inflation, and graft and corruption.

In view of this, crime prevention policies have been incorporated in national economic development plans. Under the past administration, reinventing the bureaucracy and crafting a new and reinvigorated Social Reform Agenda became priority actions. Specifially, the Philippines 2000 program, launched in February 1993, encompasses the Filipino vision for an improved quality of life for all. It is anchored in people empowerment and global competitiveness.

Significant sector-specific strategies to more equitably distribute the fruits of development, to bridge rural-urban disparities and to increase people's participation are being introduced on all fronts.

In the reduction of crime, a systems-wide strategy was initially developed in the 1970s. This ventured into specific community-based crime prevention activities for adoption and implementation by criminal justice agencies, specifically those perceived to have the greatest potential for improving the quality of life, and hence, reducing crime. The strategies that find relevance to the present are: 1) reinforcement of the home and family life; 2) educational improvement; 3) health improvement; 4) active participation of religious organizations/groups; 5) improvement of recreational facilities; 6) involvement of mass media; and 7) citizens' involvement in crime prevention activities.

C. Coordination and Networking in the Philippine Criminal Justice System

The criminal justice arena is a system of interrelated goals, functions and roles. Interagency coordinating mechanisms have been created and strengthened to optimize problem-solving for pressing issues affecting each pillar, and to work out the implementation of projects and activities within an interdisciplinary framework.

1. National Peace and Order Council

Several years ago, a centralized coordinating mechanism to carry out a national program addressed not only criminality but all forces that threaten national security was established with the promulgation of Executive Order 309, as amended by EOs 317 and 320, and recently EO 366. This national council, more popularly known as the Peace and Order Council, draws its membership from government agencies and non-governmental organizations (NGOs). It underwent reorganization and

revitalization on all levels-national, regional, provincial and city/municipal.

The Peace and Order Council (POC) is a unified and strongly coordinated body to carry out national programs addressed to the problems of criminality, terrorism, drugs, insurgency, rebellion or disruption of public order, which threaten our national unity and security.

2. National Summit on Peace and Order

In connection with this, the government tasked the National Peace and Order Council to call on all criminal justice agencies in the country consultative meetings. This resulted in the holding of national peace and order summits to craft a common policy and action plans against criminals, especially those involved in heinous offenses.

The National Summit on Peace and Order, which was institutionalized in 1993, is an annual exercise wherein government is considered in this jurisdiction as the fifth component of the criminal justice system - not just in the implementation phase but also in the policy-formulation level.

The Summit of 1993 was the first time that public servants met with the citizenry on a national scale to openly discuss the peace and order conditions in the country on which could be forged a rationalized blueprint for action, distilled from the clash of intellectual and experimental insights.

The Summits have endeavored to learn from hindsight, to sustain the gains that have been made in the past and to find out what more could be done to improve the administration of justice in the country and the overall peace and order situation. The annual summit provides an occasion for a diagnosis of the year just past, and a prognosis of the year to follow.

Conferees in the Summit agreed to adopt a Master Plan of Action for Peace and Order to be implemented for a period of 5 years by the criminal justice system agencies and the mobilized community. Former President Fidel V. Ramos directed the Peace and Order Council through the National Police Commission's Technical Committee on Crime Prevention and Criminal Justice to oversee the implementation and monitoring of the projects contained in the Master Plan.

The Master Plan of Action for Peace and Order is the blueprint for a concerted government action against criminality, and programs, projects and activities incorporated in the plan are to be implemented from 1997 to 2001.

III. PUBLIC PARTICIPATION AND COOPERATION IN THE CRIMINAL JUSTICE PROCESS

Trust and confidence is built upon a firm knowledge of a criminal justice machinery that is able to deliver justice speedily, accurately, equitably, fairly and accessibly, or any combination of these depending on society's culture and norms.

As reforms in the Philippine criminal justice system gradually take root in the individual pillars, public trust and confidence can be built up into greater vigilance and active community involvement. The process of regaining people's trust and confidence in the country's criminal justice system is being orchestrated at the highest levels of government and is being coordinated throught the close networking of inter-disciplinary committees such as the Napolcom Technical Committee on Crime Prevention and Criminal Justice. Some of the programs initiated, by pillar, are the following.

A. Police Level

By and large, this pillar represents the most visible subsystem and has the greatest membership of the four formal components. To date, the country has a total of 94,965 members of the Philippine National Police nationwide, with NCR accounting for 10,644 members, excluding uniformed and civilian volunteers comprising a total of 3,817 at present. This in the entry point of the system for first offenders and the re-entry point for the failures of the other subsystem. This is sometimes referred to as the "gateway to the Criminal Justice System".

The law enforcement function is spearheaded by the Philippine National Police (PNP) and the National Bureau of Investigation (NBI). The PNP is national in scope and civilian in character and administered and controlled by the National Police Commission (NAPOLCOM), an attached agency of the Department of Interior and Local Government (DILG).

Several measures have been initiated at the law enforcement level to maximize the participation of the public at this level of the criminal justice system. Among these are:

1. Community Oriented Policing Concept (COPS)

The National Police Commission and the Philippine National Police agreed that there should be a specific operational program initiated by the government to counter criminality, even if some of the more successful models are those initiated by the community. The two agencies agreed to implement and institutionalize a particular community-based crime prevention program nationwide. This program is dubbed the "Community-Oriented Policing System or COPS"

The major emphasis of COPS is the imperative of cultivating a people-police partnership to champion the cause of peace and order in the community. Public support is the desideratum of police effectiveness and success. The police can not single-handedly solve the manifold problems of criminality, considering its deficiencies in manpower, mobility, communications and firepower. Only the people can fill the gap.

The Philippine National Police (PNP) has been directed to hasten the full implementation of community-based policing projects, especially in urbanized areas, nationwide. All territorial unit commanders have been directed to accelerate the institutionalization of the community policing system in their respective areas in cooperation with local government units (LGUs), other government agencies/offices, and nongovernment organizations (NGOs).

Cognizant that the support and involvement of the community is one of the significant factors in the successful implementation and intstitutionalization of the community policing project, the Napolcom enjoined the PNP to solicit and enter into partnership and alliance with all interested NGOs, civic organizations and LGUs to be formalized through the signing of Memorandum of Agreement without exclusivity.

The physical/structural aspect of the project is the establishment of a modest police box or police center in the community wherein the activities of the system will be planned, organized and executed. The primary function of the box or center is the organization of the community to prevent and control crime.

On the other hand, its psychological/ behavioral aspect pertains to COPS as a

philosophy that guides the approach to policing taken by every police unit. It is the process of changing the mindset and attitude of the members of the police force in solving criminality without resorting to violent means and methods. In the same manner, the members of the community will be convinced to enter into partnership with the law enforcer to keep the community peaceful. While a police agency can adopt aspects of the community policing philosophy for selected units and activities it undertakes, maximum impact cannot be achieved unless the entire station adopts the COPS philosophy and the station is organized in a manner that reflects the commitment to neighborhood problem solving.

COPS aims to cultivate the citizen-police partnership to serve the cause of peace and order in the community. It seeks the cooperation and active support of NGOs, the local government officials, and the entire community for crime prevention and control. It also ensures immediate police response to situations, thereby fostering a sense of security among the residents in the community. In the long term, it aims to facilitate the transition from the traditional reactive incident-driven model of policing to a proactive style of operation which seeks to identify and resolve community problems and actively engage members of the community in the process.

2. Institutionalization of the Peoples Law Enforcement Boards (PLEB)

People empowerment as a strategy in the administration of police administrative disciplinary system finds actualization with the organization and operation of the People's Law Enforcement Boards (PLEBs) in the cities and municipalities throughout the country.

Under R.A. No. 6975, the PLEBs are vested with the jurisdiction to hear and decide citizens' complaints against erring personnel that are filed before them. The intent of the law is clear. In the governance over the police, local government units and the community must have substantial and more meaningful participation, particularly in the area of discipline.

PLEB members are appointed by the local executives through the recommendation of the local Peace and Order Councils. In 1995, a total of 1,510 PLEBs were organized nationwide. PLEB members are given the appropriate training upon appointment. Of the total number of PLEBs organized, 1,087 PLEBS were monitored to determine their caseload and status of case disposition, as well as to look into their technical or legal capabilities and requirements. Around l,919 complaints against PNP members were filed with the various PLEBs. Of this number, 824 were disposed of, registering a 42.9 percent case disposition rate.

3. Establishment of "Women's and Children's Concern Desk" in Police Stations

The establishment of the Women's and Children's Concern Desks in police stations is expected to further streamline and strengthen the effort of the police in responding to problems of violence against women and children. As a management strategy, police women are assigned to man the desks, or if no female personnel are available, a trained male police officer is assigned. To date, a total of 1,632 WCCDs with 1,763 personnel (l,468 policewomen and 294 policemen) have been established nationwide. In highly urbanized cities, the WCCD handles the investigation of women and children's cases. A total of 3,463 cases of abused women and children have been reported to WCCD and acted upon appropriately. WCCP officers have been effective tools in providing services to

women and children in close coordination with the Department of Social Welfare and Development (DSWD) and concerned women-based NGOs.

Aside from these flagship programs, the police also conduct their own public information and education programs through a number of TV and radio programs. They likewise conduct regular "*Ugnayans*" or dialogue with the community and hold a "People's Day" every month. These activities make police services accessible to the public.

4. Law Enforcement Pillar Master Plan of Action for Peace and Order

   l. *Pilot-Testing of Enhanced Community-Oriented Policing System in the Municipality of Valenzuela*

This pilot testing project was conducted in the municipality of Valenzuela. All police officers in this station are specially trained in the COPs philosophy and mindset. They are also afforded better logistical support like computers, hand held radios and office equipment. Seminar-workshops on crime prevention are regularly conducted and attended by community leaders and the police. Action planning sessions are also held.

A favorable result on the implementation of the project was observed, particularly on the maintenance of peace and order. The citizens observed that the continuous monitoring and evaluation of the COPs program in their area has brought about a more favorable level of safety in the community.

B. Prosecution Level

The National Prosecution Service (NPS) is the prosecution arm of the Philippine government and is mandated to uphold the rule of law as a component of the criminal justice system. In the realm of the criminal justice system, prosecution is viewed as the machinery that sets in motion the institution of action to establish the guilt of criminal offenders and law violators. Its mission is to maintain peace, order, safety and justice in the community through delivering prompt prosecutoral services, that is, the investigation of crimes and the prosecution of criminals. Tasked with this delicate function of screening and evaluating which cases are to be dropped or filed in court, the prosecution is often called the prime official in law enforcement. They represents not only the community but the people in the prosecution and trial of the accused in court. It is the prosecution's responsibility to represent the government in court and to see that proper persons are appropriately charged.

The National Prosecution Service came into being on 11 April 1978 by virtue of Presidential Decree No. 1275. The NPS is under the supervision and control of the Department of Justice. They run a nationwide organization consisting of state prosecutors, regional prosecutors, provincial prosecutors and city/municipal prosecutors tasked to undertake the investigation and prosecution of cases involving violations of penal and special laws.

The NPS is mandated to maintain and uphold the rule of law through the effective and expeditious delivery of prosecutorial services in order to enhance peace and order. The members of the NPS are primarily tasked to investigate and prosecute all criminal offenses defined and penalized under the Revised Penal Code and other special penal laws.

The Department of Justice, in coordination with various government agencies maintains several programs to ensure citizen participation at this level of justice administration.

1. The Witness Protection, Security and Benefit Program (WPSBP)

After only six years of operation, the Witness Protection, Security and Benefit Program (R.A. 6981) has proven to be an indispensable feature of the criminal justice system in the country. Clients-witnesses covered by the program have continued to play a pivotal role in the successful prosecution of significant criminal cases.

The Witness Protection, Security and Benefit Program (WPSB), under Republic Act No. 6981, is a recent legislative enactment granting witnesses certain rights and benefits and defining their responsibilities, if admitted into the Program. Apart from the primary benefit of security and protection, witnesses may be given any or all of the following benefits under the program; 1) secure housing facility for high-risk witnesses; 2) financial assistance to witnesses and their dependents, ranging from a minimum of P3,000.00 to about P15,000.00 in certain cases; 3) travelling expenses and subsistence allowance; 4) medical and hospitalization assistance; 5) housing or rental allowance in case of witnesses is with manageable risks.

The success of the Program is best measured by the number of convictions it has secured. From 1991 to January 31, 1998, the program secured convictions in 132 cases, the most recent of which are the Dumancas Kidnapping-Murder Case (involving the heiress of the owner of a bus company) and the former Chief of Police of Bacolod City, putting behind bars a total of nine accused based on the sole testimony of a witness under the program; the Cong. Jalosjos case; and the Mayor Alonte case. For 1997, the program placed behind bars 45 accused with 23 witnesses testifying.

The Department of Justice entered into agreement with different government agencies for assistance and services to be

Table 1
Witness Protection and Benefit Program
Budget and Important Statistics

	1991	1992	1993	1994	1995	1996	1997	1998
Budget (in Million Pesos	25.00	25.00	23.036	18.718	25.360	35.00		
Less Reserve	-	1.964	2.268	.918	1.250	-		
Net Appropriations		25.00	23.036	20.768	25.800	24.110	35.00	
Applications Received	60	149	293	499	525	317	245	112 (as of 8-31-98)
Carry over from Previous Year		50	40	16				
Total on Hand	60	199	333	515				
Admissions	6	99	247	273	300	229	189	53 (as of 8-31-98)
Denials/Archived/ Withdrawn/Suspended	4	60	70	147				
Balance by Year-End	50	40	16	95	350*	500*		
Disposition Rate	17%	80%	95%	82%				

afforded to clients. The Department of Foreign Affairs agreed to render assistance in facilitating/securing passports and visas for WPSBP covered witnesses and initiate negotiation with countries to determine the feasibility of exchanges of witnesses. The Philippine Overseas Employment Authority (POEA) agreed to assist witnesses in obtaining livelihoods abroad through its government hiring schemes or other methods of deploying overseas contractual workers. The Department of Labor and Employment and the Department of Social Welfare and Development conduct skills training programs for witnesses.

2. Compensation for Victims of Unjust Imprisonment or Detention and Victims of Violent Crimes from the Board of Claims

Republic Act No.7309 is the law creating the Board of Claims under the Department of Justice, granting compensation for victims of unjust imprisonment or detention and for victims of violent crimes. One of the more vexing problems in the area of justice and human rights is the implementation of the constitutional provision against the deprivation of life, liberty and property, without due process of law. Persons have been accused and imprisoned for crimes they did not commit, only to be subsequently acquitted.

For the victims of unjust imprisonment, compensation shall be based on the number of months of imprisonment and every fraction thereof shall be considered one month, but in no case shall such compensation exceed P1,000.00 per month. In all other cases, the maximum for which the Board may approve a claim shall not exceed P10,000.00 or the amount necessary to reimburse the claimant's expenses incurred for hospitalization, medical treatment, loss of wage, loss of support or other expenses directly related to the injury, whichever determined by the Board.

3. Prosecution Pillar Projects Under the Master-Plan of Action for Peace and Oder

1. *Prosecution, Law Enforcement and Community Coordinating Committee (PROLECCs)*

One of the projects contained in the Master Plan of Action for Peace and Order is the maintenance of the prosecution, law enforcement and community coordinating service (PROLECCS). Representatives from the different pillars of the criminal justice system have taken cognizance of the low rate of cases rested in court. This could be attributed to the limited or lack of evidence presented in court. The prosecution pillar of the Technical Committee on Crime Prevention and Criminal Justice felt the need for closer coordination among prosecution, law enforcement, and community pillars, specially in evidence gathering.

Project PROLECCS provides a regular forum to achieve and sustain closer linkages among the prosecutors. Law enforcers, and community in evidence-gathering, specifically in cases involving heinous crimes. It is also designed to help attain a 50% increase in the rate of cases rested in court for a 5-year period. The project envisions fostering an enhanced working relationship and to promote camaraderie among prosecutors, law enforcers and concerned non-government organizations (NGOs) through regular meetings, seminars and conferences. The project was launched in August 1996 in the Metropolitan Manila area and is being participated in by Chiefs of Police, PNP District Directors, representatives from other law enforcement units, and members of the community and cause-oriented groups such as the Crusade Against Violence (CAV), the Citizen's Crime Watch (CCW), the United Pasig Against Crime

(UPAC) among others.

To date, the PROLECCS have conducted seven (7) general meetings and five (5) Sub-Committee meetings. During the general assembly meetings, several issues, problems and gray areas were discussed, especially on procedural matters and on the gathering and presentation of evidence, for the purpose of strengthening the merits of cases in court. Through the exchange of information during meetings, the law enforcers were made to understand certain rules regarding gathering, handling, preservation and presentation of evidence. Accordingly, the law enforcers will be able to apply the learned process in their future cases.

2. *Training Program for Drug-Identification Accredited Professionals (DIAPs Training Program)*

One of the most pressing problems that hamper the speedy disposition of cases is the lack of witnesses who will testify in court. Specifically, expert witnesses play a vital role in the speedy administration of justice in that their knowledge may be either make or break a case. Giving particular focus on the drug problem, the Technical Committee on Crime Prevention and Criminal Justice have taken cognizance of the problem of the very low conviction rate in drug cases. The problem has been traced, among others, to the dearth of government chemists who can testify as expert witnesses in court. At the time, only the chemists from the Philippine National Police, the National Bureau of Investigation (NBI), and the Dangerous Drugs Board (DDB) were allowed to appear in court as expert witnesses.

The Napolcom TCCPCJ felt the need for a project that will augment the very limited number of resident chemists in crime laboratories. The Committee, spearheaded by the Prosecution Pillar, designed a "Training Program of Non-Chemists in Dangerous Drugs Identification". The graduates thereof shall be called Drug Identification Accredited Professionals (DIAPs). They shall be allowed to serve as expert witnesses in drug and drug-related cases. From 1995 to 1996, two batches of training were conducted, which produced a total of 52 DIAP graduates.

C. Judiciary

Together with the other pillars of the Criminal Justice System, the court is an important institutional agency relied upon by a great number of people in the protection of their lives, rights and dignity, as well as their property.

The court plays a dual role in our criminal justice system as both participant and supervisor of the latter's process and dispensation. In its role as participant, the court determines the guilt or innocence of the accused, the courts are responsible for the trial process. Also it must ensure that the law is properly applied to the case at hand, and that all parties to the proceedings receive justice. As supervisor, the court acts as important guardian of human rights. Thus, the court remains the final and ultimate sanctuary of the citizenry against all forms of injustice.

In their formal organization, the courts are concerned with punitive sanctions for violators of law. This concern is reflected in the activities of the courts personnel, as well as in the very trial process itself, a process that has as its goal 'the determination of the guilt or innocence of the accused'.

There is, however, an informal court organization that allows a certain degree of discretion about whom it should or should not punish. It also decides the nature and extent of the punishment that

is to be imposed. This informal side has made possible some new approaches to the control of crime, for example, by treatment instead of punishment.

As the court system now operates, an attempt is being made to be as non-punitive as possible by the use, for instance, of probation coupled with warnings of punishment for the offender who ventures outside the conditions set forth by the judge. Such conditions include continued good conduct, adequate support of families and steady employment. Several projects are being initiated to make citizens aware of the operations of the judiciary.

1. Judiciary Project Under the Five-Year Master Plan of Action for Peace and Order
   1. *Conduct of Symposium on the Operational Workings of the Court*

The courts pillar of the TCCPCJ conducted symposia in different regions of the country to enhance the understanding of the public on the processes involved in the administration of justice. The symposia provided more information and familiarization on the operational system and workings of the judicial system. The symposia enlightened the minds of those with negative beliefs about the judicial system and provided public awareness of the entire criminal justice system. Participants gained insights on the actual situation in courts and the causes of delay in the disposition of cases.

2. *Grant of Awards and/or Recognition of Deserving Judges and Court Personnel through the Merit System*

To further improve the efficiency and effectiveness of the judges and court personnel, the grant of awards and recognition is given to deserving judges and personnel through a merit and award system.

The Foundation for Judicial Excellence, a private foundation, has granted awards for Judicial Excellence every year. This private foundation grants awards to three (3) Outstanding Regional Trial Court Judges, and three (3) Outstanding Metropolitan or Municipal Trial Court Judges. Likewise, the foundation also gives awards for Outstanding Public Prosecutors and Outstanding Public Defenders. The award system is implemented to affirm and encourage exemplary performance and conduct among public servants, and to strengthen citizen's faith and confidence in the rule of law.

D. Corrections

The corrections pillar is formally charged with the primary responsibility of reforming the deviant behavior of offenders, young and adult alike, for their eventual absorption into the social and economic streams of the community. These goals are important in developing and implementing programs to achieve the objectives of corrections, which include building and rebuilding solid ties between the offender and the community, integrating or reintegrating the offender into community life, restoring family ties and obtaining employment and education.

In the Philippines, the primary agencies for institutional corrections are the Bureau of Corrections, which is under the Department of Justice, responsible for the treatment and rehabilitation of national prisoners who are serving sentence of more than three (3) years; the Provincial Jails which are administered and supervised by their respective provincial governments. Inmates who are serving sentences from six (6) months and one (1) day to three (3) years are confined in these jails and the Municipal and City Jails which are administered by the Bureau of Jail Management and Penology (BJMP), which is under the DILG. The inmates confined

in these jails are serving sentences of not more than six (6) months of imprisonment.

The Bureau of Corrections, which is mandated by law to safekeep and rehabilitate national prisoners, has maintained about 20,172 prisoners in 1997, who are distributed in its seven prison and penal farms. The Bureau, in cooperation with non-government organizations, has intensified the conduct of livelihood training programs for prisoners through the effective Agro-Industrial Livestock Productivity Program. The continuous conduct of religious activities, recreation programs, as well as educational (both formal and non-formal) and training programs were given by concerned NGOs.

Non-institutional corrections involve the reformation and treatment of offenders outside correctional facilities, and are community-based. These community-based alternatives to imprisonment do not include pre-trial diversions which, in the Philippine setting, take the form of case disposition under the barangay justice system, e.g release on recognizance, bail, pre-trial conference and imposition of fines. The non-institutional treatment of offenders are as follows:

(i) *Adult Probation*

A significant milestone in the Philippine Criminal Justice System is the institutionalization of the Adult Probation Law under implementation of the Probation and Parole Administration (PPA) of the Department of Justice. The Parole and Probation Administration has received 36,939 applications for probation in 1998. About 32,607 Post Sentence Investigation Reports were completed and submitted to the courts. The investigation of an applicant for probation, parole or conditional pardon involves a thorough study of criminal records, family history, educational background, married life, occupational record, interpersonal relationships and other such aspects of life.

About 17,121 unemployed and low-income probationers, parolees and pardonees were assisted for job placement projects. About 5,434 clients were trained or extended scholarships on automotive mechanics, refrigeration, and air conditioning and radio-audio repair. Some 2,061 of them either continued their formal education or were given various income-generating projects such as animal dispersal, fish culture and backyard gardening.

(ii) *Parole and Conditional Pardon*

Under these forms of release, prisoners who no longer need institutional treatment are released and given the opportunity to be reintegrated into the community. It is the President of the Philippines who grants conditional pardon, upon recommendation of the Board of Prison and Parole (BPP) which has also authority to grant parole.

The Board of Pardons has received a total number of 17,803 *carpetas* from 1995 to 1998. Out of this number, 8,490 were granted parole, 5,392 were released and discharged, and 2,025 were recommended for conditional pardon, 5,034 for commutation of sentence and 98 for absolute pardon.

(iii) *Probation for Youth Offenders*

Youth offenders are dealt with in accordance with the provisions of the Child and Youth Welfare Code. This Code provides that "the court shall suspend all further proceedings and shall commit the minor to the custody of the Department of Social Welfare and Development (DSWD), or to any training institution operated by the government, x x x until he shall have reached twenty-one years of age x x x."

Table 2
Comparative Data of the Board of Pardons and Parole
(CY 1995 to September 1998)

Particulars	1995	1996	1997	1998	Total
Carpetas Received	5,750	4,969	3,986	3,098	17,803
Parole Granted	2,736	2,190	1,757	1,807	8,490
Recommended for Conditional Pardon	615	565	440	405	2,025
Recommended for Commutation of Sentence	1,848	1,822	1,138	226	5,034
Recommended for Absolute Pardon	42	25	15	16	98
Granted Final Release and Discharge	1,377	1,446	1,603	946	5,392

1. Community Involvement in Corrections in the Philippines

(1) *Parole and Probation Volunteer Aides*

Probation is a disposition of the court that allows a convicted offender to serve their sentence in a community and outside prison, but under the supervision of a parole and probation officer and subject to certain conditions contained in the Parole and Probation Order. Dedicated members of the community are tapped as volunteers to ensure the success of the parole and probation system. These volunteers are screened and trained. Each volunteer supervises a maximum of five clients and keeps all information about a parolee, probationer or pordonee in strict confidence. S/he works in close coordination with the Chief Probation and Parole Officer in providing counselling and placement assistance.

2. *Strengthening of Coordinative Mechanisms with Non-Government Organizations*

In line with establishing more responsible rehabilitation and correction programs and services for inmates, correctional agencies coordinate with government and nongovernment organizations like the Episcopal Commission for Prisoners Welfare, CARITAS (formerly the Catholic Charities), and the National Manpower and Youth Council (NMYC) in providing small-scale livelihood projects and community-based programs for inmates. Likewise, several religious groups visit jails to share spiritual messages.

3. *Observance of the National Correctional Consciousness Week*

Proclamation No.55l, dated March 15, 1995, declares the last week of October of every year as National Correctionol Consciousness Week. A national secretariat, composed of government and private sector representatives from media, academia, civic and religious sectors formulate a national plan for the celebration.

2. Corrections Pillar Projects Under the 5-Year Master Plan of Action for Peace and Order

1. *Operation and Management of the Philippines-Japan Halfway House*

The Philippines-Japan Halfway House was designed to provide preparatory rehabilitation activities for released or pre-release clientele in a 24-hour residential setting. It is geared towards preparing the

clientele to become emotionally, socially and economically prepared for family and community life and to cope with the different pressures in society. An interdisciplinary-trained staff provides services wherein all activities are geared to providing therapeutic impact on the clients served.

The construction of the edifice was shouldered by the Nagoya West Lions Club and the Asia Crime Prevention Foundation (ACPF). Several donations from the Nagoya West Lions Club and ACPF were also given through the efforts of the United Nations Asia and the Far East Institute for the Prevention of Crime (UNAFEI) and the Asia Crime Prevention Philippines (ACPPI). The initial seed money for operation of the Halfway House was taken from the funds of the 5-Year Master Plan of Action for Peace and Order. Various non-government organizations and several private individuals have assisted in the maintenance of the Halfway House, including the Makati Golden Lions Club, the Muntinlupa Lions Club and the Lady Judges Association of the Philippines.

II. PUBLIC PARTICIPATION AND COOPERATION IN CRIME PREVENTION

The activities that properly belong to the community pillar are those that concern the so-called infrastructure of crime, such as the lack of educational or recreational opportunities and inadequate job skills. These are social conditions that foster crime which the formal criminal justice system can not resolve alone. Other community actions that can contribute to less crime are improvement of the home and family life, delivery of health and treatment services, reduction of criminal opportunities and safeguarding of the integrity of the government.

In line with this, government has identified several ways of encouraging the community to join in the anti-crime campaign. One way is to provide venues for community-based participation in localized crime fighting. Another is to forge partnerships with non-governmental organizations (NGOs) in the creation of more crime-watch groups nationwide. A third way is to tap media groups in implementing communication strategies that will enhance public awareness.

Great emphasis has been placed on the subject of citizen participation in crime prevention. The process offers a viable means of involving citizens in the planning, decision-making and process of change and innovation. Various indigenous concepts of adopting community-based methods were formulated in urban locales in the Philippines to assist in the process of maintaining peace and order, specifically against criminality.

A. Community-based Strategies

There are a number of community-based crime prevention programs. Recent community-based crime prevention groups differ from classic vigilante groups in that they do not put the law into their hands. Instead, their primary function has been the surveillance and protection of their own communities, often acting as an ancillary group to regular police. They amplified law enforcement through pursuit and capture. Largely, their primary function is in information gathering and dissemination, as well as surveillance or neighborhood policing.

In the Philippine setting, the activated community is spearheaded by the *barangay*, the grassroots political unit which is primarily envisioned to strengthen the popular voice of political decision making, and at the same time augment law enforcement efforts in coordination with

police forces.

1. The *Barangay* Initiated *Ronda* System

The *Barangay* Initiated *Ronda* System is an offshot of Presidential Decree No. 1232 authorizing the organization of community groups to serve as effective vehicles for organized community participation in crime prevention. The said groups are organized by *barangay* officials. The most common community-based crime prevention program implemented by the *Barangay* Council is the Ronda System, conducted by the *Barangay* Security and Development Officers or *Barangay Tanods* (Village Watchmen). Based from interviews, *Ronda* has been implemented as far back as 1972 and is still in operation now.

The *Barangay* Security and Development Officers (BSDOs) or more popularly known as the *Barangay Tanod*, are the volunteers who are responsible for peace keeping activities in the *barangay*. Recruited civilian volunteers will be engaged primarily in unarmed civilian assistance that shall include intelligence information-gathering, neighborhood watch or "*rondas*"; medical/traffic/ emergency assistance; assistance in the identification and implementation of community development projects; and gathering relevant information and data as inputs to peace and order planning and research.

The localities have adapted the program and have taken the liberty of assimilating the concept into native culture and beliefs. Examples of these are the *Oplan Pakigsandurot* in Cebu City and the Neighborhood Watch Group in Baguio City.

(a) *Oplan Pakigsandurot*

"*Oplan Pakigsandurot*" was initiated by the Cebu City local government. This is based on Cebu City Police Community Involvement 93 to Cebu City Integrated Community Public Safety Plan, dated July 18, 1993. The said plan aims to promote closer ties between the police and the community, maintain peace and order through combined crime prevention, and improvement of police image.

"*Pakigsandurot*" is a Cebuano word which means an act of fostering better relationships for the purpose of getting fully acquainted with or obtaining a closer harmonious relationship. This plan encapsulates the idea of getting the police to be personally involved in the affairs of the community where they reside, specifically on matters of peace and order. The plan conceptualizes a program where the police are enjoined to render two hours voluntary service to their *barangay* residence during their time off-duty and be always on call when the need arises. It calls for their direct participation in conducting patrols and other police actions in their area, side-by-side (buddy-buddy system) with the *tanods*. *Oplan Pakigsandurot* regularly conducts meetings/dialogues or fellowship every second Saturday of the month.

Each *barangay* has a manpower complement of twenty *tanods* and 15 reserves. The group is divided into two shifts, the first shift is from 7:00 am to 7:00 pm and the second shift is from 7:00pm to 7:00am.

To complement the program, another operational activity was launched, code named *Oplan Tambayayong* or *Oplan LUBAS* (*Lungsod Batok Salaod* or City/ Community Against Crime). Composed of civilian volunteers, this organization is aimed to organize an anti-crime movement, composed of well-meaning citizens to complement the various PNP units in the city in its operational activities. It is likewise designed to promote peoples'

awareness of their basic obligation to contribute to the maintenance of peace in their community.

(b) *Baguio City's Community Oriented Policing (COP) Program*

In order to prevent or minimize the incidence of crime in the city and to promote the security and well-being of the populace, Mr. Ray Dean Salvoza, a civic leader, formulated the Community Oriented Policing (COP) Program as early as November 1991. This program intends to meet the demands of innovative and creative intervention, and is designed to promote a highly organized, high morale, efficient police force working hand in hand with the community in crime prevention. This was fully accepted in the city in 1993.

The program aims to install an integrated, interdependent law enforcement system designed to efficiently and effectively assist the Baguio City Police Force to prevent and minimize the incidence of crime. Involvement of the citizen/ community/ neighborhood crime watch systems were sought to meet day to day policing operations.

The crime prevention activity conducted by these community-based organizations is basically carried out through the *Ronda* system. The system is operated by teams of volunteers who take turns making rounds (*Ronda*) around the *barangay* during critical periods (late at night or early dawn). For operational purposes, the *barangay* is divided into "*pook* or *puroks*" and each "*purok* or *pook* " has an appointed leader. There are various methods/styles in conducting the *Ronda* and each *barangay* improvises according to its resources and needs.

The main actors in the said programs are volunteers. The main component is therefor citizen participation. Volunteerism plays a vital role. Sustainability of any grassroots project depends on the harnessing of local resources, particularly that of human resources.

Aside from the *Ronda*, a number of indirect measures are also conducted. Some of these include establishing day-care centers, organizing the youth, conducting seminars on responsible parenthood, providing training for livelihood and assisting families in the establishment of small scale businesses.

The public perception survey reveals that such programs are effective deterents to criminality. However, the study shows that the effectiveness of community-based crime prevention programs depend upon a host of factors. Based on the data gathered, the effectiveness of projects depends on leadership, area of jurisdiction, population size, logistical capability and the location of the *barangay*.

2. <u>The Civilian Volunteer Organizations (CVO) Program</u>

To reorganize and consolidate the *Barangay Tanod* of the 1970's, the government initiated in 1989 the program on Civilian Volunteer Organizations (CVO's) or *Bantay Bayan*. Most of the local governments just reorganized their *Barangay Tanod* and the same group acted as their CVOs or *Bantay-Bayan*. The establishment of another organization was triggered by inactive *Barangay Tanods*. The local executives and police officials deemed it necessary to organize a new group. The new group is called CVOs/ *Bantay-Bayan*.

B. Forging Partnerships with Citizens' Group/ Non-Government Organizations

Greater involvement of the community towards effective social defense in the local

setting is being mobilized through various groups. The Crusade Against Violence (CAV), the Citizens' Action Against Crime (CAAC), and the Movement for the Restoration of Peace and Order (MRPO) were created as an offshoot of the escalating incidents of violent criminality in the country. These anti-crime movements undertake: (1) protest rallies as the means of obtaining a more effective response of the government in criminal justice matters; (2) sustained court watch; (3) information campaigns to increase consciousness of victims and their families on the need to cooperate with authorities in reporting crimes and pursuing cases in court; (4) monitoring of cases pending with law enforcement agencies and the Department of Justice; (5) legal assistance and; (6) public education campaigns on crime prevention to encourage vigilance among the citizenry in the campaign against crime and violence.

The Citizens' Crime Watch is an umbrella organization of non-government organizations (NGOs) and People's Organizations (POs) working in partnership with the government in the anti-crime campaign. It provides assistance to the police in information-gathering, reporting of suspicious persons and places, service of subpoenas and other court processes, and monitoring the progress of investigation, prosecution and disposition of heinous offenses. In *barangays*, *Barangay* Crime Watch Centers are being organized by the *Barangay* Chairman in consultotion with the City/Municipal Peace and Order Council concerned.

1. Most Recent Program (Example): Street Watch

Street Watch is a program designed to get the community actively involved in preventing crime by encouraging neighbors to help each other deal effectively with neighborhood crime and related problems, and to cooperate in law enforcement. It involves the organization of neighborhood blocks in a *barangay* into a Street Watch unit.

Each member of the Street Watch is expected to be on the look-out for crimes and emergencies within their own premises and that of their immediate neighbors. The monitoring efforts shall be assisted by the Foundation for Crime Prevention by providing the necessary infrastructure and networking.

Support of the media is provided by one of the major television networks of the country, GMA Network, Inc. The neighborhood Street Watch information and education campaign on crime prevention is supported by the GMA's radio and television network. Crime prevention information and tips are aired in its newscasts, radio and television programs. GMA has also set up a Street Watch Action Center to follow up cases and report emergencies. The station also airs feature stories and interviews on crime prevention and criminal justice issues.

Street Watch has established an Emergency Hotline (Emergency Hotline 117) which is centrally managed by the Philippine Long Distance Telephone (PLDT) Company and operated by qualified operators from the Philippine National Police.

C. Activities for Enhancing Public Awareness

The media's role must be in making the public more conscious and aware of the problems of criminality, the sociology of crime, the machinery of the criminal justice system, the imperfections and problems besetting the system and the arduous process of prosecution. Criminal justice agencies can engage the services of the

media for a more effective fight against crime. Towards this end, a Communication Plan was launched in 1994 to educate the public on what the criminal justice system is and its critical role in the prevention and control of crime.

1. The Criminal Justice System Communication Plan

A common strategy among the five pillars of the criminal justice system is the conduct of an Information Education Communication (IEC) Campaign. A Presidential Directive was issued for the five pillars of the criminal justice system to formulate and implement a comprehensive Criminal Justice System Communication Plan (CJS Complan). The CJS Complan was initiated to promote the CJS in order to enhance justice, public order and safety through an integrated and sustained communication program. Primers, posters, brochures, pamphlets and other materials containing information on the criminal justice system were prepared, reproduced and distributed to the public. CJS agencies also air a weekly one-hour radio program "*Bantay-Katarungan*" (Justice Watch) which focuses on crime prevention and the criminal justice system. It is aired every Friday from 11:00 a.m. to 12:00 noon over DZBB Radyo ng Bayan.

2. Nationwide Crime Prevention Week Celebration

The Department of the Interior and Local Government, through the National Police Commission, spearheads the annual celebration of the National Crime Prevention Week. Presidential Proclamation No. 461 dated 31 August 1994, declared the first week of September of every year as National Crime Prevention Week (NCPW).

Plans, programs and activities for the week-long celebration, are drawn up with the active support and involvement of the Department of Education, Culture and Sports (DECS), the Peace and Order Councils, the Office of the Press Secretary-Philippine Information Agency (OPS-PIA) and various citizens groups like the Crusade Against Violence and the Citizen Action Against Crime.

In recent years, activities conducted include the Presidential Kick-Off ceremony, an inter-collegiate debate on crime prevention, an On-the-Sport poster making contests, symposia on crime prevention, skit-drama contest for high school students, motorcades and parades. These activities are conducted nationwide.

V. KATARUNGANG PAMBARANGAY SYSTEM - CONFLICT RESOLUTION SYSTEM OUTSIDE TRIAL

Presidential Decree No. 1508, otherwise known as the *Katarungang Pambarangay* Law, established a system of amicably settling disputes at the *barangay* level. The system aims to strengthen the family as a basic social institution, preserve and develop Filipino culture and promote the quality and speedy administration of justice being dispensed by the courts. The essence of *Katarungang Pambarangay* (KP) is embodied in two salient features of the law. One is that it makes the *barangay* settlement compulsory and a pre-requisite to bringing suits in regular courts of justice, or before any governmental office exercising adjudicative functions.

As a community-based, conflict resolution mechanism, the KP has proven its effectiveness in perpetuating the time-honored Filipino tradition of settling interpersonal disputes amicably without resorting to confrontational social behavior. Moreover, while central to the concerns of the KP is the speedy administration of justice, what appears to be of prime

significance over time is people empowerment and, therefore, highly supportive of the notions of social ordering and human development.

The Philippine *Barangay* Justice system exemplifies the personal-oriented approach to the dispensation of justice within a faster and shorter time frame, with less rigor and cheaper costs. Its performance for over more than fifteen years shows that it is one sure mechanism for diverting cases of petty crimes and civil cases from the judicial system. The amicable settlements of disputes intends to bury the rancour and bitterness between the parties and ensure the preservation of closer personal relationship within the *barangay*.

There are 41,000 *barangays* in the country, with a total number of 780,000 mediators (*Lupong Tagapamayapa* Members). The system has contributed to the improvement of the administration of justice specifically the problem of poor people having limited access to the higher courts.

Progress reports from the Department of the Interior and Local Government (DILG) indicated that some 171,042,975 cases were settled, with only 53,361 disputes being elevated to the courts. Its settlement success percentage is a high 89.25%. If this number of disputes were elevated to the courts, the government would have spent P 21,665,443,500.00 representing the total cost of adjudication of the cases. This does not take into account the other benefits to the country such as developing community leaders and providing a complementing alternative to the judicial system at the *barangay* level.

VI. ASSESSMENT AND CONCLUSION

The success of the criminal justice system, with the goal of reducing crime through prevention, hinges on the support and involvement of the citizenry. Without the active and meaningful involvement of the community, even the best trained and equipped police force would fail in its function of maintaining peace, order and stability in society. For instance, if the citizenry would deny a former inmate the chance to be reintegrated into community life, it would be difficult for the offender to be reformed.

"A vigilant community is a peaceful community". In our society, emphasis and recognition should be placed on the so-called mobilized community which is composed of those who are tasked to assume a leading role not only in law enforcement, but in the endeavor to fashion the values and attitudes that make the criminal justice system work. The Philippine criminal justice system has, in its feature, the community as its fifth pillar. The community in this context refers to the elements that are mobilized and energized to help authorities in effectively addressing the law and order concerns of the citizenry.

As a sub-system of the criminal justice system, the community is the most critical and useful component in view of its massive and pervasive composition. Enlightened and cognizant of their roles in the maintenance of peace and order, as well as in the dispensation of justice, members of the community get involved in providing assistance and support to crime prevention activities, particularly in improving the detection and prosecution of crimes and the re-integration of offenders into the mainstream of society.

REPORTS OF THE COURSE

GROUP 1

VICTIM ASSISTANCE: PUBLIC PARTICIPATION FOR MORE EFFECTIVE CRIME PREVENTION AND LAW ENFORCEMENT

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I. INTRODUCTION

The importance of public participation in the effective functioning of the criminal justice system and in preventing crimes is an acknowledged fact. The necessity to encourage and mobilize citizen participation can not be overemphasized, because the criminal justice system can not work in a vacuum. Likewise, past experiences have proven that public participation is indispensable for the success of any crime prevention program.

As reforms to maximize citizen involvement in the criminal justice system gradually take root in the individual pillars, this paper will focus on public involvement at the police level. The paper will cover three (3) main topics, this includes: 1) participation of the public in police investigation; 2) community policing and 3) victims assistance at the investigation stage. It should be noted however, that this paper is prepared from this perspective of criminal justice practitioners, most of whom are law enforcers (public officers, prosecutors).

II. PARTICIPATION OF THE PUBLIC AND VICTIMS IN POLICE INVESTIGATION

A. Situational Analysis

The basic objective of police work is the maintenance of law and order, the preservation of peace, the prevention and detection of crime, the apprehension of offenders and the promotion of public safety. This concept of police work is universal, even if there are slight differences in the procedures of each country, largely dependent upon existing laws.

As regards police methods and procedures of investigation, the detection of criminals, collection of evidence and manner of crime reporting, the present situations in the countries represented are very similar. In all countries, reporting can be done in three ways: 1) personal reporting to police stations (police stations, koban, police counters, etc.); 2) written report through letters of complaint; 3) telephone hotlines. However, in the Philippines, certain offenses should be reported to the *Barangay*[1]; this includes offenses punishable by imprisonment exceeding one

(1) year or a fine exceeding 5,000 pesos. Examples of these offenses include slight physical injuries, slander, threats, theft, evicition, family or marital relations, collection of debts, damage to property and other petty quarrels amongst neighbors. Malaysia has "paperless investigation", wherein reporting is only inputted in a computer file.

Unlike other countries, whereby vicitims and witnesses are not legally bound to report crimes, in Pakistan every person is legally bound to report the commission of certain offences like murder, robbery, dacoity and bribery.

The police should make an effort towards ensuring that the public understands their role in the investigation process, so as to encourage maximum participation. The public must assume some sort of a shared responsibility in the maintenance of peace and order in the community, even if the primary responsibility of enforcing law and order still rests with the police.

The police expect the public to cooperate with them specifically at the three stages of the investigation process. As regards crime reporting, which is considered to be the first stage, the police expect the public to willingly report crimes and unusual incidences. The second stage, which involves collection of evidence, the police expect the public to provide information, be willing to be a witness (by giving police statements), identifying suspects, recognizing weapons, etc, and by not tampering with evidence. During the apprehension or arrest stage, the police expect the public to assist in locating suspects, giving information (hideouts etc), providing logistical assistance like transportation and communication, if necessary.

At this point, it should be noted that the group had a lengthy discussion on whether to expect the public to conduct citizen arrests or not. According to some participants, the police expect the public to exercise their right of citizen arrest because the police can not be everywhere, everytime. The representatives from Gambia, India, Pakistan and the Seychelles declared that this expectation is appropriate since the laws of their country provide for this. Any private person may arrest or cause to be arrested any person who in their presence commits a non-bailable and cognizable offense, and without unnecessary delay, shall take any person so arrested to a police officer or police station. According to the laws of these countries, every person is bound to assist in the prevention or suppression of a breach of the peace, or in the prevention of any injury. However, Japanese representatives noted that the police should not expect the citizens to make an arrest. They also noted reservations especially in relation to the issue of "mob justice" and "arrest without warrant".

B. Hindrances that Impede Public Participation and Cooperation

The best performance index for the police service is the quality of the relationship established between the police and the community they serve. The perception of the community by the police, and vice-versa, accounts for the kind of police-community relations that prevail. Favorable public perception suggests acceptable police behavior and ready public support. An unfavorable image spells trouble. It should be noted that public perception is rather negative in some countries.

Police effectiveness is derived from external focus on how the community perceive their activities, and their willingness to help in enforcing the law. It

is therefore important that good police-community relations be nurtured, as this will increase community involvement in crime prevention and control processes. The public has valid input for a better police service.

1. Police Factors (Negative Police Image)

(a) *Unsatisfactory Police Performance*

When the police do not detect and investigate criminal cases sufficiently and effectively, this prevents the public and victims from counting on and cooperating with the police. At present, a number of deficiencies affect police performance

(i) Police human resources:
- Insufficiency of investigative skill, manpower and legal knowledge.
- Inflexibility of police officers.
- Insufficiency of coordination amongst law enforcement agencies and with other government offices.

(ii) Logistics:
- Insufficiency of not only modern but basic equipment and supplies.

(b) *Lack of Awareness Regarding Issues of Victims (Secondary Victimization, Victims' Rights, Sensitivity to the Plight of Victims etc.)*

Some police officers are not even aware that they commit secondary victimization in the course of their investigation. The routine of police work sometimes causes them to be indifferent and callous to the plight of victims. Secondary victimization can be committed in the cource of police questioning. Such victimization occurs when the police cause unnecessary delay; ask unnecessary questions; make unnecessary remarks, allow the media to access investigation; create an atmosphere of fear for the victim; prejudge the situation; discriminate because of race, colour or religion; or work for possible reconciliation without permission from the victim. Some specific examples of secondary victimization are: showing photographs of the family members killed, investigating a victim immediately after undergoing severe medical treatment, arbitrary scheduling of questioning, or having the victim relate the story too many times.

(c) *Low Police Morale*

The morale of police officers affects their performance. If they have low morale and do not have the right attitude towards their work, the kind of service rendered to the public is shortchanged.

(d) *Political Influence*

Police fear reprisals as they can be transferred or reassigned to a remote area or a less important position if they refuse to cooperate with influential politicians.

2. Public and Victim Factors (Uncooperative Attitude)

A basic condition for an effective and efficient criminal justice system is the genuine trust and confidence of the general public. It is this trust and confidence that spells the difference between an actively supportive public and an apathetic community. Encouraging citizens to get involved is no easy task. Currently, the following conditions of the uncooperative attitude of the public are observed in some of the participating countries:

(a) *Uncooperative Attitude due to Fear of Political Interference in the Police Process*

Public and victims in some countries fear that nothing will come of the investigation, in spite of their efforts, because someone more "influential" has a hand in things (incidences of whitewash; political vendetta; complaint not being entertained because of the political leaning of the victim or witness, etc.)

(b) *Uncooperative Attitude due to Pressure from the Community (Traditional Values)*

In some countries, the concept of justice is heavily culturally laden. Victims and witnesses are often reluctant to report crimes for fear that it will affect their stature in society. They are likewise concerned about less confidentiality in a communal society, wherein people tend to talk about and make fun of the misfortunes of others. This situation may bring shame for the victim and their family if the event occurred because of their own negligence or if the offense is delicate (eg, those involving sexual offenses). Since most communal communities are quite small and people know each other, victims and witnesses often fear reprisal from offenders or from the offenders family and friends. There are even instances wherein the community would view their reporting or cooperation with the police as a "breach of brotherhood". In the Philippines, this breach of brotherhood is a violation of the value of "*pakikisama*"[2]. In Gambia, this is called "*badia*"[3].

(c) *Uncooperative Attitude Due to Materialism and Individualism*

Another observation is that people are uncooperative because they are too busy earning a living and do not like to be bothered. They do not care much about the good of society and think only of themselves.

(d) *Lack of Incentives for the Public*

The public do not have enough incentive to assist in the investigation process. They are expected to dole out money for transportation to and from the police station, and to sacrifice possible earnings because of spending time for the investigation. Often times, their efforts go unrecognized.

(e) *Lack of Awareness of Criminal Procedures*

Most people are uninformed about the proper way of reporting crimes or filing a complaint. They are often also not aware of distinguishing the various types of offences and such situations may discourage them.

3. Unfavorable Environment Created by Mass Media

The Media has to play a positive and constructive role as a channel of information and as a line of communication from the government to the people, and from the people to the government. Media must make the public more aware and conscious of the problems of criminality, the sociology of crime, the machinery of the criminal justice system, the imperfections and problems besetting the criminal justice system, and the arduous process of prosecution.

However, untoward events are sometimes caused by the media. Media sensationalism, unfortunately, creates a negative impact on public trust and cooperation. Media sensationalism is identified as a common problem in all countries. Some media practitioners give particular "colour" to issues to add to the commerciability of the medium. Sometimes they go to the extent of

glorifying crimes and criminals, and practice irresponsible reporting.

C. Recommendations

1. Police

(a) *Enhancing Police Education*

Improve the treatment of crime victims by enhancing police education in the fields of human psychology, victim sensitivity, and crisis intervention, especially in handling domestic violence cases and sex offences. Such training programs are currently being locally conducted in Japan, Pakistan, the Philippines, and the Seychelles. Police officers in Gambia and the Philippines are also trained overseas for this purpose. In Malaysia, training for senior police officers is held every year and an international police training course is sponsored by the government which is participated in by neighboring countries like Brunei. In the USA, all police officers are given training on victim's rights, how to treat people in distress, crisis intervention and other victim issues. Proper police education should be continuously conducted to meet victims with respect and sympathy, and to make diligent efforts towards not hurting their feelings, and avoiding secondary victimization.

(b) *Improved Police Performance*

The best image-building program is good police performance. Efforts should be made toward achieving higher crime solution rates, promoting better police accountability and preventing corruption. Such effort can be maintained by means of the proper monitoring of police services. An internal system of inspection and monitoring in the police force is currently being practiced in all countries. However, an independent performance evaluation scheme, like that practiced by the Public Safety Commission of Japan and the National Peace and Order Council of the Philippines, seems more appropriate to truly effect an unbiased evaluation.

(c) *Promote Better Relationships with the Public*

The police must make a conscious effort towards creating a conducive atmosphere for the public to report crimes. One strategy is community policing.

(d) *Equipment and Supplies*

Provide basic equipment and supplies, and procure modern equipment by tapping available resources from the government and private sector. However, conditions for donations from the private sector should be properly laid out by each country.

(e) *Provide a More Comfortable Environment for Victims and Witnesses*

Providing a condusive atmosphere for crime victims and witnesses means establishing specific windows/ counters for victims, providing receiving rooms, deploying courteous police officers to man the counters, and providing women investigators for victims of sexual crimes or domestic violence.

Japan has provided victims with a receiving room. Malaysia has installed 'Victim's Counters' in police stations and has a Mobile Police Complaints Center (bus) which can be deployed to the scene of the crime. The Philippines has established 'Women and Children Concerns

Desks' nationwide. Policewomen to investigate crimes of domestic violence and sexual offenses are common in Gambia, Japan, Malaysia, Pakistan, the Philippines, and the Seychelles.

(f) *Provide Information to Victims and Witnesses*

The police should provide sufficient information to victims and witnesses, including explanation of criminal justice procedures, available services, status of the case investigation, and situation of the offender.

A victims notification system is currently being practiced in Japan and the Seychelles. In the Seychelles, a Complaint's Acknowledgement Form is issued to victims upon reporting a crime. The form consists of the complainant's name, address, date and time the report was made, particulars of the compliant, name of the officer receiving the complaint, the case number, relevant telephone numbers, date on which the victim may check back for the outcome of the case.

The notification program to victims in Japan is based on the Code of Criminal Procedure, wherein a public prosecutor should promptly notify the complainant, accuser or claimant of the result of the disposition (CCP article 260, CJLJ p. 129). Therefore, the notification program to victims was launched on 1 April 1999. When the victims, a bereaved family member or witnesses desire notification, a public prosecutor shall inform orally or in writing as follows; (1) the disposition of the case (e.g. prosecution for the formal trial, prosecution for the summary proceedings, non-prosecution or referral to the family court); (2) in prosecuted cases, the name of the court and the date of the trial; (3) the result of the judgement, sentencing, whether to appeal to a higher court; (4) the summary of the prosecuted offences, the heading and summary of the non-prosecution, whether to detain, bail etc.

(g) *Strengthen Coordinative Mechanisms with other Government Agencies*

The police should maintain coordinative mechanisms with other government agencies. One of the measures recommended is the deployment of police personnel in hospitals. A police counter is recommended at least at the district hospitals. This is currently being practiced in Gambia and Malaysia. In these countries, police counters are set up in district hospitals so as to assist and/or monitor unusual occurences which necessitate medical attention. By setting up police counters in the hospital, victims or witnesses are provided with easier access to police services and therefore encourages reporting. Likewise, the police can also look after or monitor suspicious occurences (i.e patients with gunshot wounds, etc).

(i) *Provide a System for Reimbursing Transportation and Allowances for Victims and Witnesses*

In Japan, victims and witnesses are provided with actual transportation reimbursement, accommodation expenses, and allowances ranging from 5,000-7,000 yen.

(j) *Victims Complaint Sections or Grievance Procedures*

Establish a victims complaints section or a grievance procedure

within the police station and an independent body for complaints against the police (disciplinary body). The independent body being proposed can be similar to the Peoples Law Enforcement Board of the Philippines or the Public Complaints Bureau in Malaysia. People empowerment, as a strategy in the administration of police, finds actualization in the organization of the People Law Enforcement Board (PLEBs) in the Philippines. Under R.A. 6975, the PLEBS are vested with the jurisdiction to hear and decide citizen's complaints against the police. PLEB members are appointed by the local executive on the recommendation of the local Peace and Order Council. PLEB members are acknowledged and respected individuals from the community.

The Public Complaints Bureau of Malaysia is under the Public Services Commission and is responsible to the Prime Minister's Department. Its task is to receive all complaints against public servants. The complaints will be referred to the proper department concerned and that department will investigate and take the necessary action. The said department is also asked to report it's actions to the Complaints Bureau. The report of the complaint will be furnished to the complainant.

(i) *Establish an Independent Institution or Committee to Monitor Police Services*

Monitoring of police services should be done by a separate independent agency. This is being practiced in Gambia (Police Commission), Japan (Public Safety Commission), Hong Kong (Independent Police Complaints Council), Malaysia (Police Commission), and the Philippines (National Police commission). These commissions involve representatives from the public. The purpose of these commissions is to supervise and administer the police force, and to draw out policies for the police.

The Public Safety Commission of Japan consists of a chairman who is the Minister of State, and five members. The members of the Commission are appointed by the Prime Minister, subject to the approval of both houses of the Diet. The National Public Safety Commission was founded 1954, and it has since played a significant role in securing democratic administration and the political neutrality of the police. The major tasks of the National Public Safety Commission are administrative supervision over police activities relating to national public security, and coordination of the police administration, by the formulation of standards for activities by police personnel.

The Malaysian Police Commission was formed under the Police Act 1967. The Commission is chaired by the Minister of Home Affairs and the members are appointed by the Minister from amongst representatives of the judiciary and former senior government officers. Its role and function includes matters of discipline and career improvement (promotion).

2. Public and Victims

(a) *Initiate or Intensify Public Information and Education Programs (with Particular Emphasis on the Procedural Stages of the*

Criminal Justice System; the Role of the Public in the Criminal Justice Process, etc)

- Police to conduct public education programs by community seminars or dialogues, and/or by target groups (students, office workers, housewives, etc).
- Exhaust the use of radio, TV and print for criminal justice information and education (print and broadcast).
- Work for the inclusion of such subjects in school curriculums - formal education.

(b) *Public Information*

Initiate moves to institutionalize the police duty to provide necessary information to the public, especially victims and witnesses, on the case progress; information on available services like witness protection, providing information on hotline numbers in case of emergencies, etc.

(c) *Adopt a Reward System for the Public*

The police should always appreciate the efforts made by the public. This recognition can be made by awarding certificates of appreciation to individuals who have rendered exemplary assistance, specifically during police anniversaries or ceremonies. The reward may also be a monetary token. Such appreciation may encourage more people to become involved.

3. Media Management

The police must initiate diligent efforts toward giving the public the right information. This can be done by coordinating with the media and by issuing official police press releases, regular conduct of media dialogue, and by establishing an office in the police service which is responsible for public relations or public information, to enhance accessibility of information to the media.

The criminal justice system can engage the forces of the mass media, along with vigilant citizen action at the local level, in the effective fight against crime. Thus, a radio, TV and print communication plan on the criminal justice system should be launched to inform the public of its critical role in the prevention and control of crime. Public appearances on radio and television programs by law enforcement officials and other criminal justice personalities serve to assure the people of the government's sincerity in cracking down on organized crime groups and other criminal elements.

III. COMMUNITY POLICING

A. Community Policing Concepts

1. Common Understanding

Community policing is an activity to attain the police objectives of maintaining peace and order, preventing crimes and promoting public safety. Community policing works on the assumption that crimes cannot be adequately met by law enforcement and coercion.

Community policing is both a goal and an organizational strategy that allows the police and community residents to work closer together in new ways to solve problems of crime, fear of crime, physical and social disorder. Community policing envisions the police will actively engage in larger social issues.

Community policing emphasizes a cooperative relationship between the police and the community, It is a system of policing mobilizing the community to solve the problem of crime and for ensuring public safety. The objective of community policing is to establish a closer relationship with the community to attain better public participation for more effective police work.

Community policing is geared towards crime prevention and crime control by promoting awareness, disseminating information, education and mobilization. It should be noted that the flow of information is a very vital factor in community policing. Information can be channeled from the police to the public; from the public to the police. Community policing is pro-active rather than reactive.

2. The Purposes of Community Policing

There are four identified purposes of community policing:

(a) To encourage police/citizen partnerships for crime prevention.
(b) To foster and improve communication and mutual understanding between the police and the community.
(c) To promote interprofessional solutions to community problems, and the principle that the response to crime is ultimately a total community responsibility.
(d) To enhance participation and cooperation of the public at all levels of the criminal justice system (police, prosecutors, courts, corrections and rehabilitation).

3. Essential Elements of Community Policing

There are three (3) essential elements of community policing:

(a) *Police Must Understand the Needs and Expectations of the Community*
Community policing is the goal that guides the attitudes of officers when interacting with the community. The police assume a much bigger role. Community-policing is problem oriented policy; officers are encouraged to make decisions about how to analyze problems, develop appropriate responses, and interact responsibly with the community in a partnership aimed at solving community problems.

(b) *The Community Must Actively Participate in Crime Prevention*
Community policing puts a greater degree of accountability and responsibility on the community. Community policing should indicate a sense of ownership from the community - "this our police".

There are three (3) basic types of crime prevention:
- Social/community crime prevention - social development programs.
- Crime prevention through environmental planning and design.
- Situational crime prevention - target hardening, reducing opportunities and temptations to commit crimes.

There are four levels of involvement in community policing:
- 1st level - No objection
- 2nd level - Agreement/consent
- 3rd level - Support
- 4th level - Involvement

(c) *Community and Police Jointly Responsible for Community Safety and Solving Community Problems*
Community policing adopts a simple problem solving model to facilitate the exchange of information between public and private agencies, community groups, and all those who become part of the problem solving process. In community policing, the police and the community assume more dynamic roles. Crime prevention is seen as the shared responsibility of the police and the community. Fostering effective partnerships to solve problems is

crucial because of the scarcity of resources.

B. Community Policing Practices in Participating Countries

1. Situational Analysis (Practical Implementation)

The overall mission of community policing is to carry out community safety activities to ensure the safety and peace of community residents, and to perform initial-stage police action in immediate response to any event related to the police. To better accomplish this mission, the community police seek to take into account the opinions, suggestions and requests of community residents, and to tailor police operations to the specific needs of each community.

Community policing is carried out by the conduct of a wide range of activities including crime prevention activities and crime solving/exposing activities; maintaining constant alert day and night; patrolling neighborhoods; exercising street vigilance; visiting families and businesses to give advice on the prevention of crimes and accidents, and listening to their troubles and requests; holding traffic safety classes and crackdowns on traffic violators; giving counsel to juveniles; protecting the drunk; protecting lost children; offering counselling on troubles and problems.

Community policing is considered as a major project in Canada, Colombia, Japan, Kenya, Malaysia, Papua New Guinea, Pakistan, the Philippines, Singapore, Thailand and the USA. Some elements of community policing are being done in Gambia and the Seychelles. Community policing will be introduced in Egypt soon.

In Japan, community policing is mainly performed by community police officers posted at street corner police outposts called *Koban*[4] police boxes and at resident-type police outposts called *Chuzaisho*[5], and by those who patrol in squad cars.

Neighborhood watch, conducted by citizen patrol groups, is also a significant activity of community policing. In the Philippines, this community patrol (*Ronda*) is conducted by the *Barangay Tanod* or village watchmen. In Washington, DC, USA, this program is called the Orange Hat Program, wherein residents patrol the streets using orange hats. The same scheme is practiced in Kenya, in which residents of an estate organize themselves into vigilante groups to perform patrol duties at night on a shift basis. The City Rangers in Papua New Guinea conduct the same type of citizen patrolling. In Pakistan, community policing includes a village watch and patrol system, organization of Citizen Police Liaison Committees, *Khuli Kacheris*[6], *Khidmat* Committees[7], *Jirga* System[8], and Union and Municipal Councils.

2. Problems

Consequently, the identified problems encountered in implementing community policing are the following:

(a) Resistance of police officers to change.
(b) Lack of manpower - the group realized that effective community policing is manpower intensive.
(c) Lack of logistics - the group pointed out the problem of resource maintenance and "sustenance".
(d) Lack of leadership and commitment on the part of police officers and community leaders.
(e) Lack of participation from the public.
(f) Strong traditional customs and beliefs.

It should be noted that according to the participant from Gambia, community policing is unlikely to succeed in some areas in West Africa because of strong traditional

customs and beliefs which make activities of community policing impossible to implement. However, other participants opined that the principle of "Rule of Law" should prevail.

3. Countermeasures

Recommendations for improving community policing are the following:

(a) *Police Organizational re-structuring*
This can be done by:
(i) Re-orientation/re-training: changing the mindset of the police on their role.
(ii) Institutionalization of community policing as a fundamental aspect of basic policing.
(iii) Providing greater job challenge.

(b) *Adopting a More Innovative Deployment Strategy*
This can be realized by:
(i) Internal reorganization: re-examining the prevailing situation and pertinent issues such as decentralization, development of career generalists rather than specialists, providing more flexibility and discretion to frontline officers (after proper training), and evaluating recruitment programs.
(ii) Utilize technology to free up manpower resources.
(iii) Tapping community volunteer groups.

(c) *Tapping Available Resources in the Community*
Liaison with business groups, NGOs, Homeowner Associations etc, and maintain a good level of coordination and networking. Some programs recommended include "Adopt a Precinct" which is practiced in the Philippines, wherein a certain civic organization looks after the needs of a certain police precinct and gives the necessary support like logistics and training, and even provides some police benefits like scholarships for the children of model cops. In Malaysia, the "*Wakaf*"[8] system is widely practiced. This can be exemplified by assistance to government by private corporations. For example, a private construction firm who has built a residential subdivision may donate a police station, including a housing area for police personnel.

(d) *Continuous Public Education*
Exhaust all possible areas of communication (TV, radio and print media) and intensify community contact activities (seminars, dialogues, home visits, business visits, etc).

(e) *Public Education on the "Rule of Law"*
In countries where the public are not receptive to any kind of policing, public education should be initiated regarding the 'Rule of Law'.

(f) *Improving Public Participation in Community Policing*
(i) Initiate good public relations programs - give sufficient, and proper information to increase the public's knowledge of police work.
(ii) Initiate measures to have more contact with the public (home visits, office visits, community dialogues, school visits, etc).
(iii) Initiate an integrated crime prevention strategy:
(a) Identifying community sectors (core group or catalysts).
- Identifying sectors vulnerable to crime.
- Identifying sectors who have influence.

- Identifying sectors who are instrumental in bringing about change.

(b) Identifying target groups:
- Juveniles
- Retirees
- Parents/Teachers
- Businessmen

(c) Identifying crimes of major concern and work for their solution.

(d) Deployment of more police officers on the beat.

(iv) Initiate measures of making the police service more accessible and more friendly (installing structures like the *Koban* or *Chusaissso*, neighborhood police posts).

(v) Adopt a comprehensive and good communications plan (public information program, information and education campaign).

(vi) Being more sensitive to community feedback - regular conduct of needs assessment surveys, and police performance and evaluation surveys.

A lot of ground has been covered by the combined efforts of the government and the community as far as crime prevention and control are concerned. On a macro-level, several measures, like systematic and organizational changes, and new policies have been introduced to enhance government capabilities to address problems of peace and order. On a micro-level, the police have shifted from the traditional reactive, incident-triggered type of policing to a proactive, problem-solving, community-orientated policing system.

The adoption of community policing has resulted in a quantum improvement in the relationship between the police and the community. This has resulted in a new partnership and increased awareness that criminality is not solely a police problem but a shared responsibility. The precipitating or major causes of crime have been brought to the consciousness of not only the victims, offenders and the police, but also to a wider spectrum of society that includes the media, religious sector/church, legislature and the whole community.

IV. VICTIM ASSISTANCE

A. Definition of Terms

Based on the UN Declaration of Basic Principles of Justice for Victims of Crimes and Abuse of Power.

1. Victim

Persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are violations of national criminal laws or internationally recognized norms relating to human rights.

2. Secondary Victimization

Victimization which occurs, neither as a direct result of the criminal act nor a further victimization, but through the response of institutions (hospitals, media), criminal justice agencies (police, prosecution, courts, corrections) and individuals to the victim.

B. Effects of Victimization

1. Physical Effects

Physical injuries, physical effects including insomnia, appetite disturbance, lethargy, headaches, muscle tension, nausea and decreased libido, physical damage - abrasions and bruises, etc.

2. Financial Effects
- Repairing property or replacing possessions
- Installing security measures
- Accessing health services

- Participating in the criminal justice system, i.e attending trial
- Obtaining professional counselling
- Taking time off to work or from other income generating activities
- Funeral or burial expenses
- Relocation
- Loss of employment

3. Emotional or Psychological Effects

The extent which people may be affected by crime will vary from one individual to another. At one extreme, people may shrug off very serious incidences with no noticeable effects, while at the other extreme, people become "stuck" in a particular stage and never move on. People who suffer from such emotional effects are diagnosed of having Post-Traumatic Stress Disorders.

C. Victim's Needs

Individual victims have individual needs. There are 5 recognized needs of victims. However, some victims may have only one or two needs, depending on the impact of the crime on them:

(i) Emotional need - recognition of "own" harm from the Criminal Justice System (CJS):
  - Recognition that there is violation inflicted.
  - CJS should initiate efforts so that the community and the offender can recognize the harm.

(ii) Emotional need: support from the community (e.g specific sectors of society like religious groups, victims groups, etc) as well as from family and friends.

(iii) Financial need: reparation for the harm.

(iv) Protection and security needs: effective protection from re-victimization or retaliation.

(v) Need of being informed: information about the offender, the offense and information about the CJS.

D. Types of Services Provided to Victims

1. Crisis Intervention

Crisis intervention should seek to ensure the safety and security of victims. At the same time, it should provide an opportunity for the victims to tell their stories, their reactions to the incident, to be assured of the validity of their reactions and prepare themselves for dealing with the aftermath of the incident.

Emotional support during crisis intervention counselling may include notification of death and occasions for the identification of the body, and notification of the offense to the immediate family. Direct assistance can be done by emergency referrals or direct assistance with medical care, shelter, food, dependent care, property repair and substance abuse treatment. Meeting the immediate need for clothing, emergency/protective shelter, money and transportation, clean-up of the crime scene and emergency repairs, protection through restraining orders, etc. Information should likewise be provided to meet the immediate needs, and victims rights and concerns, like information about emergency financial assistance.

2. Counseling

The incident may trigger stress reactions during the processes of the criminal justice system, and after the trial. Victims may again be traumatized by the verdict, sentence, etc. Some victims simply take longer to begin to cope with their victimization and to reconstruct a new life.

Emotional support can be in the form of supportive individual and group counselling. Direct assistance may involve referrals to or direct assistance with protective shelters. Information should also be given as to how to prevent further

victimization and substance abuse, information and referrals for social, physical health or mental health services.

3. Advocacy

General advocacy services, in order to provide assistance with applications for victim compensation or private insurance, intervention to ensure the continuity of the victims credit, housing or employment, assistance with protection through protection orders, relocation or shelters for victims when needed, in order to ensure access to the trial.

4. Examples of Police Support During Investigation

(i) *Emotional Support*
Accompaniment to occasions for the identification of the accused and to other criminal justice interviews; accompaniment to evidentiary examinations; accompaniment of victims for the identification of bodies, the crime scene and evidence.

(ii) *Direct Assistance*
Assistance with the prompt return of property, victim compensation, restitution, protection orders, shelters or safe places available to victims.

(iii) *Information*
At first contact with the criminal justice system, provide information on the progress of the investigation; information on the criminal justice process; information on the rights of the victims at the scene of the crime and later in the criminal justice process; provide information on the detention of the suspect, bail, bond, measures to assure reparation, the protection of evidence for forensic examination; information on medical assistance at the forensic examination; and information on the prevention on further victimization.

E. Situational Analysis

Please refer to Annexure 1, programs/ activities on assisting victims currently being practiced in the participating countries.

F. Victims Assistance Programs

As understanding and awareness of the effects of crime has grown, so to the responses to crime have become more complex. Research has brought issues such as re-victimization and harassment to the forefront, and victimization surveys have highlighted different levels of risk and the problem of witness intimidation. All these developments have illustrated the need for a community response to crime.

Victim assistance is committed to providing people affected by crime with appropriate and sufficient recognition, support and information to help them deal with their experience, and to ensuring that their rights are acknowledged and advanced in all aspects of criminal justice and social policy.

1. The Goals of Victims Assistance Programs

The goal of a victim service program is to assist victims in dealing with emotional trauma from participating in the criminal justice process, obtaining reparation and coping with associated problems caused by the impact of victimization.

2. The Objectives

The objectives of the program is to do the following:

(a) Increase the commitment of governments and organizations to do all that is possible to assist victims.
(b) Increase the range and availability of services for victim from the time of the victimization, and throughout the aftermath.

(c) Expand the victim's opportunities to participate at all critical stages of the criminal justice process, and to ensure consideration of the impact of victimization upon the victim in all criminal justice systems.
(d) Increase coordination and networking of all appropriate agencies, organizations, groups, and families, kinship and community support systems providing services to victims or affecting the treatment of victims, in order to develop an integrated system of victim assistance.
(e) Improve the quality of outreach to and treatment of victims in need.
(f) Be aware of the unique needs of under-served and new victim populations.

3. Special Victims Groups

The group members agreed to identify special categories of victims' groups which need professional and specialized assistance:

(a) Domestic violence victims
(b) Juvenile victims
(c) Victims of organized crime
(d) Victims of sex offences
(e) Victims of crimes involving police or military or high ranking government officials

4. Police Role in Victim Assistance

(a) Onsite-crisis intervention
(b) Securing medial assistance
(c) Information regarding their rights
(d) Referrals to services and resources

5. Evaluation

Evaluating the strengths and weaknesses of a victims support program initiated by the police against those Initiated by volunteer groups.

G. Recommendations

1. Strategies

(a) Work for the establishment of an integrated victim's support system or establish a network of agencies to provide comprehensive services.

(b) Establish a victim's support unit within the police organization (every police officer has to have a chance to work in the Unit - job rotation after proper training). Special counters for women, or women and children's concern desks are established in Japan, Malaysia, Pakistan, Papua New Guinea, the Philippines and the

Police	Volunteer Groups
Strengths	**Strengths**
• More control and more manageable. • More specialized personnel trained. • More impartial. • More accessible for general types of victims.	• Maximize public involvement. • Reducing costs for CJS. • More accessible to specific types of victims (violence against women, violence against children, etc).
Weaknesses	**Weaknesses**
• Limited police budget - scarcity of funds.	• No guarantee of confidentiality of information. • May lack the needed training . • May have a particular agenda.

Seychelles.

(c) Encourage the establishment of victim's support groups initiated by private and non-governmental organizations similar to the Shizuoka Victim Support Center and Mito Victim Support Center of Japan (please refer to a more detailed explanation in Annexure 3- victim support programs).

(4) Provide specialized programs for victims of special categories of crime:
   (a) Domestic violence victims(e.g Malaysia, Philippines);
   (b) Juvenile victims (e.g Philippines);
   (c) Victims of organized crime (e.g Japan);
   (d) Victims of sexual crimes (e.g Malaysia, Philippines);
   (e) Crimes involving police or military or high ranking government officials (e.g Philippines - provided by the Commission on Human Rights, or the National Police Commission).

(5) Provide victims with information on the available services by employing suitable measures, depending on the conditions in the country. Examples: set up a referral system, employing victim's advocates (USA).

(6) Encourage citizens to get involved in victims support programs. The community can get involved in victim support programs by:
   (a) Being a sponsor: victim support produces and supplies a growing range of information leaflets for people affected by crime. The cost of production, translation, and distribution of the material is sometimes very costly. Victims support offers many opportunities to sponsor information leaflets and other publications for companies who see the merit of being associated with such a worthy cause.
   (b) By investing in services like training, research and information campaigns.
   (c) By becoming a volunteer - volunteers contribute in a variety of ways, from offering administrative services, assisting in publicity and fundraising, helping victims cope with the effects of crime, and as witnesses in court, etc.
   (d) Becoming a friend - annual donations.

The issue of victims' assistance is a relatively new phenomenon. A lot of issues should still be addressed to improve the participation of victims and the public in the criminal justice process. Efforts to improve the plight of victims, however meager, prove that governments recognize the importance of the role they play in the justice machinery.

V. CONCLUSION

The effective, efficient and fair administration of justice lies in the smooth and expeditious functioning of the criminal justice system at different stages and levels. The flow of cases at these levels comprise the workload of the machinery, given the interlocking relationships amongst the components of the criminal justice system- law enforcement, prosecution, courts, corrections and the mobilized community. Each component must strive to be a coherent, efficient and effective unit for the whole system to fit neatly together. Of the five components, the law enforcement pillar constitutes the most critical stage, as it defines the workload of the entire criminal justice system.

Public cooperation is vital for the system to work effectively. Public trust and confidence is built upon a firm knowledge of a criminal justice machinery that is able to deliver justice speedily, accurately, fairly and accessibly. Encouraging the community to get involved is no easy task. Certain preconceptions in the minds of the public have to be reshaped for them to better appreciate their role in effective crime prevention and the functioning of the criminal justice system.

As regards crime prevention, strategies should include the seven elements identified by UNICRI (presentation of Dr, Uljesa Zvekic), to include:

(i) The promotion of active crime prevention policies to accompany law enforcement and criminal justice, based on international experience obtained through effective projects developed by the United Nations and other relevant international organizations.
(ii) The development of long-term plans, even though public opinion might ask for short-term responses to crime.
(iii) Improved coordination between crime prevention activities at the national, regional and local levels.
(iv) Encouragement of the public to be involved in crime prevention, by strengthening the community's confidence in the police.
(v) The promotion by law enforcement and criminal justice agencies of the safety and security of persons and property.
(vi) Treatment of victims with respect and understanding of their needs, and the provision of prompt assistance and information about their rights.
(vii) The regular monitoring of crime prevention programmes, based on reliable information, analysis and public discussion with all parties involved.

Sustained efforts towards providing proper avenues for public participation is a good step towards maximizing citizen involvement. Public participation can be achieved in the investigation process, community policing programs and victim's assistance programs. Governments have to ensure that these opportunities are present and that the public is properly informed about them.

ENDNOTES

1 Community or village organization; the smallest political unit in the Philippines.
2 Filipino values pertaining to communal relationships; expectations on the issue of brotherhood.
3 Gambian value of brotherhood.
4 Japanese police boxes.
5 Japanese residential police boxes.
6 Open public gatherings which are held at various places of a district and division, chaired by the deputy commissioner and commissioner, respectively.
7 Volunteer committee to assist police in crime prevention.
8 Arabic term meaning 'generous gift'.
9 Council of Elders of a tribe or a tribe or a number of tribes which settle all issues within the region.

ANNEXURE 1

SUMMARY OF VICTIM PROTECTION AND VICTIM SUPPORT LEGISLATION AND PRACTICES IN THE COUNTRIES REPRESENTED

COUNTRY	MEASURE	BRIEF EXPLANATION
GAMBIA	VICTIM PROTECTION	Although there is no victim protection program in Gambia, there is some protection available in special cases. This is offered by the police. In most cases, where a victim fears revictimization or molestation by others, the police provide protection in the form of surveillance of the victim's residence. When it is absolutely necessary, an armed guard is provided. The victim is also provided with the numbers of the nearest police stations, in case of emergency. At worst, the offender is detained or re-manded in custody for the safety of the victim. The victim is also assigned an investigative officer whose task will be counselling.
	VICTIM SUPPORT	Victim support is available only during natural disasters such as flood, outbreaks of fire, or heavy storms. Here, there are support group such as the Red Cross and other voluntary organizations. These organizations will provide support to the victims both in cash and kind.
THE SEYCHELLES	VICTIM PROTECTION	There is presently no victim support scheme in the Seychelles, however such a scheme is deemed important to alleviate the plight of the victims of crime. Similarly, no official witness protection scheme exists, however such protection is carried at the discretion of the commissioner of police, in special circumstances.
PAKISTAN	VICTIM PROTECTION	Deployment of police contingent or security guards at the residence of the victim. Issuance of firearms license for self protection. Installation of police hotlines. *Daraullaman* (Female Hostel).
	VICTIM SUPPORT	Establishment of police counters at hospitals. Many NGO's have their emergency centers in cities and along the highways where the facilities of hotlines, as well as ambulances, are available. Women at police stations.
MALAYSIA	VICTIM PROTECTION AND SUPPORT	**Actual Situation** • Royal Malaysia Police (RMP) have no specific victim units/victim support centers. • We have standing orders/ administrative orders to treat victims with dignity, empathy and information. • The role of RMP in victim protection and support is more of referral to existing agencies such as the Social Welfare Department and NGOs.

		• Protection is given depending upon the merits of the case. The witnesses are given protection when there is a threat on life or property. This must be followed with an official police report. If not, security will be given on an *ad hoc* basis. • Victim protection and support is given in cases such as rape, domestic violence and child abuse, by the Social Welfare Department with the assistance NGO's. • Less than 10% of domestic violence cases are being prosecuted because of: (a) Withdrawal of complaint (b) Reconciliation (c) Referred to religious department (for muslim families) • Women police officers have been assigned to such care roles. • There are no major crimes involving big numbers of victims and the record shows that the probability of future violence is less. • Most cases of causing hurt in domestic violence are classified under Sec. 323 pc. This is a non-arrestable case, and an order to investigate must be given by the deputy public prosecutor. **Should Police Organizations Have Victim Units?** <u>Strengths</u> • Control of the situation. • Information on who the victims are. • Ability of services; referral. • Emotional support. • Assurance of safety for victims and witnesses. • Assurance that the actions of the victim or witness is normal. • Strengthen the police awareness of avoiding secondary victimization. <u>Weaknesses</u> • Cannot depend on volunteers only. There must be professionals. • Security is not guaranteed. • Specific job creates boredom and no job satisfaction. • Extra job/ manpower. • No specific budget. **Victim Support Unit Must be Under the Deputy Public Prosecutor Office, Why?** 1. Legal Implications: • Amendment of laws • Budget • Personnel 2. Order to investigate can be given by e-mail, it is not necessary that the investigating officer submit the investigation paper. Not every district is provided with a public prosecutor.

		Countermeasures Due to a low budget and administrative problems, the existing police personnel of all levels should be aware/ knowledgeable about victim's rights. This will avoid secondary victimization and unnecessary work pressure.
THE PHILIPPINES	LEGISLATION The Witness Protection, Security and Benefit Program (WPSBP)	The Witness Protection, Security and Benefit Program (WPSB), under Republic Act No.6981, is a recent legislative enactment granting witnesses certain rights and benefits and defining their responsibilities, if admitted into the program. Apart from the primary benefit of security and protection, witnesses may be given any or all of the following benefits under the program; 1) secure housing facility for high-risk witnesses; 2) financial assistance to witnesses and their dependents, ranging from a minimum of P3,000.00 to about P15,000.00 in certain cases; 3) travelling expenses and subsistence allowance; 4) medical and hospitalization assistance; 5) housing or rental allowance in case of witnesses with manageable risks. The Department of Justice entered into agreement with different government agencies for assistance and services to be afforded to clients. The Department of Foreign Affairs agreed to render assistance in facilitating/ securing passports and visas for WPSBP covered witnesses, and to initiate negotiations with countries to determine the feasibility of an exchange of witnesses. The Philippine Overseas Employment Authority (POEA) agreed to assist the witnesses in obtaining livelihood abroad through its name hiring or government hiring schemes, or other methods of deploying overseas contractual workers. The Department of Labor and Employment, and the Department of Social Welfare and Development, conduct skills training programs for witnesses.
	Compensation for Victims of Unjust Imprisonment or Detention and Victims of Violent Crimes- The Board of Claims	Republic Act No. 7309 is the law creating the Board of Claims under the Department of Justice, granting compensation to victims of unjust imprisonment or detention, and victims of violent crimes. The following may file claims for compensation before the Board: a) any person who was unjustly accused, convicted and imprisoned, but subsequently released by virtue of a judgment of acquital; b) any person who was unjustly detained and released without being charged; c) any victim of arbitrary or illegal detention by authorities as defined in the Revised Penal Code under a final judgment of the court; d) any person who is a victim of violent crimes. Violent crimes shall include rape and shall likewise refer to offenses committed with malice which result in death or serious physical and/or psychological injuries, permanent incapacity or disability, insanity, abortion, serious trauma, or acts committed with torture, cruelty or barbarity.

		For the victims of unjust imprisonment, compensation shall be based on the number of months of imprisonment and every fraction thereof shall be considered one month, but in no case shall such compensation exceed P1,000.00 per month. In all other cases, the maximum for which the Board may approve a claim shall not exceed P10,000.00 or the amount necessary to reimburse the claimant's expenses incurred for hospitalization, medical treatment, loss of wage, loss of support or other expenses directly related to the injury, whichever is determined by the Board.
	PRACTICES Establishment of "Women's and Children's Concern Desk" in Police Stations	The establishment of Women's and Children's Concerns Desks in police stations is expected to further streamline and strengthen the efforts of the police in responding to problems of violence against women and children. As a management strategy, policewomen are assigned to man the desks, or if no female personnel are available, a trained male police officer is assigned. To date, a total of 1,632 WCCDs with 1,763 personnel (1,468 policewomen and 294 policemen) have been established nationwide. In highly urbanized cities, the WCCD handles the investigation of women and children's cases. A total of 3,463 cases of abused women and children have been reported to WCCD and acted upon appropriately. WCCP officers have been effective tools in providing services to women and children in close coordination with the Department of Social Welfare and Development (DSWD) and concerned women-based NGOs.

ANNEXURE 2

OUTLINE OF CRIME VICTIMS SUPPORT CENTER

Networking of Related Agencies and Groups (Japan)

- October 1996, first establishment of crime victim assistance liaison conference at the prefectural level.
- May 1998, national network of victim support, consisting of 10 volunteer groups.
- February 1999, last establishment of crime victim assistance liaison conference at the prefectural level (established in all prefectures).

Crime Victim Assistance Liaison Conference

(1) *Members*

Police, public prosecutors offices, local government and related agencies (e.g legal circle, medical institution, psychological institution, Counseling Institution for Women and Children, social welfare institutions, Board of Education, business world, public-service corporations, mass media, and so on) and volunteer groups.

(2) *Location*

The Office of Crime Victims Assistance liaison conference is at the prefectural police headquarters and the police cooperate with related agencies and volunteer groups.

(3) *Activities*

Opening meetings, exchange information, training course on counselling, introduction of the proper organizations mutual to crime victims according to victims needs, various activities in order to open counseling centers.

(4) *Purpose*

One of the aims of establishing crime victim assistance liaison conferences at the prefectural level is to build volunteer groups such as support centers at the prefectural level; through the activities of crime victim assistance liaison conferences, such as the meetings and examination of the members of crime victim assistance liaison conferences and the volunteers to prepare for the establishment the volunteer groups.

Volunteer Groups

12 groups have been established at the prefectural level, such as the Mito Support Center (SC) in Ibaragi Prefecture and the Shizuoka Support Center (SC) in Shizuoka Prefecture.

(1) *Mito Support Center*

Established referring to the program of NOVA in 1995 July. There are 5 Programs (5 activities):

(a) Information: explain the rights of victims and giving the information which victims need.
(b) Referral to related organizations: e.g. hospitals, police, lawyers associations, clinical psychologist and so on.
(c) Crisis response; crisis intervention. Two volunteers accept training to visit victims and give the support which victims need.
(d) Counselling: by telephone or by interview.
(e) Support groups: support to make the association (or meeting) of victims or their bereaved family.
(f) Others: there are more than one hundred volunteers. Characteristic activities of the Mito SC is to escort victims to the courts.

(2) *Shizuoka Support Center*

Established in May, 1999. The activities of Shizuoka SC is similar to those of the Mito SC.

ANNEXURE 3

COMPARATIVE EVALUATION OF STATE COMPENSATION

	JAPAN	THE UNITED STATES
Eligibility Requirements	• Report to police; no time limit. • Filing period: Within 2 years from the day the applicant recognizes the crime, and within 7 years from the day the crime was committed.	• Report to police: usually within 72 hours; exceptions are made for good cause. • Filling period: One year is typical; time limits vary from State to State.
Victims of Terrorist Acts	N/A	Compensation is payable for residents and non-residents who are injured by crimes involving terrorism occurring within the States or, on the case of US citizens, outside of the US.
Claimants	• Victims of crime who suffer serious injuries. • Dependents of deceased victims if they legally reside in Japan. • Foreign citizens if the victim was a legal resident of Japan when the crime occurred.	• Victims of crime. • Dependents of homicide victims. • Relatives of victims of crime. • Foreign citizens; eligible in most States.
Procedures	The victim must report the crime to the police, and the police must recognize the victimization. A claimant can obtain an application from any police station or prefectural police department. The claimant should send the application to the prefectural public safety commission through the police station or the prefectural police department that has jurisdiction over the address of the claimant. It takes approximately 5 months for the applicant to be notified of the decision, and it takes approximately 2 more weeks for the applicant to receive the benefit.	The claimant must file an application with the compensation agency in the State in which the crime occurred. Based on information submitted by the victim, the agency determines whether the claimant is eligible and has suffered a financial loss. In most States, the victim can appeal the agency's decision to deny or reduce the award of compensation.
Benefits and Award Limits	The maximum award in yen: Bereaved Family Benefit: 10,790,000: Incapacity Benefit: 12,730,000	Most States can pay a maximum of between $15,000 and $25,000. A few states have higher or lower maximums.

Compensable Costs	None. The program provides the above lump sum awards.	All States will cover the following: • Medical expenses. • Mental health counselling. • Lost wages for disabled victims. • Lost support for dependents of homicide victims. • Funeral. • Travel for medical treatment. • Services to replace work previously performed by the victim. • Cleaning of homicide scene if a residence. • Essential personal property. • Rehabilitation.
Emergency Awards	If the program cannot quickly render judgement because the offender is unknown or the degree of disability is unclear, the program offers provisional benefits to the applicant.	Some States provide emergency awards or expedite processing for victims faced with an extraordinary financial or health crisis.
Funding Sources	The program is funded by the National Expenditure. For bereaved children, scholarships are available throught the Crime Victim's Relief Fund.	Most States obtain their funding from fees or charges assessed against offenders. Some States receive appropriations from general revenue. OVC provides supplemental funds from Federal criminal fines.

GROUP 2

PARTICIPATION OF THE PUBLIC AND VICTIMS FOR MORE EFFECTIVE ADMINISTRATION IN PROSECUTION AND THE JUDICIARY

Chairperson	Mr. Alvaro Caro Melendez	(Colombia)
Co-Chairperson	Ms. Emi Yoshida	(Japan)
Rapporteur	Mr. Hideki Igeta	(Japan)
Co-Rapporteur	Mr. Moustafa Ahmed Genidy Abdin	(Egypt)
Members	Ms. Wang Ping	(China)
	Mr. Jyotirmoy Khosla	(India)
	Mr. Darmawel Aswar	(Indonesia)
	Ms. Tokiko Sugawara	(Japan)
	Mr. Hisashi Uruga	(Japan)
	Mr. Yasanath Ravindra Weerakkody Wijegunawardena	(Sri Lanka)
Advisers	Professor Keiichi Aizawa	(UNAFEI)
	Professor Hiroshi Iitsuka	(UNAFEI)

I. INTRODUCTION

Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered; as is provided in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly resolution 40/35 (1985)). Unfortunately however, victims of crime have received insufficient attention from the criminal justice system. Although in recent years considerable progress has been made to improve the situation of victims, many shortcomings and problems still remain. This means that victims still suffer physical and financial impact, psychological injury and, in some cases, secondary victimization from the criminal procedure. In order to realize more effective administration in prosecution and the judiciary, it is important to encourage victims to cooperate with the criminal justice system by releasing them from victimization.

In addition, public participation, mainly as witnesses, is also indispensable for the same object. This matter is also likely to be neglected because witnesses are regarded not as the object to consider, but as a 'means to an end' in the criminal procedure.

The main subject of this group is the 'Participation of the Public and Victims for More Effective Administration in Prosecution and the Judiciary', which is accompanied with the undermentioned 3 sub-topics:

(1) Measures for securing testimony (e.g witness protection).
(2) Redress for victims through criminal justice procedures.
(3) Measures for protection of the rights and interests of victims.

We know that there are a lot of issues of concern with our main theme, an example of which is the jury system, but we will not discuss such issues. The focus is on the said 3 sub-topics because, as officers engaged in law enforcement, we believe that we should address our attention to the issues that can be resolved in practice, and the 3 sub-topics are commonly shared among us. We are going to discuss our main subject according to these topics, under which the problems and current situation of each country, and our suggestion, will be discussed.

II. MEASURES FOR SECURING TESTIMONY

A. Problems

Among most of the group participants, it is well recognized that witnesses are sometimes exposed to threats by defendants or members of the gangster groups and as a result, are likely to be reticent to answer questions by the prosecutor or change their statement in court. If witnesses are afraid that defendants or their associates might harm them, they will hesitate to attend court and will avoid statements against the defendant in court, at which the defendants and their associates (in spectators seats) may be present (some participants named this situation of witnesses as "hostile"). As the public or victims as witnesses cannot effectively participate in the criminal proceeding, the pursuit of truth shall fall into a fatal blunder. The group discussed how we are to cope with this problem of threats and reticent witnesses.

It is certain that the reticence of witnesses can be caused by other reasons, such as victims of sexual offenses not wanting to disclose their experience (we will mention this problem later). However, the main and major reason for witness reticence to assist the prosecution authority, even if arising from other causes, cannot be separated from the problem of the threat to witnesses.

B. Current Situations and Present Countermeasures

As each participant presented the countermeasures implemented in their respective countries, we have discussed the merits and demerits of each system in practice, with recommendations. We came to recognize that multiple countermeasures are compatible in specific countries and, if selected and applied properly, to a variety of situations. The brief summary of the current situations and countermeasures adopted at present are given below.

1. Witness Securing Program

In Colombia and the USA, there are highly developed countermeasures for securing witness protection in order to prevent threats against witnesses. This concept brought us a great model for desirable countermeasures. It includes control over information on witnesses and concrete protection measures. This system can include providing witnesses with body-guards, changing their name, identifying them by a number throughout the trial, providing them with a budget for moving to safety areas or to a foreign country, and so on. In a case where witness examination is conducted, linking a witness in another room to the courtroom via video camera is one measure. This program can be applied from the early phase of investigation and continue to the end of the danger to the witness. These concrete protection measures are selected and adopted depending on such elements as the phase of the case, seriousness of the threat, the nature of a witness and so on, or by the judgement of the Attorney-General.

Also in Egypt, special permission for carrying firearms and insurance arranged by the government is available for

witnesses likely to be threatened. Such programs are effective and invaluable to these countries, in spite of their enormous costs, where the power of gangster groups is so strong that witnesses are likely to expose themselves to serious harm by opposing the groups. It is a matter of course that these programs should be implemented without any unfair influence on testimony from the investigation authority.

2. Devices in the Examination of Witnesses

In countries such as Indonesia and Japan, which have their legislative origin in the Continent, written statements of witnesses made by the investigating authority can be examined under specific conditions, i.e, as evidence in the trial (if the prosecutor submits it, the defense counsel consents to it and the judge makes an affirmative decision). In such cases, it is not necessary to summon a witness to the court in Japan. Unfortunately the accused and the defense counsel are likely to refuse consent for the written statement because they contend the guilt of the accused.

Witness examination through TV cameras is suggested in order to relieve witnesses of pressure from defendants and spectators, although it has not been implemented in any countries of the group. This measure may well be recommended and adopted, especially where the defendants or the spectators scare the witness extremely, because this can exempt them from confrontation with the defendants or spectators, while still granting an open trial and the right of cross-examination.

In Japan, judges are authorized to exclude the defendant from the courtroom during witness examination when their presence would interrupt the witness from giving a full statement. Indonesian Judges have similar powers too. Although there is a collision between the victim's rights and the defendant's right to attend the court, such powers can be justified under specific conditions and are adaptable to other countries.

3. Keeping the Defendant in Custody

In such countries as India and Japan, there is a legal mechanism that the accused, who are suspected of destroying evidence or threatening witnesses into changing their statements, may be kept in custody and refused bail during the trial. In some cases, persons (except for the defense counsel) are prohibited from interviewing the defendant, even in a detention house. This can contribute greatly to security for witnesses, as it makes it impossible for the accused to threaten the witnesses by themselves. However, some participants objected to this idea in terms of the defendant's human rights. Therefore, adoption of this idea seems to depend on the nationality and situation of each country, though it is an effective countermeasure for securing witnesses.

4. The Sanction Against Threat

A threat or unlawful force to a witness composes another crime, such as intimidation of a witness, and is punishable by another criminal procedure in some countries. However this provision seems insufficient as a measure to annihilate such activity in the case of specific organized gangster groups, because members of the group are likely to threaten witnesses regardless of this provision.

There is sanction in the sentencing against defendants who threaten witnesses in their case. If such conduct is proved in the trial of the case, the sentence for the accused will be increased by 25% in Colombia. Similar treatment is reportedly

implemented in Egypt. Where an attempt to control witness' testimony is impossible, a defendant, knowing that such an attempt would result in longer sentencing, will give up on such unlawful conduct. This sanction against the defendant can be effective in preventing threats committed by defendants to some extent.

In Japan, a judge may have a specific spectator excluded from the courtroom when his/her presence would interrupt the witness' statement. Implementation of this countermeasure requires adjustment between the authority and the dignity of the court, and the human rights of the threatener, because s/he shall be subject to such disposition by a relatively simplified procedure. Whether judges can be endowed with such power depends on the status of the court in each country.

C. Suggestions

Effort should be made to enhance the protection of witnesses during the entire criminal judicial process. Introduction of comprehensive witness protection programs would be useful for the fight against organized crime.

D. Additional Problems or Points

1. Allowance of Witnesses

(a) *Problems and Situations of Countries*

Although in many countries daily allowances and traffic fees for witnesses are supposed to be provided, in more than few countries they are not provided in practice because of the deficit budgets of governments. In Egypt, no allowances are supposed to be paid to witnesses.

(b) *Suggestions*

It is desirable that:

(i) Adequate daily allowances and traffic fees be paid to a witness who attends the court and testifies.

(ii) If necessary, accommodation fees be paid or accommodation facilities be available.

2. Document as Corroborative Evidence

(a) *Problem*

Besides oral evidence, documentary evidence is necessary in cases for proof, such as medical reports and other expert reports. In cases of misappropriation or criminal breach of trust, documentary evidence plays a great role. It is also possible that a witness' testimony is not admissible or credible without such kinds of documents. Unless these documents are preserved and protected, it is difficult to prove the case. There may be cases where the offender may try to damage or destroy the documents. Whether this issue should be an item of this sub-topic was doubted by some participants because it is not relevant to our main theme. However this issue was decided as a topic of our discussion by the majority in whose countries the loss of documents is a serious problem.

(b) *Current Situation of Each Country*

In Japan, the documents which are not yet submitted to the court are kept in the prosecutor's office, where a scientific way of preserving documents is available. They are inputted into the computers. In India, the court takes these records into the custody. The documents are submitted by the prosecution and are produced only during the trial. In China, evidence involving state secrets shall be kept confidential. Seized articles and documents are properly kept and sealed. Judicial functionaries take measures for the protection of the documents in Colombia. In many developing

countries, documents submitted to the court by the prosecution authority are sometimes lost or altered without the consent of the related parties.

(c) *Suggestion*
Criminal records, especially evidence including documents, should be kept adequately safe, and if tampering is found, the officer in charge of keeping the documents should be blamed for this fault. Documents should be protected at all costs. Scientific devices may be adopted for the same ends.

III. MONETARY REDRESS FOR VICTIMS THROUGH CRIMINAL PROCEDURE

A. Problem

Victims suffer damages from crime such as loss of their property, bodily injury, death and mental suffering. In addition, victims have to pay for medical bills, moving fees and so on. When an offender kills a victim, the bereaved have to hold a funeral which might cost dearly. Such damages or cost should not be left unaddressed. Therefore offenders should, where appropriate, make fair restitution to victims, their families or dependants. Such restitution should include the return of property or payment for the harm or loss suffered, and reimbursement of expenses incurred as a result of the victimization.

Firstly, victims of crime can bring a civil action against the offenders in civil court for monetary payment as compensation, in order to recover the damage of the crime. Unfortunately however, victims sometimes cannot get any or sufficient amounts of money with civil action, because it has some defects in relieving victims of crime, that is:

(i) Victims sometimes cannot identify or find the offender.
(ii) Victims sometimes find difficulty in collecting enough evidence to sustain civil actions.
(iii) Offenders often lack enough funds to make up for the victim's damage, even if victims win in civil action.
(iv) Hiring a lawyer for civil action costs much in comparison with the amount of gain that the victim may get, so that victims sometimes cannot or do not want to bring actions.
(v) In case of payment of fine, this might be an obstacle to compensation for victims.

Regarding stolen property, every country has a system in which articles belonging to victims, seized as evidence by the investigation authority and submitted to the court, shall be returned to the owner as soon as possible. If the articles is lost or not found, victims have no choice other than to get monetary redress for the damage.

In addition, from a historical point of view, criminal procedure for punishment and civil procedure for monetary redress were not separated in pre-modernized society. Therefore each country has developed a respective system to realize monetary redress through criminal procedures, other than civil action in civil court (the systems adopted are countries are attached in table 1).

B. Current Situation and Countermeasures at Present

Here we will illustrate state compensation, restitution orders, and civil action in criminal procedure, with the experience of practice in each country.

1. State Compensation

State compensation means indemnification provided by the state, police authority or Attorney-General outside and independent of judicial

procedures. With state compensation, victims can obtain some monetary redress from the government or state. State compensation does not require the apprehension and conviction of the offender to provide financial relief to the victims.

State compensation can provide victims with financial relief, even though the offenders do not have enough money to make restitution. In general, compensation for victims of crime is paid mainly to the victims of violent crimes. Property loss is typically not covered, with the exception of eye glasses, hearing aids and other medical devices. Adoption or implementation of state compensation is likely to depend on the financial situation of the government.

In Japan, state compensation was introduced in 1980 according to the enactment of the Crime Victim Benefits Payment Act (Law of State Compensation for the Victims of Crime). The types of crime or damages to which this system is applicable are death or serious disability that are incurred by intentional conduct. This includes 2 types of payment, that is:

(i) Payment for the bereaved of victims who were killed.
(ii) Payment for victims who suffered serious disability.

In 1997, payment from this system amounted to 635 million yen for 259 bereaved or victims. It is possible that victims who received damage by the conduct of their relatives, those who are responsible for the cause of the crime or those who have got official payment, such as compensation for industrial accidents, may be suspended from payment of all or a part of the compensation.

In India, the state of Tamil Nadu commenced the Victim Assistance Fund in 1995. The scheme is run by state police and is applicable only in the said state. State compensation requires national funding sources and mechanisms. There are two primary sources: funding from fees or charges that offenders pay, and funding from General-Revenue appropriations from the legislature. In the United States, at the federal level, fines and penalties are levied against federal criminal offenders and these monies are deposited into the "crime victims fund", which is used to help states support their victim compensation programs.

2. Restitution Orders

Restitution order means an order by the criminal court, on its own initiative and discretion, that the offender should compensate their victim's damages. Restitution should be used to provide a way of offsetting some of the harm done to the victim, and also to provide a socially constructive way for the offender to be held accountable, while offering maximum opportunity for rehabilitation. Restitution attempts to establish a relationship between the victim and the offender in an effort to raise the offender's sense of responsibility to the victim.

Restitution to the victim of a criminal injury can be effective as a punitive measure, as well as a financial remedy. If used as a punishment, restitution must come from the offender's own resources and it must be part of the criminal court sentence, in that it is tied to the disposition of the case.

Assessment of victim loss is a complex process, so some device is required to have restitution in the criminal procedure to function effectively. In Colombia, both civil action in criminal procedure and restitution orders are adopted and enacted. The court can consider and order both punishment of the accused and payment

from the accused to the victims. In restitution orders the court is authorized to decide from which property the defendants should raise money for restitution, in order to guarantee fulfillment of the restitution order. For this purpose, the public prosecutor seizes enough property of the defendant for this payment, after the arrest.

In India, restitution orders, that is court authorized orders for offenders to pay to victims, was introduced in 1974. This system has been regarded as a substitution for fines in India, that is; payment of compensation is at the discretion of the court and is subject to no specific criterion. The priority of restitution over fine is at the discretion of the court and restitution orders cannot be realized by compulsory execution. The defendants shall be subject to detention in a workhouse if they fail to fulfill their payment. In practice, the cases in which restitution orders have been entered are very few because the public prosecutor is indifferent to the monetary redress of victims and does not ask for it in court.

3. Civil Action in Criminal Procedure

Civil action in criminal procedure is another countermeasure to realize monetary redress in criminal procedures, where victims can participate in the criminal procedure, seeking monetary redress as a party. Many jurisdictions allow the consideration of civil claims in criminal proceedings. This combination of civil and criminal proceedings has several benefits for the victim and the jurisdiction, ranging from procedural economy to the fact that responsibility for the collection of evidence and the presentation of the issues, to a large extent, lies with the authorities.

In China, civil action in criminal procedure was introduced recently as Incidental Civil Actions, where victims who have suffered material loss as a result of the defendant's criminal act have the right to file an Incidental Civil Action during the course of the criminal proceeding. An Incidental Civil Action is heard together with the criminal case. Only for the purpose of preventing excessive delay in the trial of the criminal case may the same judicial organization, after completing the trial of the criminal case, continue to hear the Incidental Civil Action. A party to an Incidental Civil Action may file an appeal against that part of a judgment or an order of first instance made by a local People's Court, at any level, that deals with the Incidental Civil Action. In practice, a considerable part of victims' injury cases or the bereaved of murder cases have tried this procedure when the People's Procuratorate decided to prosecute the defendants. Victims are likely to get insufficient remedy because the defendant is lacking enough money.

In Egypt, civil action in criminal procedure is also adopted. As the decision of the criminal court is binding on that of the civil court, victims are supposed to make use of this system when cases have been prosecuted. In Indonesia, the court is authorized to decide the civil suit for compensation with the criminal case, at the request of victims. If the injured party seeks joinder of their claim with the criminal case, the district court concerned shall consider its competence to adjudicate the said claim, the veracity of the basis of the claim, and the order requiring reimbursement of costs expended by the injured party. Except where the district court declare its incompetence to adjudicate a claim, or a claim is declared to be unacceptable, the judgment shall only set forth stipulation on the order requiring reimbursement of costs expended by the injured party. Where there is a joinder of a civil suit and a criminal case, then the said joinder shall continue at the stage of

examination on appeal in and of itself. Where no appeal is lodged with respect to the criminal case, then a request for an appeal regarding a judgment on compensation shall not be allowed. As in most criminal cases in practice, when the offender/defendant has no budget for fulfillment of the compensation, the victims may use the civil court to get compensation, as the judge of the civil court can seize the property of the offender and enforce its decision on the offender to pay the victims.

In Germany, civil action in criminal procedure has not worked sufficiently after it was introduced as "Ancillary Proceedings" in 1987. Although this system has a lot of merits for victims or the bereaved, ancillary proceedings were used in only less than 1% of all judgments delivered in 1997. Judges, public prosecutors and legal professionals have been reluctant to use the proceedings and the victims were also unfamiliar with this type of proceedings. The assumed reasons for this are the strict separation between criminal and civil law, and the mental distinction between punishment and reparations. It is claimed that a considerable amount of additional work can stem from the proceedings, and the procedural delays resulting from the taking of additional evidence are considerable.

C. Suggestions

We should continue with our efforts to find how the criminal procedure can best contribute to ensuring the monetary recovery of victims of crime. State compensation could be one of the possible solutions, especially in case the offenders are not caught or they do not have enough money. It is also worth considering the feasibility of encouraging criminal courts to be able to order the defendant to compensate the victim's damage, and establishing a system in which the victim can participate as a party concerned in the criminal procedure, and propose compensation for damage.

In some countries this kind of system was introduced, but even in those countries, the judges and prosecutors were not interested in the system; or even if such orders in that system were issued by the judge, the defendant did not have the monetary power nor intention to compensate for the damage. For such instances, a possible alternative is the system of the UK, where if the judge does not order the defendant to compensate the damage, the reason should be disclosed by the judge. In the system of Colombia, the public prosecutor may seize the property of the accused, which can be appropriated for payment to the victims, in order to prevent the accused trying to avoid the enforcement of compensation and conceal their property.

IV. MEASURES FOR THE PROTECTION OF THE RIGHTS AND INTERESTS OF VICTIMS

As the status or standing of victims in criminal procedures has been reviewed recently, we discussed some issues which can be argued relating to our general theme. We will explain each problem, the current situation of each country and suggestions to each issue according to the flow of prosecution and trial procedure. We also mention the issue of how to cope with the dissatisfaction of victims with sentencing.

A. Notification System for Victims

1. Problem

Information is the minimum requirement to protect the rights and interests of victims, because victims cannot take any adequate action to participate in the criminal procedure, exercise their legal rights or apply for special treatment without knowing basic information such as

on the proceeding or disposition of cases, and the existence of and application procedure for their rights and special treatment.

2. Situation of Each Country and Present Countermeasures

(a) *China*

The court, receiving inquiries about prosecution of the case from victims, shall answer and notify persons after the prosecution. On the other hand, the People's Procuratorate cannot explain the case to the victim before the phase of prosecution. However if the case is privately prosecuted, victims are naturally notified of information regarding the case, as a party to the case.

(b) *Colombia*

Victims have the right to receive documents, in which the outcome and disposition of the case is shown, within 12 days when they inquire about these matters in writing to the public prosecutor.

(c) *Egypt and India*

In Egypt and India, any special rights or treatment regarding the notification system are not available to the victims. Victims shall get relevant information when they bring private prosecution by themselves in both countries.

(d) *Indonesia*

Although a victim may ask for information regarding the case from the public prosecutor or the court, it is not mandatory to correspond and answer this inquiry.

(e) *Japan*

Some kinds of pamphlets and brochures which explain the outline of the criminal judicial procedure, and the rights and positions of victims are prepared and available at the police office and the public prosecutor's office. The public prosecutor's office implemented a notification program where the prosecutor in charge of a case, with application of the victim, shall inform the victim of the disposition of the case, of the court in charge of the case, the trial dates and so on.

3. Suggestions

In order for the victim to be able to make necessary proposals or requests to the investigating authorities and the court, it is necessary to provide adequate information on the flow and outcome of the criminal proceeding. However providing information to the victim may result in violating the privacy of third parties concerned with the case, or the secrecy of investigating information. Therefore, it is desirable to provide information to the victim by striking a balance between the necessity of providing information, protection of the privacy of third parties, and the secrecy of investigating information.

Specifically, if there is a request from the victim, we should provide the victim with information on the disposition of the case, trial court, trial date and outcome of the trial. Another method explaining the flow of the criminal proceeding, such as pamphlets or brochures explaining judicial procedures and the rights and positions of victims, are also useful to victims.

B. Initiative or Participation of Victims in Criminal Prosecution

1. Problems

Victims sometimes feel dissatisfied with the decision of non-prosecution by the public prosecutor. However, generally victims are not provided with the right of participation regarding the decision to

prosecute an offender. The need for victims to check non-prosecution might be strong where prosecution is monopolized by the public prosecutor and is discretionary.

2. Current Situation of Each Country

(a) *China*

While the public prosecution agency exercises the power to prosecute in terms of the state, society and the victim, the victim by himself/herself may bring a charge and request the judicial body to investigate criminal responsibility by right.

(b) *Colombia*

The public prosecutor has the authority to decide on the prosecution of cases. This decision is not discretionary but mandatory when the evidence is sufficient. Special countermeasures for abuse of prosecution power are not available.

(c) *Egypt*

Prosecution of the case is decided at the discretion of the public prosecutor. On the other hand, there is a system of private prosecution where a victim, who is not satisfied with the decision of non-prosecution, may bring criminal action against an offender by himself/herself. In spite of its significance for victim participation, private prosecution in Egypt does not serve victims substantially, for victims can scarcely win in private prosecution.

(d) *India*

Most of the criminal cases in India are investigated by the police and prosecution, and are also filed by them. However, the victim's right to prosecute an offender is provided under Sec. 200 of the Code of Criminal Procedure, 1973. The victims in certain cases get legal assistance from the state to prosecute the offender. The victims can engage lawyers for prosecution at their own convenience. So far as legal assistance is concerned, victims can either receive counseling or lawyers engaged to assist the victims.

(e) *Indonesia*

The public prosecutor decides the prosecution of a case at his/her discretion. There is no system to check or control this discretionary decision. Sometimes victims use mass-media to pressure the Attorney-General into re-investigation and re-examination of non-prosecution decisions.

(f) *Japan*

Prosecution of a case depends on the discretionary decision of the public prosecutor, even though the evidence is sufficient to support the case. On the other hand, the Inquest of Prosecution in each jurisdiction of the district court, which is composed of 11 ordinary people, have authority to check a decision of non-prosecution by a public prosecutor, and provide an opportunity to correct his/her decision. It also serves the function of letting a victim present his/her complaint. In addition to this, there is a system where a person, who has made a complaint or accusation of a specific crime, and is not satisfied with the public prosecutor's non-prosecution decision, may apply to the court to order the case to be tried. If the application is granted by the court, then a practicing lawyer is appointed by the court to exercise the functions of the public prosecutor.

3. Suggestions

Under the countries where private prosecution is in practice, victims naturally

should be able to bring criminal action against the offender in spite of a prosecutor's non-prosecution decision. It is desirable to check the reasons why the private prosecution system does not work effectively and improve it to realize victim's rights or interests.

Under the countries where private prosecution is not in practice, it is necessary to study/establish the system and to provide victims with an opportunity to be involved in the decision of prosecution or non-prosecution, or the indictment process, by being interviewed by the public prosecutor and having a say in the content and degree of damage, and the punishment of the offender. It is worth considering that victims should have an opportunity to file a complaint and request review of the non-prosecution if they are dissatisfied with the decision of the public prosecutors.

C. The Right to Attend the Trial

1. Problem

Victims sometimes can not attend the trial date, even though they want to, because of non-notification of the trial date, capacity of spectator's seats, place of the court and so on. The situation of victims attending the trial is as follows. First, victims are summoned and testify as witnesses at the trial. Secondly, victims attend the trial as a party of the case under the private prosecution system. Thirdly, victims attend the trial as spectators. What matters mainly is the third- standing as spectators- because sometimes there are obstacles to victim's hearing the proceeding of the case, although they are interested.

2. Current Situation of Each Country

In China, victims have the right to attend the court and are granted special seats beside a public prosecutor in the courtroom, and will be notified of the trial date by the court. In Colombia, victims have the right to attend court and testify. We will mention this right later under an independent item. Egypt and India also adopt the private prosecution system. In this, the victim who brings criminal action against the accused is naturally authorized to be notified of the trial date and attend the court as a party.

In Indonesia and Japan, victims have no special standing to attend the trial other than as spectators. In Indonesia, special seats are provided for victims to hear the trial as spectators, after their witness examination. In Japan, special allocation of spectator's seat is sometimes provided for victims at the discretion of the court.

In the United States, in the Oklahoma bomb case, the case was transferred to another court far from the residence of the victims. Also the number of victims was too large to accommodate in the spectator's seats of the court. The court allowed victims to watch the trial by relay-broadcast in special seats set in a gymnasium located in a residential area near the crime scene.

3. Suggestions

Regarding the right of victims to attend and hear the trial, it is worth considering special treatment for victims in some situations to guarantee their opportunity of attendance or hearing, besides the general right to hear the public trial.

D. Secondary Victimization Through Witness Examinations

1. Problem

Victims have difficulty in testifying in the courtroom in front of a defendant or spectators in cases of sexual crime, child abuse and organized gangster groups. We focused on victims of sexual crime here. Victims of sexual crime want to avoid witness statements in the trial because they think it is scandalous or shameful. In addition, victims are often afraid of the

defendant.

It is generally assumed that the gap between the actual number of sexual crimes committed and those reported is great, and the latter does not reflect the reality of the situation because female victims hesitate to report such crimes. Victims are sometimes cross-examined severely or humiliated by the defense counsel, suffering additional hurt.

2. Situations of Each Country

(a) *China*

In China, examination of witnesses shall be subject to closed trial in the case of sexual crime. This is not discretionary but mandatory.

(b) *Colombia*

Colombia has the Total Witness Security Program which is also applicable to the examination of victims as witnesses in sexual offenses. Under this system, victims of sexual offenses can be examined in a way where their privacy is not invaded, because the victims are exempt from witness examination in front of the defendant, and written statements of the victims can be used as evidence with the medical reports. A detailed explanation of this system was already mentioned earlier.

(c) *Egypt*

In Egypt, the victims of sexual crime are examined as witnesses under open trial before spectators.

(d) *India*

Sec. 327 of the Code of Criminal Procedure 1973, provides for trial *in camera* for any classes of cases deemed fit by the magistrate/judge. In addition, in all rape cases the trial is held only *in camera*. This would not only be in keeping with respect for the victim of the crime, and in tune with the legislative intent, but is also likely to improve the quality of the evidence of a female witness because she would not be so hesitant or bashful to depose frankly, as she may be in an open court under the gaze of the public.

(e) *Indonesia*

In Indonesia, the victims of sexual offenses can be examined as witnesses *in camera*, which means a closed trial without spectators, except for relatives of the offenders and victims. Needless to say, the applicability of this system is limited to the victims of sexual offenses, but this can also contribute to securing the privacy of victims generally.

(f) *Japan*

In Japan, examination of a witness may be held outside of the trial date, under restricted conditions, without spectators. This doesn't mean denial of an open trial, but it substitutes written statements of the said examination for direct witness statement as the evidence of the case. This can be very useful in securing witnesses' privacy, as this makes it possible to keep the identification of a witness secret and, at the same time, allow a defendant and their counsel the right to cross-examine.

3. Suggestions

Devices to relieve the mental suffering experienced by victims of sexual offenses through witness examination, balanced with the right of defendants to cross-examine, the right of spectators and an open trial, is desirable. Examples of such devices are as follows:

(i) video-linked witness examination systems.

(ii) witness examination in a witness box sheltered from the defendant and spectators.
(iii) keeping the name, address and place of work of a victim (as a witness) secret during the course of the trial.
(iv) closed trial *in camera* without spectators, scope of which should be limited to specific cases such as rape or sexual crime, in order to save any further embarrassment of victims.

E. Mental Care and Support for Victims

1. Problem

Victims sometimes want to avoid testimony as witnesses at court, even if there is no concrete danger or risk of humiliation. Victims also sometimes feel uneasy and isolated in testifying as a witness, especially when it is the first time for them, because victims do not understand the criminal procedure and the course of examination. Victims sometimes do not have access to free legal counsel to instruct them on their rights, and as a result, they may not enjoy their rights or interests.

2. Situation of Each Country

China, Colombia, Egypt, India and Indonesia have no special volunteer organizations to serve for the mental care of victims. All countries of the group, including Japan, have no special systems to support victims to attend and testify at court. However it may be noted that:

(i) There are a private and volunteer organizations which collect money and allocate aid to victims in Egypt. They do not provide counselling or support services.
(ii) Some volunteer groups in Japan are working in the field of the mental care of victims and have started activities which are limited to victim assistance (not extended to witness assistance).
(iii) Some kinds of leaflets or brochures explaining criminal procedure and witness examination are available for victims at police stations and public prosecutor's offices in Japan.

3. Suggestions

Criminal justice agencies concerned with the criminal judicial procedure, including police officers, public prosecutors and judges, should recognize the mental impact or suffering that victims of crimes receive. It is worth considering establishing a system of orientation to the criminal procedure, escort to the court, or counselling support by government authorities or non-government organizations, and training to have officers recognize victim problems.

F. Punishment - Giving Victims a Say About Sentencing

1. Problem

Punishment by the court may not be commensurate with the crime committed, and the victims may not be satisfied with the punishment given to the offender. But we do not conclude that heavier punishment is desirable, as punishment itself does not provide redress to the victims.

Victim's feelings or victim's damage cannot be neglected in the disposition of cases because they are deeply concerned with the cases, even if they are not a party to the trial. Therefore the involvement of victims in decision-making regarding the sentencing of the offenders can be an issue, as they sometimes have no chance to give their opinion or state their damages. Generally, such involvement is referred to as "Victim Impact Statements" or "Victim Statements of Opinion".

2. Situations

In an increasing number of jurisdictions, where the victim does not have the right to prosecute, the victim is allowed to

provide information through a victim impact statement or victim statement of opinion. With victim impact statements, the victims fills out a form in which they indicate what impact the offence has had, what property was lost or damaged, what other financial losses resulted and how the event has disrupted their life. It provides the victims with an opportunity to inform the court of how the offence has affected them physically, mentally, and otherwise. In some jurisdictions, victims are given the right to allocution, i.e, the right to deliver in person a statement on the impact that the offence has had on them. In Colombia, victims have right to attend the trial and present their opinion about the crime. In Egypt, the court often allows victims to appear in trial and explain to prosecutors or judges their point of view, even when they are not going to be called or summoned as witnesses, although it is not endowed as the right of victims. The court may take their opinions into consideration in the punishment of the offender. In Japan, victims are allowed to present the damage that they have suffered from the crime and their feelings in written statements given before the investigating officer, or as a witness statement at the trial, if the court decides to do so.

3. Suggestions

Victims should be allowed to have their views and concerns presented and considered at appropriate stages of proceedings where their interests are affected. This should be done without unfair prejudice to the accused and must be consistent with the relevant national criminal justice system.

In deciding the sentence of the defendant, some elements presented by the victims could be considered, such as the content and degree of the damage, the effect on the victim, and the punishment of the offender. It is therefore desirable to consider the establishment of a system in which the victim will have a say in the criminal trial, for example, such as the Victim Impact Statements of the USA.

G. Victim Involvement in Decision-making on Appeals

1. Problem

Victims are sometimes not satisfied with the sentencing of the courts, but usually whether to appeal or not depends on the judgement of the prosecutor.

2. Current Situation of Each Country

(a) *China, Egypt and India*

China, Egypt and India have the system of private prosecution, but the status of the victims who have privately prosecuted the case are different. In Egypt, public prosecutors have the right to appeal the court decision if the prosecutor who prosecuted the case is not satisfied with the decision of the court. Victims can not appeal even in the case of private prosecution. In India, victims who have brought private prosecution can appeal. In China, in a case of public prosecution, if the victim does not agree with a judgement made at the first instance of the Local People's Court, s/he has the right to request the people's procuratorate at the same level to propose a counter-appeal, but has no right to lodge on appeal to the people's court at a higher level.

(b) *Colombia, Indonesia and Japan*

In Colombia, Indonesia and Japan, only the public prosecutor, defendants and defence counsels have the right to appeal against the court decision or sentencing. Usually they don't ask the victims for their opinion on deciding whether to appeal.

3. Suggestions

It is worth considering giving the victims an opportunity to have their say on the decision-making re appeals, to promote victims participation. Usually victims are not asked their opinion by authorities when deciding whether to appeal.

H. Privacy Invasion by the Press

1. Problem

Mass-media sometimes reveals the privacy of victims. The press sometimes reports details of the case or the privacy of victims; and information that the victims do not want to disclose will be made open to the public. As a result, such victims are obliged to suffer another victimization. Mass-media are able to get information about the victims' privacy as a spectator at the court trial.

2. Situation of Each Country

(a) *China, Egypt and Japan*

The Courts of China, Egypt and Japan are authorized to prohibit broadcasting of the trial. We can say that the mental suffering of the victims of sexual crime deriving from the broadcasting of witness examination is diminished to some extent.

(b) *India*

There is no provision for broadcasting the trial in India. However, the press may, with the permission of the court, publish a brief summary of the case without any invasion of the privacy of the victim, in other words, the privacy of the victim is protected.

(c) *Indonesia*

In Indonesia, the court has the power to restrict the press broadcast of a trial, but sometimes allow it to do so. Regarding the trial of sexual crime, privacy invasion does not occur as witness examination can be held under closed trial.

3. Suggestions

Generally, the privacy of victims should be taken into account all through the criminal judicial procedure. Especially in sexual crimes, the necessity of securing the privacy of victims in order to prevent victimization through witness examination should be recognized. It is desirable to take into account the freedom of the press and balance it with the privacy of the victims.

V. CONCLUSION

Participation of the public and victims in the criminal justice procedure is of vital importance to the fair and effective administration of criminal justice. Without the active contribution of the public and victims, the criminal justice system is unable to fulfill its entrusted mission. In this context, we note with pleasure that growing attention has been given to this issue, not only at the national level, but also in the international forum. Nevertheless, we recognize that there is still a long way for us to go.

Various relevant issues at the stages of prosecution and trial have been identified, and extensive discussion was made during our debate. However, these are in no way exhaustive. There are a lot of other important issues to be studied in order to meet the challenges we are facing.

Moreover, the suggestions contained in the present report have not necessarily been implemented, even in the participant's respective countries. We recognize that it is essential for criminal justice personnel to increase their awareness of the importance of the public and victims' participation, for reaching our goal.

At the same time, the group fully understands and respects the systems

prevailing in different countries. The political, social and economic conditions of some countries may not be conducive to the implementation of some of the measures proposed above. The intention of the group is to make contributions to further current efforts to promote understanding on this issue.

Table 1

REDRESS FOR VICTIMS THROUGH CRIMINAL PROCEDURE

SYSTEM / COUNTRY	Mediation program; out-of-court payment from offender to victim	Indemnification outside & independent of judicial system	Order to pay by the judge, upon initiative and discretion of judicial system	Victim as civil party in criminal procedure	Civil action by victim in civil case	Return of property belonging to the victim
CANADA	Yes	Yes	Yes	No	Yes	Yes
CHINA	Yes	No	No	Yes	Yes	Yes
COLOMBIA	Yes	Yes	Yes	Yes	Yes	Yes
EGYPT	No	No	No	Yes	Yes	Yes
FIJI	Yes	Yes	Yes	Yes	Yes	Yes
GAMBIA	Yes	No	Yes	No	Yes	Yes
HONG KONG	No	No	Yes	No	Yes	Yes
INDIA	No	No	Yes	No	Yes	Yes
INDONESIA	No	No	No	Yes	Yes	Yes
JAPAN	No	Yes	No	No	Yes	Yes
KENYA	Yes	No	Yes	No	Yes	Yes
MALAYSIA	Yes	No	Yes	Yes	Yes	Yes
PAKISTAN	Yes	Yes *	Yes	No	Yes	Yes
PAPUA NEW GUINEA	Yes	Yes	Yes	Yes	Yes	Yes
PHILLIPINES	Yes	Yes	Yes	Yes	Yes	Yes
REPUBLIC OF KOREA	Yes	Yes	Yes	No	Yes	Yes
SEYCHELLES	Yes	No	Yes	No	Yes	Yes
THAILAND	Yes	No	Yes	No	Yes	Yes

*Sometimes the government provides financial assistance to victims of certain offences or acts, like terrorism, from relief funds. This is a discretionary power of the government. Victims cannot claim this as a matter of right.

Note: If the country has the system, "Yes" is written. If the country does not have the system, "No" is written.

GROUP 3

THE PARTICIPATION OF THE PUBLIC AND VICTIMS FOR MORE EFFECTIVE ADMINISTRATION IN THE TREATMENT OF OFFENDERS

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I. INTRODUCTION

We know that the effective treatment of offenders cannot be achieved through the efforts of governmental agencies alone, we require public participation and co-operation in order to effectively rehabilitate offenders and re-integrate them into society. At the same time, the treatment of offenders can be enhanced by the participation of victims, so that it can satisfy the needs of victims as well as those of offenders.

This group was assigned the topic: "participation of the public and victims for more effective administration in the treatment of offenders." Since there are two forms of offenders' treatment i.e, institutional treatment and community-based treatment, this topic was divided into three issues:

(1) Participation of the public in institutional treatment:
  (a) prison labor
  (b) rehabilitation programs
(2) Participation of the public in community-based treatment
(3) Involvement of victims in the treatment system of offenders

II. PARTICIPATION OF THE PUBLIC IN THE INSTITUTIONAL TREATMENT OF OFFENDERS

A. Prison Labor

It is noted that many countries have been facing the problem of overcrowding and the supply of inadequate amounts of prison labor for prisoners. Consequently, it is often seen that many prisoners do nothing in prison, which brings undesirable results in the administration of the treatment of prisoners. The main point which we have discussed is how prison labor can be stabilized and promoted by means of public participation.

1. Actual Situation

Some countries have been successful in increasing public participation in running prison industries, as a form of the stabilization of idle prison labor. In doing

so, it is believed that public participation in running prison industries, inside prisons, can contribute to a decrease in the recidivism rates of both adults and juveniles delinquents.

It is very interesting to take particular note of how religious organizations play an important part in the stabilization of prison labor in some countries like Fiji, Hong Kong, India, Kenya, Malaysia, Pakistan, Papua New Guinea, the Philippines, the Republic of Korea and Thailand. Another interesting situation, which will soon come into reality, is the establishment of privately managed prisons in both Malaysia and Korea in the near future.

Hereunder, we will observe the actual situation of public participation in prison labor in Japan, Korea and Thailand. Making an effort is essential to preparing satisfing prison labor, to make prisoners constructive human beings.

In Japan, a style of public participation in prison labor is the CAPIC (Correctional Association Prison Industry Cooperation). As a result of the stringent fiscal situation of the State, the raw materials budget for the operation of prison work was forced to be substantially curtailed. Consequently, the Corrections Bureau of the Ministry of Justice adopted the "third sector system" as a countermeasure. Specifically, the Prison Industry Cooperation Division, which provides raw materials for prison work and markets for these products, was set up within the Japanese Correctional Association (JCA) in 1983, with the State providing subsidies for five years. Since the discontinuance of the subsidies, it is self-funding and manages its own accounts.

In Korea, the State Use Law for Products by Prison Industry was enacted in 1962. Under the Law, industrial plants have been established at correctional institutions across the country, with the participation of private contractors. Industrial work consists of 27 different kinds of work, such as carpentry and printing. An average of 21,600 prisoners are working at these factories per day.

In Thailand, the Department of Corrections has promoted offender's treatment through mass media by encouraging the private sector to set up workshops in prison. Now, most prisons in Thailand have made contracts with private contractors for producing goods or using prison labor.

2. Obstacles

The following points are recognized as problems in public participation in the stabilization of prison labor, and these are;

(a) Lack of public interest and appropriate information getting across to the general public or business sector, to help or assist prison administrators in the rehabilitation process by way of setting up small-scale industries within prisons to stabilize prison labor.
(b) Security risk is a contributing factor as prison administrators cannot guarantee the safety of the public in the prison. Lack of tight security allows easy access for prisoners to attack or take civilian participants as hostages, or to escape from prison.
(c) Inadequate land or space for expansion of the prison impedes businesses who are interested in setting up small-scale industries in prison.
(d) Quality of productions cannot be competitive in open markets on the grounds that goods and items produced in prisons are considered to be of poor quality and of no open

market value, as compared to the same kinds of products produced by well recognised manufacturing companies.

(e) Difficulty in securing qualified and well-trained prisoners constantly exists, because offenders may be released: early; on their normal due date of release after serving out their full imprisonment term; released on amnesty; extra-mural release or on parole.

(f) Lack of official certificates for attainment of certain levels of work skills, issued by authorized labor institutes, to help discharged offenders in securing employment with private business firms/ institutions after their release.

(g) No legal provisions in place for the use of prison labor or liberalization of the market in a number of countries. Therefore, it is difficult for those countries with no legal basis to improve their prison labor engagement by the public.

3. Countermeasures

The following points are thought to be the countermeasures for the obstacles to public participation in the stabilization of prison labor:

(a) Strengthen the activities of public relations through media and public seminars on the various activities undertaken inside the prison, so that they (the public) can meaningfully contribute, in whatever possible form, to the stabilization of prison labor.

(b) Improve security capability or measures in prison in order to accommodate and protect the well-being of public participants working inside the prison and its surroundings.

(c) Establish intensive and functional workshop units (put together) in prison by making use of limited land as much as possible, to accommodate more public participation in prisons for the stabilization of prison labor.

(d) Upgrade the quality productivity of prison products through more modernized instruments, with the help of private sectors.

(e) Teach prisoners, affirmative guidance, or instruction for work skills (with the help of the private sector), and utilize the evaluations of a classification system more effectively.

(f) Skills gained through prison labor should be geared towards the issuing of trade test certificates.

(g) Active movement for appropriate legislation by appealing to the necessity of public participation in prison labor.

B. Rehabilitation Program

The main point of our discussion is how rehabilitation can be more fruitful and effective by means of public participation. Rehabilitation programs should be treated as the most important factor because they are regarded as one of the most effective programs for offenders.

1. Actual Situation

The search for effective measures for the rehabilitation of prisoners has led the criminal justice system to look beyond the walls of the prisons for programs in the community that effectively complement the rehabilitative efforts in prisons. It is noted that prison authorities run rehabilitation programs in two ways, either by the prison management themselves or with assistance (by introducing public participation in helping with the implementation of programs conducive to the suitability of a particular prison environment). Some countries have developed many effective rehabilitation programs throughout their correctional

history, and are trying to develop more effective rehabilitation programs nowadays.

(a) *Vocational Training*

Vocational training programs are organized so as to serve a constructive purpose in the treatment of offenders. The objective is not only to provide offenders with vocational knowledge, but also to strengthen their individual will to work and learn new skills. On the other hand, vocational training can be seen as part of prison work. Nevertheless, these should be more skill orientated in the sense that training helps very much in enhancing the complement of prison and public joint venture projects situated in prisons.

In Hong Kong, the public participates by supplying the prison with raw materials and vocational training examination documents for the offenders to make finished products, and to sit for vocational training examinations endorsed and certified by the Vocational Training Council for Offenders, respectively.

In Japan, many vocational training programs are conducted with the participation of the public who have qualifications in teaching those programs. In Kenya, qualified skilled personnel from the public participate actively with the offenders in finishing products.

In the Philippines, the Correctional Bureau, in cooperation with non-government organizations, has intensified the conduct of livelihood training programs for offenders through the effective agro-industrial livestock productivity program. The continuous conduct of religious activities, recreational programs, as well as educational (both formal and non-formal), and training programs are given by concerned non-governmental organizations.

In Korea, since 1969, public vocational training centers have been established with authorization from the Ministry of Labor Affairs throughout the 30 correctional institutions amongst the nation. At each training center, six month to two year training courses are provided for 54 different types of jobs, such as architecture, mechanics, electrical fields, etc. For the training, many volunteers teach their skills to prisoners with the assistance of professional vocational training teachers. Some religious members or rehabilitation members financially support the expenses needed for vocational training. Amongst the trainees, those who have exceptional skills are selected to participate in national and local skills contests, with other students or civil participants. If they win prizes from the contest, occupational guidance is provided by the prison or public, and they are given priority for such privileges as release on parole.

In Thailand, the public supply raw materials, together with training equipment, for offender rehabilitation programs. Qualified skilled personnel are also sent into the prison to assist in finishing production of the goods/items supplied to the prison.

(b) *Educational Training*

In countries like Hong Kong, Japan and the Republic of Korea, services receive good financial support from their respective governments, as seen in the form of government-funded basic education/ literacy, English and mathematics programs. As far as higher education is concerned, a large number of the participating countries facilitate correspondence courses for offenders, with the assistance of the public. In most cases, the government meets the cost for long-term sentenced offenders who undertake such correspondence courses. Likewise, in

some cases, public assistance also comes from NGOs and church organizations.

(c) *Life Guidance*

Volunteer visitors, psychologists, and respectable religious instructors participate in life guidance programs to provide counseling, role playing and spiritual guidance to offenders. In this way, offenders will know that they are not left alone in prisons without public care. Offenders are human beings and therefore they are to be cared for and treated humanely as another fellow human being.

(d) *Work Release*

In order to facilitate offenders' smooth re-integration into society upon discharge, many countries adopt work release programs with public participation, especially with the help of the private sector, by employing offenders at their workplace outside of the prison.

Work release programs contribute to the reduction of institutional operation costs, or allows assistance for victims, when some amount of offenders wage is paid for prison food or bed expenses, or remitted to a victim or his/her family.

In Japan, offenders are selected to go on work release programs in factories producing building materials and ship building. The offenders commute to their work place either by foot or institutional transportation, with supervision provided by prison officers. In fact, work release offenders are selected under strict conditions, and work is accorded only to offenders having six months of an imprisonment term left to serve.

In Korea, the work release program has been in force since 1984. Under this program, selected model prisoners commute to their workplace in the community's (private industry) and receive a salary according to their work. In February 1992, the number of prisoners participating in work release programs was 400 offenders, and this number has gradually increased, so nowadays the number of prisoners participating in work release programs are 1064, from 25 prisons in 54 private industries.

In Sri Lanka, according to the administrative regulation concerned, the work release program is defined as "a scheme under which selected offenders are allowed to get themselves employed in the open community, unescorted during day, and return to prison for the night". The work release program may be applied to those offenders who have successfully completed part of their prison term (two years or more) and who have a remainder of two years or less imprisonment. Among these offenders, some are selected for the program when resources for implementation are available. This program was inaugurated in May 1974. Under this program, offenders for whom suitable employment can be found in the community are sent to work, either from a prison or from a work release center, where they return in the evening. Therefore they are technically still a custody. The prisoners receive normal wages, which they can send to their families or which they can collect on their discharge. In the process, the offender gets accustomed to conditions and regulations prevailing in the workplace. Prison welfare officers occasionally visit the workplace to meet employers and to monitor the progress of inmates. Offenders who perform poorly can be withdrawn from the program. Work release is applied to about one hundred offenders each year.

2. Obstacles

The following points are regarded as obstacles:

(a) Negative public perception of participating in rehabilitation programs. The public want the offender to do hard labor for the punishment of the crime committed, rather than be assisted by way of education and vocational training programs given by both the prison and the public.
(b) Shortage of specialists or qualified staff suitable for implementing the required rehabilitation programs run in prisons.
(c) Shortage of effective or practical vocational training programs such as data processing, motor mechanics, welding, electrical work, boiler making and tailoring.
(d) Security risks in prison whereby there is less manpower to carry out the supervisory role of offenders undergoing rehabilitation programs.
(e) Protection of privacy of offenders. Offenders privacy needs be protected at all times whenever public participants are participating inside the prison.
(f) Less employment opportunities in work release programs. When an ex-offender approaches businesses seeking employment, he/she is outrightly rejected from employment due to their criminal background.
(g) Responsibility for injuries to prisoners in work release programs makes employers hesitate to accept offenders. When an offender sustains any serious or minor injuries while undertaking a work release program, there is still difficulty in solving who is supposed to meet the medical expenses or workers compensation for the offender.

3. Countermeasures

Based on examining the actual situation and problems, the following countermeasures are recommended:

(a) Strengthen the activities of public relations through print and electronic media, and public seminars educating the public on the importance of their role in participating and involving themselves in rehabilitation programs.
(b) Encourage the participation of experts from private fields, such as institutes or universities, to make use of retired staff or reformed ex-offenders who have become good citizens of society. This kind of effort can make rehabilitation programs more fruitful.
(c) Introduce more modernized and practical vocational training programs which meet the needs of society, with the assistance of public participation.
(d) Improve security capability or measures in prison by improving the current prison manpower strength, in order to encourage the public that their security is guaranteed if and when assisting the offenders in rehabilitation programs.
(e) Set up effective regulation for privacy protection, describing that violators leaking privacy information to the public shall be disqualified and given sanctions.
(f) Find and encourage cooperative employers in cooperation with job placement offices, where government needs to take the initiative in making an effort to give private contractors benefits such as reducing corporate or income tax.
(g) Give cooperative employers the opportunity to make use of the medical insurance system applied to the case of injury in order to reduce their responsibility.

III. PARTICIPATION OF THE PUBLIC IN COMMUNITY-BASED TREATMENT

The main task of the group was to exhaustively explore how participation of the public in the community-based treatment of offenders could be enhanced to achieve good results. In this regard, the group was to evaluate the performance of existing, conventional community-based methods of treatment of offenders like probation, parole, halfway houses, probation hostels, community work programs, mediation and fines, and also to give an insight into other community-based treatment programs which may be used as supplementary methods of the restorative justice system. The group also looked into the obstacles affecting these methods and the countermeasures which may be used to secure more public participation in the community-based treatment of offenders.

In so doing, we opened the discussion by expressing the importance of participation of the public in the community-based treatment of offenders as a crime prevention method. The forms of public participation may vary from country to country, depending on the diverse socio-cultural and economic practices inherent in specific countries. Some countries may have less crime, while others have a greater number and more serious crime. However since the commission of crime is as dynamic as technology, the growth of urbanization, moral decadence, and economic difficulties take centre stage. Even countries who are currently enjoying a situation of public safety might find themselves entangled in an environment where they have to grapple with complicated crimes.

We further said that in approaching the subject of participation of the public in the community-based treatment of offenders, we need to focus our attention on non-custodial measures. The advantage of non-custodial measures are many and varied, as they range from benefits to the offenders in particular, and to government and the community in general. The following were considered as some of the most important benefits derived from non-custodial measures in the treatment of offenders.

A. Advantages

1. The liberty of the individual is maximized to prevent the possible violation of human rights.
2. It is less disruptive on family life. The offender is still allowed to continue contributing towards his/her family in particular, and society in general, by working instead of being confined in prison.
3. The rehabilitation of the offender is enhanced by continuing normal community life.
4. The criminogenic effects of custodial measures are avoided, thus removing a factor that often complicates the reintegration of the offender into the community and avoids offender stigmatization.
5. Non-custodial measures are cost effective. They cost much less than custodial measures.
6. The number of prisoners entering the prison is reduced, thus facilitating the administration of prisons and the proper correctional treatment of those who remain in prison.
7. It is more conducive to social integration, thereby reducing recidivism and increasing the crime control effects of the criminal justice system.

The kinds of non-custodial measures in the treatment of offenders, as well as the obstacles and countermeasures of participation of the public in these measures, are considered as outlined below.

B. Probation and Parole

1. Probation

Probation is a community-based method in which a juvenile delinquent or an adult criminal offender, who has been found guilty by the process of judicial criminal hearing or on their own plea of guilt, is released into the community (particularly the family or halfway house) by a sentencing court, without being sent to prison or a juvenile institution. Such an offender will be subjected to specific conditions imposed by the court and shall be under the supervision of a probation officer. In countries like Fiji, Hong Kong, Japan, Kenya, Papua New Guinea, the Republic of Korea and Thailand, probation services have almost similar arrangements and are used as an alternative to imprisonment. The application of actual supervision by a probationer seems to be the same in the above mentioned countries, including the Seychelles and India.

In Hong Kong, Japan, Papua New Guinea, the Philippines, the Republic of Korea and Thailand, the services of government probation officers are supported by Volunteer Probation Officers (VPO). However the VPO systems vary from country to country.

In Hong Kong, the role of VPOs is minor. They may assist the probation officers in the overall supervision of the probationers. They accompany the probation officer during the time of actual visits to a probationer. In Hong Kong, the probationer directly reports to the probation officer and not to the VPO. The VPO may only assist the probationers in organizing some social activities in the home area of the probationer. VPOs are usually members of NGOs under the Social Welfare Department. The VPO may also be an ex-offender with a proven record of good conduct, or university students studying behavioural sciences who are on vacation and have an interest in assisting probationers.

In Japan, the probation officer assigns a VPO as the day-to-day supervisor of the probationer. The assignment is based upon the probation officer's judgement, matching the VPO's personality with that of the offender, so that the most effective supervision of him/her will be materialized. Most VPOs are familiar and keep close relations with community residents, groups and organizations. They utilize these relationships in helping offenders rehabilitate. Also there are two forms of public participation in the treatment of probationers in Japan. First, Big Brothers and Sisters (BBS) is an organization of youths who befriend juvenile probationers, and encourage their desistance from delinquency. Their activities include organizing sporting events and outdoor activities, accompanying juveniles in volunteer work in homes of the aged and discussing probationers' views of their life and future. Second, the Cooperative Employers Scheme helps probationers by offering stable employment.

In Papua New Guinea, there are about 500 active VPOs who assist probation officers. In urban areas, they are retired public servants, missionaries, NGOs, Young Men's Christian Association (YMCA), Young Women's Christian Association (YMCA). In rural areas, they are village elders, councillors, literate middle-aged men/women.

In the Philippines, probation is a disposition of the court that allows a convicted offender to serve their sentence in the community/outside prison, but under the supervision of a parole and probation officer and subject to certain conditions contained in the Parole and Probation Order. Dedicated members of the community are tapped as volunteers to

ensure the success of the parole and probation system. These volunteers are screened and trained. Each volunteer supervises a maximum of five clients and keeps all information about the parolee, probationer or pardonee in strict confidence. S/he works in close coordination with the Chief Probation and Parole Officer in providing counselling and in placement assistance.

In the Republic of Korea, previously there were three types of VPO groups: rehabilitation members, who were in charge of halfway houses; protection members who assist juvenile offenders; and crime prevention members, who were generally acting as crime prevention agents. The coordination of the activities of the above groups became fairly cumbersome. Therefore in 1996, the three groups were integrated into one body called Crime Protection Members. To make their activities become more effective, and to achieve efficient communication and understanding amongst the members.

In Thailand, there are two types of VPOs. One works for the Department of Probation. Another works for the Department of Corrections. The main responsibilities of VPOs in the two departments are similar, i.e to examine the background of offenders and supervise them. However, their target groups are different. The probationers are those who have never been imprisoned before and have committed minor crimes, but the parolees and the sentence remissioners are prisoners who are conditionally released. So the work of VPOs in the Department of Corrections is tougher and requires more skill. Moreover, the way they are trained is different.

In general, it is not easy to decide whether integration of the system of VPOs is better than a separate service, because the decision to integrate or not will be determined by the local conditions prevailing in each country.

2. Parole

Parole is a system which has been used over the years in many countries as a community-based method of treatment for offenders. In this system, a prisoner is given a certificate of discharge from prison to detention in the community under the supervision of a probation officer. While the actual application may vary from country to country, the principle behind parole remains the same. The parole system is granted to a prisoner who has a remaining sentence to serve, subject to good conduct, previous criminal record and length of the sentence. The parole system is used in Hong Kong, India, Japan, Kenya, Pakistan, Papua New Guinea, the Republic of Korea and Thailand.

In Japan, a parolee who has been conditionally released from a prison or a juvenile training school shall be placed under the supervision of the VPO for the remaining term of the sentence, as is the case of a probationer. Parolees get assistance from BBS and Cooperative Employers.

In Kenya, parole or after-care service is extended to long-term offenders. Long-term offenders are those offenders who are committed to life imprisonment or long confinement, but on serving part of their sentences, usually ten years or above, they may be considered for early release. For this category of prisoners, the officer in charge is expected to submit periodical reports on the conduct and behaviour of such a prisoner to be placed before a discharge board. The discharge board is composed of the Attorney General as the chairperson, Commissioner of Prisons as the secretary, the Director of Probation Services, Director of Medical Services,

Permanent Secretary to the Minister Responsible for Prisons, and two other prominent members of the public who are appointed by the Minister Responsible for Prisons. The discharge boards' main responsibility is to review the prisoners records with a view to making recommendations for early release under the supervision of probation officers.

For ex-Borstal inmates, the law provides that a youthful offender between the age of 15 and 18 years who has committed an offence punishable by imprisonment, who may not be rehabilitated by the probation services, is ordered to undergo three years Borstal training. During their residence in the Borstal Institution, the offenders are taught some useful vocational training in addition to academic education. On completion of one year, the inmates are released on license to their communities under the care of a responsible person, who is usually a community leader, village elder, businessmen, retired public servant or from organizations like religious groups or NGOs offering welfare services to needy cases and charitable organizations. While on license out of institutional treatment, they remain under the supervision of a probation officer. So the number of opportunities available for such youthful offenders to be released on license will depend on the number of people willing to live with and take care of such offenders in the community. During this period, they may continue with formal education or technical training in local polytechnics. While they are out in the community, they are required to be of good conduct and avoid associating with bad characters.

The Papua New Guinea members are appointed from the public by the Minister for Justice. Appointment is based on the following conditions:

(a) Experience in social welfare.
(b) Active involvement in community affairs.
(c) Maturity and integrity.
(d) Good standing in the community.
(e) Appreciation and understanding of social issues and problems: interest or background in working with people in need of rehabilitation.

The Minister may therefore nominate the Chairman, who must be a lawyer by training, another person is nominated by the Commissioner of Prisons and another person nominated by the Departmental Head.

3. Obstacles
(a) Negative public attitude towards offenders.
(b) Limitation of activities like less employment opportunities.
(c) Inadequate trained staff and VPOs.
(d) Some parole board members are incompetent in making useful decisions.
(e) Insufficient budget to meet the needs of VPOs.
(f) VPOs supervise by means of their humane interests and their strong sense of responsibility, but sometimes it is difficult for them to supervise offenders like sex offenders and drug offenders.

4. Countermeasures
(a) Encourage the public to cooperate in the community-based treatment of offenders.
(b) Introduction and improvement of VPO training in supervisory duties.
(c) Governments to provide more funds to improve the services of VPOs.
(d) Diversify community-based treatment methods by involving various community groups like NGOs, Drug Addiction Rehabilitation Centers, Alcoholic Anonymous.

C. Halfway Houses and Probation Hostels

1. Halfway Houses

Halfway Houses can be defined as community-based centers to which offenders are sent with the view to maintaining or facilitating social integration. Halfway houses serve those placed under supervision following institutional treatment and those who have completed serving their sentences. They are provided with the basic necessities like food, shelter and clothing and, where possible, help seek employment opportunities for ex-offenders preparing themselves for re-integration into the community. In Hong Kong, Japan, the Philippines, the Republic of Korea and Thailand, halfway houses are privately managed. On the other hand, Hong Kong halfway houses managed by its government.

In Japan, all halfway houses are run by a non-profit organization called the Juridical Persons for Offenders Rehabilitation Services (JPORS). The Law for Offender Rehabilitation Services was enforced in 1996 to legally improve the financial status of the JPORS by introducing a tax-reduction specifically applied to it.

2. Probation Hostels

In Kenya, probation hostels are residential institutions providing temporary residence for some special categories of probationers. Some probationers commit crimes which necessitate their removal from society for fear of reprisal or revenge as a result of hostility displayed by the victims of their crimes. Other crimes like infanticide or abortion, incest or manslaughter may create family hostility among close family relatives. It is therefore necessary to remove them, through a court order, into a probation hostel for a period not exceeding 12 months. During their stay in the probation hostel, they are involved in various occupational training courses under the supervision of probation officers. The charitable organizations and NGOs voluntarily donate items like bedding to be used by inmates and also tools to be used in vocational training courses.

3. Obstacles

(a) Inadequate accommodation space in halfway houses and probation hostels in developing countries due to insufficient funds.
(b) Lack of community support and negative public perception.
(c) Lack of public awareness due to lack of education.
(d) Vulnerable groups like the aged, disabled, and the sick, who may need assistance, cannot be accommodated in halfway houses.
(e) Inmates with poor records like gang members, and drug or sex offenders may not be accepted in halfway houses.

4. Countermeasures

(a) Seek alternative accommodation like from the church and non-government agencies.
(b) Developing countries which are not capable of expanding halfway house programs should seek donor funds to facilitate the administration of these programs.
(c) Community education programs should be provided so that the community gains a better understanding of community corrections issues to accept and support halfway houses/probation hostels within their localities.
(d) The private sector should be encouraged to make contributions to these programs by way of incentives.
(e) The programs for the treatment of residents of halfway houses should

involve various community resources such as medical officers, teachers, psychologists, sociologists, psychiatrists, community leaders and business executives.

(f) Halfway houses should be more vigorous in reciprocating services to the public like cleaning in the community, actively assisting the events held by neighbourhood associations, renting parking lots to neighbors at a lower price, and allowing cultural groups to have meetings in their premises.

(g) Halfway houses should be encouraged to make positive contributions to the community by availing their programs. They should avoid operating as closed institutions.

(h) The government should support halfway house in recognition of the important role they play in the intensive treatment of offenders in the community.

(i) Pre-release programs to make integration easier.

D. Community Work Programs

The community work program is a system in which prisoners and probationers perform public work within their community. It is the type of work which benefits the whole community. In this program, offenders perform such work like the up-keep of the streets, cutting grass, clearing bushes, putting-out fires, maintenance of school buildings, assisting the aged or disabled people in social welfare institutions. The rationale underlying Community Work Programs is for offenders involvement in community work and for such performance to be acknowledged by the community.

Community work programs include community service orders by courts, pre-release by correctional institutions, community participation programs by probation offices or by prisons. Including countries, community work programs are also an alternative to imprisonment and a means to alleviate prison overcrowding. It is a reparation method for offenders to pay back the community for the offences they have committed. It is a program that enables a prisoner to become accustomed to social life within their community, build self-worth, achievement and eradicate guilt or stigmatization.

In Japan, many volunteers like VPOs, WARA and BBS participate in this program. The effects of the program are:

(a) to develop a client's sense of responsibility as a member of society and enhance their sense of self-worth;

(b) to know different types of people in their living space and learn their way of life and values as identifiable role models;

(c) to learn about sound relationships with others;

(d) to learn sound ways of spending leisure time.

Community work programs are found in Fiji, Hong Kong, Japan, Kenya, Papua New Guinea, the Republic of Korea and Thailand (prisoners only).

1. Obstacles

(a) Insufficient trained staff to perform supervisory duties.

(b) Lack of equipment like vehicles to transport probation officers to supervise work.

(c) Lack of placement like social welfare institutions and cooperative employers.

(d) Negative public attitudes in accepting offenders to work in their communities.

(e) Unwillingness by the offenders to work in the community where they reside.

(f) Danger of offenders getting injured in the course of performing public work.

2. Countermeasures

(a) Improve public perception through education programs. The public should come to understand and appreciate offenders as fellow human beings who need care and love. A person does not cease to be a human being by becoming an offender.

(b) Encourage more public involvement in the community work programs through the media, public education and public meetings.

(c) Use the services of part-time supervisors like retired police, prison officers, army officers, probation officers, churches, non-government agencies, and civil servants including university students (studying social sciences) during their vacation as Volunteer Probation Officers.

(d) Publicity of the work or services provided by the offenders like tree planting, building of temporary wooden bridges, digging of water canals, cleaning parks.

(e) Motivate offenders to perform community work and gain community responsibility.

E. Aftercare Services

The definition may vary from country to country, for example with the existance of supervision, application or obligation, but this form of system was found in Hong Kong, Japan, Papua New Guinea, the Republic of Korea, and Thailand. In countries like Japan, after-care services are provided only to those who specifically apply for them in person at the probation office. The probation officer will then conduct a background investigation and screen each individual in light of the urgency and priority, and the offenders' willingness to rehabilitate themselves. The offenders who take after-care services are mainly as follows: termination of execution of sentence, granted suspended execution of sentence, granted suspended prosecution. Such ex-offenders are provided meals, clothing or fares for travel. Some of these services are aided by the Juridical Person for Offenders Rehabilitation. When lodging is necessary, ex-offenders can live in halfway houses run by the Juridical Person for Offenders Rehabilitation.

1. Obstacles

(a) Unreceptive community not wanting prisoners.

(b) Slim employment opportunities for ex-offenders.

(c) Inadequate supervisory staff - use of volunteers.

(d) Difficulty in coordinating the services of other government departments and organizations like NGOs and social welfare institutions.

2. Countermeasures

(a) Encourage educational activities through public meetings, seminars to create public awareness on the value of human life.

(b) Encourage private sector participation by incorporating prominent businessmen and members of the community and volunteers.

(c) Set up community agency networks through education and a better understanding of roles and responsibilities.

F. Mediation

Mediation is a method that has been used as a means of solving disputes and personal damages in many countries in the world. Mediation has been used in solving minor conflicts in which basically both parties, the offender and the victim, come to some form of compromise through a

neutral group comprising of village elders or respectable persons in the community acting as mediators in the restorative justice system, without necessarily seeking the intervention of the judiciary.

Mediation programs bring the offender and the victim together in face-to-face meetings to negotiate a restitution settlement. The objective is to appease the social situation which has been disturbed by the offender. Mediation procedures are different from criminal judicial proceedings. A mediation session is only arranged with the consent of both the victim and the offender. During a reconciliation session, the two parties can bring up the social conflict which might have been the cause of the delinquent act. This approach attempts to address the economic, as well as the psychological, injuries in such way that the offender is able to comprehend the full impact that the crime has had on the victim. The advantages of mediation are:

(a) The victim is not treated as a mere witness but has the opportunity to digest what has happened to them by expressing their shock and bewilderment.
(b) The offender is made to reflect upon the injuries done to the victim and to accept responsibility by engaging in constructive actions. This is deemed to have a high value of rehabilitation.
(c) The offender gets less stigmatized.
(d) The victim obtains financial and emotional restitution quickly and in an informal way.
(e) There is higher involvement of the community in the solution of conflicts, which is supposed to have a positive impact on deterrence.

However, due to modernization, these systems have been disregarded as outmoded methods of solving disputes between parties like land cases, damage caused to crops by cattle, and minor disputes within the community. It is absurd that the present generation does not appreciate traditional laws, which they presume to be orthodox and authoritative. In our view, these methods should be revived and activated to settle minor cases in society and avoid offenders being taken to court, and eventually entering prison.

Mediation may take place in three stages, at pre-trial, during trial and at post trial. For the purpose of our discussion, we focused on mediation at post trial. In our view, we would like to recommend the possibility of mediation as a form of community-based treatment of offenders.

In the community-based treatment of offenders in Japan, it is taken into consideration whether the offender makes restitution to their victim or not, and whether he or she has the willingness to make amends or not. It is important for offenders to apologize with sincerity and to make restitution after trial for their successful entry into the community. When probation officers conclude that it is necessary for parolees and probationers to make restitution or to apologize to their victims, they supervise through the following means:

(a) Including victim measures in the treatment plans made by probation officers.
(b) Including victim measures in any special conditions to be observed.
(c) Asking about the progress conditions of victim measures or discussing their necessity.

Victim measures by offenders reduce the hostility of the public, allowing the offender to re-integrate more easily. Furthermore, this helps the offender to develop the willingness to rehabilitate and, in doing so,

continues to prevent crime. That is why the development of mediation after trial has an important role in the treatment of offenders.

In many instances, mediation after trial is not enough. However, from the viewpoint of the re-integration of offenders and crime prevention, many countries felt it more desirable that we expand public participation and promote mediation at the post-trial stage.

1. Obstacles
   (a) No guidelines defining the use of mediation in penal matters. There are no guidelines to address the conditions for the referral of cases to the mediation service, nor procedures to handle cases following mediation.
   (b) Mediators lack training, resulting in unfair and biased decisions.
   (c) Offenders/victims are sometimes unwilling to appear and uphold the ruling by the mediator.
   (d) No selection and assessment procedures for mediators.
   (e) Mediation services do not have autonomy in performing their duties, making it difficult to issue certified documents. In India and Pakistan, mediation is legislated and required as a lawful method of settling a dispute.
   (f) No public awareness as to the usefulness of medition.

2. Countermeasures
   (a) Legislation facilitates mediation in penal matters. There exists clear guidelines explaining the use of mediation in penal matters.
   (b) Mediators must have basic qualifications and receive training in mediation skills. Training programs should be made available for the betterment of the mediation system, for the smooth and effective disposal of disputes. Before assuming office, mediators receive initial training in mediation duties, as well as inservice training. Their training aims at providing for a high level of competence, taking into account conflict resolution skills, the specific requirements of working with victims and offenders, and basic knowledge of the criminal justice system.
   (c) Recruitment and appointment of mediators should be done from all sections of society, and such people should generally possess a good understanding of local culture and the norms of the communities.
   (d) The public be educated to appreciate mediation as a means to resolve disputes. Before agreeing to mediation, the parties should be fully informed of their rights, the nature of the mediation process, and the possible consequences of their decision.

G. Fine Payment

In many countries, monetary penalties are usually awarded, and in default of payment, the offender suffers imprisonment. Fines are mostly awarded for petty and traffic offences. That is, if the offender can pay the fine s/he secures their liberty, but if s/he fails to pay the fine they suffer imprisonment. Fines are a common form of non-custodial sentence. Fines are economical because their management involves less money and less manpower. They are regarded as humane, since they cause minimum social damage to the offenders. Fines therefore aim to achieve the objectives of punishment in terms of retribution, deterrence and rehabilitation.

In a number of cases where fines are imposed, the court may consider the following basic pre-requisites:

(a) The gravity of the offence and the circumstances under which the offence was committed.
(b) The financial ability of the offender.
(c) The offender's family background.
(d) Offender's occupation.
(e) The health condition of the offender.
(f) The previous criminal history of the offender.

In determining the amount of fine, the court may also consider the offender's financial position, whether s/he can pay on demand, be allowed more time for payment or order the payment by installment. In Fiji, when the offender is given monetary penalty and the offender does not have sufficient money to meet the amount required, s/he may be given more time, usually thirty days, to go and look for the money, or the offender may be allowed to pay by installment until s/he completes the fine.

In quite a number of situations, the offender may not be able to pay the fine due to poverty or other adverse economic factors surrounding the offender. In such a case, we may ask the public to offer the offender opportunities to pay the fine due. For example, the community can provide work to the offender so that he/she can fulfill the responsibility of paying the fine. Also the work to be performed by such an offender can benefit the whole community. The community, which is aware that non-custodial sentences are better than imprisonment for the re-integration of the offender into the community, can help with the rehabilitation of the offender.

1. Obstacles
(a) Poor status of the offender in the immediate community.
(b) Unwillingness by the public to contribute towards the payment of the fine.
(c) Award of fine sentences is at the discretion of the sentencing courts.

2. Countermeasures
(a) Educate the public to learn to assist disadvantaged members of the community by pulling their resources together.
(b) Educate and counsel members of the community to be law abiding.

H. Summary

In the past, not much attention has been focused on the community-based treatment of offenders as a mean to achieve the rehabilitation and reformation of offenders. However, considering that governments are now experiencing huge budget deficits, to the extent that not many governments can now afford to be over-burdened with the provision of other than basic services, public participation in the community-based treatment of offenders is vital. There is, therefore, the need to strengthen cooperation between government agencies like local government, law enforcement agencies and correctional agencies, social welfare departments, non-governmental organizations (NGOs), donors and the private sector.

IV. INVOLVEMENT OF VICTIMS IN THE TREATMENT SYSTEM FOR OFFENDERS

Involvement of victims in the treatment system for offenders is very important for both victims and offenders. By involving victims in the treatment of offenders, offenders can be sensitized to the victims' feelings and agony. Also, offenders' genuine feelings of guilt are promoted. Programs previously described in this paper promote understanding between offenders and victims, and prompt reconciliation. Victims are encouraged to be more forgiving.

A criminal justice system that is intended to restore social relationships is

called 'Restorative Justice'. The aims of the restorative justice are:

(i) To repair the harm that has been done to the victims and the community;
(ii) To involve the victims and other members of the community as active participants in the process;
(iii) To help communities to reintegrate victims and offenders;
(iv) To rebuild communities that have been weakened by crime and other social ills;
(v) To deal with the needs of the victims, offenders and community.

So, restorative justice systems require the involvement of victims in the treatment of offenders.

A. Restorative Justice Programs

We classified restorative justice programs into the following five categories and organized our discussion according to these categories.

1. Mediation (direct/indirect)

There are two types of mediation programs; one which requires face-to-face contact between the victim and the offender (direct mediation), and one which does not involve face-to-face contact between the victim and the offender (indirect mediation).

(a) *Victim-Offender Mediation*

Victim-Offender Mediation Programs (VOMP), also known as Victim-Offender Reconciliation Programs (VORP), bring offenders face-to-face with the victims of their crimes, with the assistance of a trained mediator (usually a community volunteer). The value of these programs in restoring all those affected has been proven in communities throughout the world. Through the process, crime victims are given an opportunity to have their questions answered, and restitution and emotional needs are met. The person responsible for the crime is held accountable for his/her actions and given an opportunity to make things right. The community becomes involved in the process of restorative justice.

A basic case management process in North America and in Europe typically involves four phases:

(i) Case referral and intake;
(ii) Preparation for mediation;
(iii) The mediation itself; and
(iv) Any follow up necessary e.g, enforcement of restitution agreements.

Often, a case is referred to VORP after a conviction or formal admission of guilt in court; but some cases are diverted prior to such a disposition in an attempt to avoid prosecution. Studies have concluded that these programs have high client satisfaction rates, victim participation rates, restitution completion rates, and result in reduced fear among victims, and reduced criminal behavior by offenders.

(b) *Serious Offence Mediation*

Program for serious offenders were carried out in Anchorage, Alaska. Mediations were conducted with juvenile offenders and their victims for offences as serious as manslaughter and attempted murder. While mediation for minor property offences has the goal of obtaining restitution, the primary goal of serious offences mediation is to help in the healing process. Participation in mediation did not result in more lenient dispositions for the offenders, most of whom were already serving their penalties at the time of the mediation. Most participants reported that mediation was successful in meeting the goals of reconciliation, accountability, and closure.

Several projects involving prison-based mediation have been done with adult offenders. As with the young offender program, the goals are somewhat different from those of community-based programs, in that they emphasize sharing information and healing rather than restitution. They involve voluntary meetings held between victims and offenders in an institutional setting. Typically, they explicitly exclude offender benefits such as parole release. Immarigeon's (1996) assessment of several prison-based programs found that hundreds of victim-offender reconciliation meetings have been held with a great deal of success, and with no negative consequences.

Such violent offenses are usually mediated upon the initiation of the victim, and only after many months (sometimes even years) of work with a specially trained and qualified mediator, collaborating with the victim's therapist and/or other helping professionals. Participation must be completely voluntary, for both the victim and the offender.

(c) *Assessment of Mediation Programs*

Victim-Offender Mediation Programs have been mediating meaningful justice between crime victims and offenders for over twenty years. There are now over 300 such programs in the US and Canada, and about 500 in England, Germany, Scandinavia, Eastern Europe, Australia and New Zealand. Remarkably, consistent statistics from a cross-section of the North American programs shows that about two-thirds of the cases referred resulted in face-to-face mediation meetings; over 95% of the cases mediated resulted in a written restitution agreement; over 90% of those restitution agreements are completed within one year.

In France in 1993 and in Germany in 1994, after the assessment of these experimental programs, victim-offender mediation has been fully recognized in criminal procedure. In France, the prosecutor is entitled to arrange for mediation before the decision of whether or not to prosecute. The mediation is directed to the compensation of the victim and the rehabilitation of the offender.

2. Disclosure of Offender's Information

Recently, a victims' need to be notified of their offenders' information is increasing. Since criminal procedures, criminal justice systems, and cultures differ among countries, there is no definite answer to the question "Who/which agency (e.g, police, public prosecutors office, the courts, correctional institutions, probation office, etc) should disclose the offender's information?". In principle, victims should be notified of their right of access to the offender's information, and the agency which is most convenient to victims should be available to them, so that they will have the least trouble in requesting the offender's information. However, such disclosure may endanger the rehabilitation of the offenders, and therefore, the criminal justice agencies should be allowed to exercise discretionary power, in case they foresee such a danger.

3. Involvement of Victims' Opinion in Decision-making Concerning Offender's Status

In some countries, victims provide input about the impact of the crime (and sometimes parole violation) at the parole hearings, in person, via audiotape or videotape, by teleconferencing, or in writing. Their statements give the parole authority crucial information about the crime's financial, physical and emotional impact on the victim. To make this meaningful however, parole authorities must notify victims and their families of

the hearings (in advance), and schedule time during the hearing to allow them to describe the crime's impact on their lives.

4. Education

(a) *Victim-Offender Confrontation Programs and Similar Programs*

(i) Victim-Offender Confrontation Programs: Programs in which offenders and victims of other offenders, usually groups of victims or their families, meet in the correctional setting to discuss the impact of crime from both perspectives. This program's goal is to sensitize offenders to the pain and suffering of victims and can give offenders the opportunity to deal with remorse and guilt (for example, Alberta Seven Step "Surrogate Perpetrators Program", a program for sex offenders in Fort Saskatchewan).

(ii) Victim-Offender Panels: Victim-Offender Panels (VOP) can be attributed to the rise of the victims' rights movement in the last decade, and in particular to the campaign against drunk driving. They were developed as a means of giving convicted drunk drivers an appreciation of the human cost of drunk driving on victims and survivors, with the intention of decreasing the likelihood of repeat offences. It also offers victims and survivors a forum in which to express their experience and thereby restore some sense of power to the victims of crime.

One noteable example of a VOP in application is the Victim Impact Panel (VIP) organized by Mothers Against Drunk Driving (MADD). This panel provides an opportunity for offenders to express the impact that drunk driving has had on their lives.

A VOP is comprised of unrelated victims and offenders, linked only by a common kind of crime, not the particular crimes that involved others. It thus provides an opportunity for indirect encounter when either the victim or offender is unwilling or unable to meet the other.

With the VIP operated by MADD, for example, judges or probation officers will often require convicted drunk driving offenders to attend a panel as an element of their sentence or probation. Attendance is monitored, with sanctions applied for failure to attend.

(b) *Victim-Awareness Program*

This type of program sensitizes offenders to the needs of victims, without direct contact with them. This type of program is important because we may not be able to find victims who are willing to participate in programs involving contact with their offenders. The following are the list of programs which are currently utilized in Japan:

(i) Essay writing.
(ii) Imaginary letter.
(iii) Role playing.
(iv) "Naikan" meditation therapy.

5. Community Service

Community service requires offenders to perform some beneficial community service. These services are beneficial to victims in several ways. First, some victims may want to humiliate offenders by having them engage in community

work. Second, some victims may want offenders to engage in community work believing that experience such as working in an elderly person's home may help offenders be aware of the plight of victims. Third, since crimes offend the feelings of the public, including the victims, community service works as "symbolic restitution".

B. Actual Situation

Table 1 shows the actual situation of the countries of this group. Mediation programs (including programs which are similar to mediation) are implemented in Fiji, Japan, Kenya and Papua New Guinea. Who takes the role of mediator is different amongst these countries. In Japan, probation officers and VPOs take the role of mediator. In other countries, mediators are voluntary chaplains and elderly persons who are trusted by the community.

The disclosure of offenders' information to victims is implemented in Hong Kong, Kenya and the Republic of Korea. In Hong Kong, upon the victim's request, the Commissioner of the Correctional Service is required to provide information as needed in respect of the offender. In Kenya and the Republic of Korea, the offender's information is disclosed to victims by the police and welfare officers.

The consideration of the victim's opinion in decision-making concerning the offender's status is implemented in Fiji, Japan, Kenya, the Republic of Korea and Papua New Guinea. In these countries, the victim usually does not attend the parole hearing. Only a document describing the victim's opinion is submitted to the parole board (e.g, the report of probation officers to the board).

Victim-offender confrontation programs and similar programs are not implemented in all countries of the group . Victim awareness programs are implemented in Japan, Papua New Guinea, and Thailand. In Papua New Guinea, voluntary chaplains come to prisons or juvenile training schools and talk about the feelings and agony of the victims. In Thailand, meditation is implemented as one victim awareness program. Thus, the involvement of victims in the treatment of offenders in many of the group's countries seems to have been successful.

C. Obstacles and Countermeasures

1. Mediation

(a) *Obstacles*

(i) In some participating countries, programs are being conducted without any legal backup. In that no monitoring system is in place, the neutrality/quality of the mediator is not guaranteed. Hence, the rights of the victim and the offender can hardly be protected.

(ii) In general, the public do not have a full understanding of the objectives and the value of these programs.

(iii) Public opinion is accustomed to the retributive model of justice, i.e, geared to the punishment of offenders. As such, public support and participation in mediation programs difficult.

(iv) Usually, the victims do not want to meet offenders as they are either afraid of being re-victimized or choose to forget the harm/ trauma that the offender has done to them.

(v) The role of the mediators is so demanding that it is quite difficult to recruit sufficiently competent mediators.

(vi) Face-to-face contact of offenders with victims can be quite dangerous, i.e, not easy to control (security administration

problems).

(b) *Countermeasures*

(i) Relevant laws have to be enacted in the implementation of mediation programs, in order to protect the rights of the victims and offenders.

(ii) The public has to be made aware of the objectives and values of such programs by providing them with all the necessary information (e.g, using the mass media).

(iii) Offenders and victims need to be encouraged to participate in programs by educating them on their objectives and values.

(iv) Government and NGOs should take the lead in organizing the training of mediators, and invite suitable citizens to become mediators.

(v) Appropriate programs, such as psychological counselling, should be set up to assist victims and offenders to be prepared for mediation.

2. Disclosure of Offender's Information

(a) *Obstacles*

(i) In many participating countries, there is no leglistaion to govern whether it is lawful to provide offender's information to their victims.

(ii) Offenders may object to having their information being disclosed to their victims, as it would infringe on their privacy.

(iii) Offenders get disadvantaged as their victims may plan retalitation against them after their discharge, by knowing their date of discharge and other information such as place of residence.

(b) *Countermeasures*

(i) Relevant laws have to be enacted to specify suitable types of information disclosable to the victim, and the proper procedure in disclosing this information to victims.

(ii) The public has to be made aware of the objectives of providing offender information to their respective victims.

(iii) Protection of offenders' privacy and human rights has to be observed. In that, laws should be enacted to prevent the victims from misusing the information provided to them.

(iv) Cooperation among the police, public prosecutor's office, the courts, and correctional institutions has to be secured in order to ensure that all information provided to the victims is updated and given in good time.

3. Consideration of the Victim's Opinion in Decision-making Concerning the Offender's Status

(a) *Obstacles*

(i) Victims do not have adequate information about parole hearings, and thus they are unwilling to participate in the hearings either in person or in writing.

(ii) Most participating countries lack human resources (e.g, probation officers, etc) to approach the victims and explain to them the objectives of the parole hearing, or to give them counseling in securing their participation in the hearing.

(iii) Most of the victims do not wish to have any further direct or indirect involvement/contact with their offenders. Some of them even refuse to hear anything about their offenders.

(b) *Countermeasures*
(i) Government should recruit more probation officers and invite suitable citizens to be volunteer probation officers.
(ii) There is a need to explain the objectives and values of the parole board hearings to the victims and the public.
(iii) Education and counselling should be given to victims, informing them that they, their offender and society would benefit from their participation in the parole hearing.
(iv) Victims have the right to attend parole hearings so that they can fully realize how the parole hearing is being conducted.
(v) If the offenders are to be granted release by the parole board, victims should be protected by imposing certain conditions for the offenders to observe, such as keeping a certain distance away from the victim's residence. In such a way, victims may feel safe in participating in the parole hearing.

4. Education
(a) *Victim-Offender Confrontation Programs and Similar Programs*
(1) *Obstacles*
(a) The general public do not recognize the objectives and value of these programs.
(b) Public opinion is deeply entrenched in executing punishment against offenders (retributive sentiment).
(c) Victim's unwillingness.
(d) Offender's unwillingness.
(e) Serving officers are not trained to implement and organize these programs.
(f) Offenders can be dangerous to victims (security administration problems).

(2) *Countermeasures*
(a) Educating the public by providing them with all the information (e.g, using mass media) regarding the objectives and value of the programs.
(b) Educating offenders and victims about the benefits of the programs, and encouraging them to participate.
(c) Providing appropriate training for serving officers in implementing and organizing the programs, and seeking cooperation from private experts in providing their professional advice to enhance/ improve the qualities of these programs.
(d) Assisting victims and offenders to be prepared for participation.

(b) *Victim-Awareness Program*
(1) *Obstacles*
(a) Serving officers are not trained to conduct/organize the programs.
(b) Through participation in the programs, some offenders may have their guilty feelings aggravated, i.e, depression.

(2) *Countermeasures*
(a) Serving officers should be equipped with adequate knowledge in organizing and conducting programs through in-service training.
(b) Cooperation with private experts should be sought in order to obtain their expertise in enhancing the effectiveness of programs.
(c) Future-orientation of programs should be emphasized to prevent offenders from

becoming depressed.

D. Problems/Challenges in Using Restorative Justice Programs

Through the above processes, crime victims are given an opportunity to have their questions answered and their restitution and emotional needs met. The person responsible for the crime is held accountable for his/her actions and given an opportunity to make things right. The community becomes involved in the process of restorative justice.

However, some research indicates that victim participation in restorative justice programs places an unwanted burden on the victim himself or herself, beyond what would result from serving only as a witness for the prosecution. In particular, placing the victim in a decision-making role may lead to even more harassment and intimidation by the offender. In some jurisdictions that have introduced mechanisms designed to give victims a more active role in the process, a considerable number of victims have chosen not to exercise such a right.

One of the keys to successful restorative justice projects is the participation and support of the community. In some cases, victims have been unwilling to participate in victim-offender mediation programs, and some surveys have shown a relatively low level of public support for alternative programs. There are several reasons why public support for these programs is by no means automatic :

(i) People accustomed to the retributive model of justice may be reluctant to support restorative justice programs. However, successful restorative initiatives can lead to a change in public attitudes.

(ii) Empowering the community to take control of justice issues can be a major step in community healing. However, it can be a difficult step because the community institutions that must do this - including the family, schools, and religious and economic institutions - may not themselves be healthy. In other words, communities may have too many other problems to deal with.

(iii) There is also the possibility that community justice may divide rather than unite people. This may happen in small isolated communities where punishment, even when it is intended to reintegrate offenders, may alienate individuals and their friends and relatives from one and other. To prevent this, everyone must understand that restorative justice is in the best interest of the entire community.

(iv) For programs conducted inside the prison setting, such as Victim-Offender Reconciliation and Victim-Offender Confrontation Programs, they are operated less often than expected. This may be largely due to the lack of additional resources. Under a limited budget, such programs are not given priority.

(v) Also, offenders must want to participate in these programs for them to be successful. Offenders should not be given rewards (such as reduced punishment) for participating, because the offender must be sincere.

(vi) Restorative justice programs may be inappropriate in cases of unequal power positions between the victim and offender (e.g, child abuse). Victims might be revictimized by such participation.

(vii) In mediation programs, the mediator needs to be well trained so that he/she can prepare both the victim and the offender. Victims cannot use the

session to only express grief or anger (i.e, just yell at the offender). Also, mediation needs to make sure that the expectations of both sides are realistic.

V. CONCLUSION

Participation of the public and victims is imperative in the overall treatment, rehabilitation and re-integration of offenders into society. In order to achieve the desired results, public involvement in the effective utilization of prison labor, enhancing and resuscitating rehabilitation programs available to prisoners, is indeed vital.

Similarly, for the re-socialization of offenders to be effective and pragmatic, emphasis should be given to community-based treatment methods which can be enormously enhanced by active public involvement. The participation of the public in community-based treatment provides an enabling environment conducive to the speedy re-socialization of the offender.

Lastly, no comprehensive treatment program for offenders will ever be complete without the involvement of the victims in the restorative justice system. The actual re-settlement of the offender into the community will be determined by the ability and readiness of the victim to live in harmony with and restore the hope of the offender.

Table 1

Involvement of Victims in the Treatmet System of Offenders (actual situation of group members)

		Fiji	Hong Kong	Japan	Kenya	Papua. New Guinea	Republic of Korea	Thailand
Mediation (post trial)	Direct	●	●	○	○	○	●	●
	Indirect	○	●	○	○	○	●	●
Disclosure of Offender's Information to Victims		●	○	●	○	●	○	●
Involvement of Victim's Opinion in Decision-making Concerning Offender's Status		○	●	○	○	○	○	●
Education	Victim-Offender Confrontation Programs and Similar Programs	●	●	●	●	●	●	●
	Victim Awareness Programs	●	●	○	●	○	●	○

●··· program which can/should be implemented ○··· program is implemented

PART TWO

RESOURCE MATERIAL SERIES
No. 56

Work Product of the 113th International Training Course

"The Effective Administration Of Criminal Justice For The Prevention of Corrupt Activities By Public Officials"

UNAFEI

VISITING EXPERTS' PAPERS

INTERNATIONAL ANTI-CORRUPTION INITIATIVES

*Donald K. Piragoff**

I. INTRODUCTION

Efforts have been ongoing within various international *fora* to combat corruption through negotiating international instruments, exchanging information, and promoting international co-operation and technical assistance in the field. The necessity of States joining together to combat corruption has also been promoted at the highest political levels. This has been the result of a recognition that corruption weakens democratic institutions and public administration, undermines good governance, fairness and social justice, distorts the economy and competition, hinders economic and social development and damages a society's moral fibre. Of growing concern is that corruption is used as a tool by organised crime to achieve its criminal goals.

Governments and non-governmental organisations have become convinced that the public must become aware of this problem and participate in its prevention, and that governments must exert coordinated action, both domestically and internationally, to fight it effectively. In result, in the last decade the issue of corruption has taken priority in the work programmes of many international organisations, both inter-governmental and non-governmental. This work has included the negotiation of international instruments and other legal measures, implementing various regulatory, preventive and educational measures and providing technical assistance and cooperation.

While acknowledging that the fight against corruption requires multi-disciplinary action, this paper will survey only a number of initiatives undertaken by a number of international and inter-governmental organisations, primarily with respect to legal measures in the criminal law area to fight corruption.

II. ORGANIZATION OF AMERICAN STATES

In 1994, at the Summit of the Americas, Heads of State and of Governments in the Americas endorsed a Plan of Action, which called upon the Organization of American States (OAS) to develop a hemispheric approach to acts of corruption. After several preparatory meetings, the Specialised Conference on the Draft Inter-American Convention against Corruption was held in Caracas, Venezuela on March 27, 28 and 29, 1996. The Convention was concluded on March 29, 1996. Twenty-one Member States (out of thirty-four Member States) signed the Convention on that date, and the Convention entered into force on March 6, 1997.

This was the first international convention to be negotiated that provides for criminalizing the bribery of foreign public officials. The OAS Convention has two purposes:

(1) to promote and strengthen within each State Party mechanisms necessary to prevent, detect, punish and eradicate corruption; and

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The views expressed herein represent those of the author and do not necessarily represent the views of the Department of Justice.

(2) to promote, facilitate and regulate co-operation among States Parties to ensure the effectiveness of measures and actions to prevent, detect, punish and eradicate corruption.[1]

The Convention describes a number of acts of corruption which States Parties are obliged to criminalize under their domestic law, and further obligates them to consider establishing various preventive measures, consider the establishment of other optional offences and provide international co-operation in the investigation of corruption. The Convention is applicable to, and States Parties shall adopt the necessary legislative or other measures to establish as criminal offences, the following acts of corruption:

- Solicitation or acceptance, directly or indirectly, by a government official or a person who performs public functions, of any article of monetary value, or other benefit (such as a gift, favour, promise or advantage for him or herself or for another person or entity), in exchange for any act or omission in the performance of his or her public functions;

- Offering or granting, directly or indirectly, to a government official or a person who performs public functions, any such article of monetary value or other benefit as described above;

- Any act or omission in the discharge of duties by a government official or a person who performs public functions for the purpose of illicitly obtaining benefits for him/herself or for a third person;

- Fraudulent use or concealment of property from any of the acts referred to; and

- Participation as a principal, co-principal, instigator, accomplice or accessory after the fact, or in any other manner, in the commission or attempted commission of, or in any association or conspiracy to commit, any of the acts referred to.[2]

The Convention also contains a number of optional obligations concerning criminalisation, which are conditional and subject to a State's Constitution and the fundamental principles of its legal system. The first of these involves transnational bribery. Each State Party shall prohibit and punish its nationals, persons having their habitual residence in its territory, and businesses domiciled there, for offering or granting, directly or indirectly, to a government official of another State, any article of monetary value, or other benefit (such as a gift, favour, promise or advantage) in connection with any economic or commercial transaction in exchange for any act or omission in the performance of that official's public functions. The second optional offence involves illicit enrichment. Each State Party shall take the necessary measures to establish under its laws as an offence "*a significant increase in the assets of a government official that he cannot reasonably explain in relation to his lawful earnings during the performance of his functions*".[3]

Such offences shall be considered as an act of corruption, for the purposes of the Convention, among those States Parties that have established transnational bribery or illicit enrichment as an offence,

[1] Organization of American States, *Inter-American Convention Against Corruption* (hereinafter "OAS"), Article II.

[2] OAS, Article VI and VII.

[3] OAS, article IX.

respectively. However, even State Parties that have not established transnational bribery or illicit enrichment as an offence shall, insofar as their laws permit, provide assistance and co-operation with respect to those offences, as provided in the convention.[4]

In order to foster the development and harmonization of their domestic legislation and the attainment of the purpose of the Convention, the States Parties are also obliged to consider establishing as offences under their laws the following acts of corruption:

- Improper use by a government official or a person who performs public functions, for his or her own benefit or that of third party, of any classified or confidential information which that official or person has obtained because of, or in the performance of, his of her functions;

- Improper use by such an official or person, for his or her own benefit or that of a third party, of any kind of property belonging to the State or to any firm or institution in which the State has a proprietary interest, to which that official or person has access because of, or in performance of, his or her function;

- Any act or omission by any person who, personally or through a third party, or acting as an intermediary, seeks to obtain a decision from a public authority whereby he or she illicitly obtains for him or herself or for another person any benefit or gain, whether or not such act or omission harms State property; and

- Diversion by a government official, for purposes unrelated to those for which they were intended, for his or her own benefit or that of a third party, of any moveable or immovable property, monies or securities belonging to the State, to an independent agency, or to an individual, that such official has received by virtue of his or her position for the purposes of administration, custody or for other reasons.[5]

Such offences shall be considered as acts of corruption for the purpose of the Convention among those State Parties that have established these offences under domestic law. Any State Party that has not established these offences shall, nevertheless, be obligated, insofar as its laws permit, to provide assistance and co-operation with respect to these offences, as provided in the Convention.[6]

Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences it has established (in accordance with the Convention) when committed in its territory, and may adopt jurisdiction where the offence was committed by one of its nationals or by a person who habitually resides in its territory. It shall also establish jurisdiction over an alleged criminal who is present on its territory and it does not extradite such a person to another country on the grounds of the nationality of the alleged criminal.[7]

With respect to extradition, each of the offences established by the States Parties in accordance with the Convention shall be deemed to be included as an extraditable offence in any extradition treaty between the State Parties, and if no extradition treaty exists between two State Parties,

[4] OAS, Article VIIIand IX.

[5] OAS, Article XI para. 1.

[6] OAS, Article, XI paras. 2 and 3.

[7] OAS, Article V.

they may consider the Convention as the legal basis for extradition. State Parties that do not make extradition conditional on the existence of a treaty shall recognise Convention offences as extraditable offences. If extradition is refused solely on the basis of the nationality of the person sought, or because the Requested State deems that it has jurisdiction over the offence, the Requested State shall submit the case to its competent authorities for the purpose of prosecution, unless otherwise agreed with the Requesting State.[8]

States Parties shall also afford one another the widest measure of mutual assistance by processing requests either through Central Authorities[9] or from authorities that have the domestic power to investigate or prosecute the acts of corruption described in the Convention.[10] They shall also provide each other with the widest measure of mutual technical co-operation on the most effective ways and means of preventing, detecting, investigating and punishing acts of corruption. This would include exchanges of experience by way of agreements and meetings, with special attention to methods and procedures of citizen participation in fighting corruption.[11]

State Parties shall also provide each other the broadest possible measure of assistance in the identification, tracing, freezing, seizure and forfeiture of property or proceeds obtained, derived from or used in the commission of Convention offences. A State Party may, to the extent permitted by its laws, transfer all or part of such property or proceeds to another State Party that assisted in the underlying investigation or proceedings.[12]

Bank secrecy shall not be invoked by the Requested State as a basis for refusal to provide assistance sought by the Requesting State. In reciprocity, the Requesting State is obligated not to use any information received that is protected by bank secrecy for any purpose other than the proceeding for which that information was requested, unless authorised by the Requested State.[13]

For the purpose of the articles concerning extradition, mutual assistance in general and assistance in respect of measures regarding property and bank secrecy, the fact that the property obtained or derived from an act of corruption was intended for political purposes, or that it is alleged that an act of corruption was committed for political motives or purposes, shall not suffice in and of itself to qualify the act as a political offence or as a common offence related to a political offence.[14]

Subject to the constitutional principles and the domestic laws of each State, and existing treaties between the States Parties, procedural co-operation in criminal matters may be given with respect to an act of corruption that was committed before the entry into force of the Convention. However, the principles of non-retroactivity in criminal law and the application of existing statutes of limitation relating to crimes committed prior to the date of entry into force shall not be affected by the Convention.[15] Likewise, nothing in the Convention prevents the State Parties from providing mutual co-operation within the framework of other bilateral or multilateral agreements or arrangements.[16]

[8] OAS, Article XIII.

[9] OAS, Article XVIII.

[10] OAS, Article XIV, para. 1.

[11] OAS, Article XIV, para. 2.

[12] OAS, Article XV.

[13] OAS, Article XVI.

[14] OAS, Article XVII.

[15] OAS, Article XIX.

[16] OAS, Article XX.

Additionally, the Convention obligates State Parties to consider the applicability of a number of preventive measures within their own institutional systems to create, maintain and strengthen:

- Standards of conduct for the correct, honourable, and proper fulfilment of public functions, in order to prevent conflicts of interest and ensure the proper conservation and use of resources entrusted to government officials in the performance of their functions, including the establishment of measures and systems requiring government officials to report acts of corruption in the performance of public functions;

- Mechanisms to enforce these standards of conduct;

- Instruction to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities;

- Systems for disclosing the income, assets and liabilities of persons who perform public functions in certain posts as specified by law and, where appropriate, for making such disclosures public;

- Systems of government hiring and procurement of goods/services that assure the openness, equity and efficiency of such systems;

- Government revenue collection and control systems that deter corruption;

- Laws that deny favourable tax treatment for expenditures made in violation of anti-corruption laws;

- Systems for protecting public servants and private citizens who, in good faith, report acts of corruption, including protection of their identities, in accordance with their Constitutions and the basic principles of their domestic legal system;

- Oversight bodies with a view to implementing modern mechanisms for preventing, detecting, punishing and eradicating corrupt acts;

- Deterrents to the bribery of domestic foreign government officials, such as mechanisms to ensure that companies and associations maintain accurate and reasonably detailed books and records, which reflect the acquisition and disposition of assets, and have sufficient internal accounting controls to detect corrupt acts;

- Mechanisms to encourage participation by civil society and non-governmental organisations in an effort to prevent corruption; and

- Study further preventive measures that take into account the relationship between equitable compensation and probity in public service.

On June 5, 1997, the OAS General Assembly adopted a Program for Inter-American Cooperation in the Fight against Corruption. Among other things, this program calls for a strategy to secure prompt ratification of the OAS Convention. The Second Summit of the Americas was held from April 18-19, 1998 in Santiago, Chile. Corruption was a featured theme under the Human Rights and Democracy section of the Summit agenda. Among other things, this section of the action plan, approved by leaders in Santiago, calls upon governments to adopt strategies to achieve prompt ratification of the OAS Convention.

A Symposium on Enhancing Probity in the Hemisphere was held in Santiago, Chile, on November 4-6, 1998. Participants included representatives of national institutions and of international agencies involved in the fight against corruption. Participants explained the underlying legal basis, sphere of competence, and functions of those bodies, as well as exiting mechanism of co-ordination with other national institutions. Presentations were also made by representatives of international organisations on how national organisations could improve their fight against corruption and better co-ordinate their activities with non-governmentnal institutions. The Symposium urged all governments to ratify the OAS Convention before the year 2000, and produced a number of conclusions and recommendations.

In 1996, following the negotiations of the Inter-American Convention against Corruption, the OAS General Assembly commissioned the Inter-American Juridical Committee (IAJC) of the Organization of American States to prepare model legislation covering transnational bribery and illicit enrichment (Articles VIII and IX of the Convention, respectively), which could be used by Member States as a guide to implementing those articles of the Convention.[17] The Committee, in the course of its work, concluded that the differences among the legal systems of Members States, in terms of criminal law, even among those with the same language, juridical tradition and similar historical background, were far deeper and more varied than those in other branches of the law. Therefore, the Juridical Committee drafted a minimum number of basic articles (which it acknowledged would probably not be adopted as they stand by any state), together with a commentary, as a guide for legislators. These are contained in its report, dated January 29, 1999, entitled "Model Legislation on Illicit Enrichment and Transnational Bribery". [18] The report was presented to the Permanent Council of the OAS in the spring of 1999.

III. ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

Corruption of public officials has been viewed as a major problem affecting international trade and investment. Accordingly, the Organisation for Economic Co-operation and Development (OECD), which is a major economic policy forum for the world's most advanced industrialised democracies, has focused attention on this issue. The OECD has 29 members, which include Canada, the United States, most European countries, Japan and South Korea.

In May of 1997, a Ministerial meeting at the OECD called for the negotiation of a binding convention to address the bribery of foreign public officials. Ministers urged that the convention be finalised by the end of 1997, and recommended that Member countries should submit legislative proposals to criminalise such bribery to their national legislatures and seek their enactment by the end of 1998. On June 21, 1997, leaders at the Summit of Seven Industrialised Countries, at their meeting in Denver, Colorado, issued a statement in which the leaders endorsed this approach and timetable. Negotiations commenced with earnest and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions was concluded on November 21, 1997. On December 17, 1997, the Convention was signed by Member States

[17] OAS, AG/RES. 1395 (XXVI-0/96).

[18] *Model Legislation on Illicit Enrichment and Transnational Bribery*, OEA/Ser.Q, CJI/doc. 21/99, 29 January 1999.

of the OECD, and by 5 non-Member States, Argentina, Brazil, Bulgaria, Chile and Slovak Republic. On May 17, 1998, in the Final Communique of the G-8 Summit, held in Birmingham, United Kingdom, the Heads of State and Government pledged to make every effort to ratify the OECD Convention by the end of 1998.

Five of the ten OECD countries with the largest share of OECD exports were required to ratify the Convention in 1998 in order to trigger its entry into force. Canada ratified the OECD Convention on December 17, 1998, and by becoming the fifth country to ratify the Convention (out of the ten countries with the largest share of OECD exports, and representing at least sixty percent of the combined total exports of those ten countries, which was a threshold condition for entry into force), the other four countries and Canada were able to trigger the entry into force of the Convention sixty days after the deposit of Canada's instrument of ratification. Thus, the Convention entered into force on February 15, 1999.

The Convention obligates each Party to take such measures as may be necessary to establish as a criminal offence under its law the intentional offering, promising or giving of any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for the benefit of that official or a third party, in order that the official act or refrain from acting in relation to the performance of official duties, for the purpose of obtaining or retaining business or other improper advantage in the conduct of international business.[19] Likewise, acts of complicity, including incitement, aiding and abetting, or authorisation of an act of bribery of a foreign official, shall also be criminal offences. Attempt and conspiracy shall also be criminalised to the same extent as they are in relation to bribing a public official of that Party.[20]

For the purposes of the Convention, "foreign public official" is defined as meaning "any person holding a legislative, administrative or judicial office of a foreign country, whether appointed or elected; any person exercising a public function for a foreign country, including for a public agency or public enterprise; and any official or agent of a public international organisation. The phrase "act or refrain from acting in relation to the performance of official duties" includes "any use of the public official's position, whether or not within the official's authorised competence".

These criminal offences "shall be punishable by effective, proportionate and dissuasive criminal penalties", which are "comparable to that applicable to the bribery of the Party's own public officials", including deprivation of liberty sufficient to enable effective mutual legal assistance and extradition.[21] The bribe and the proceeds of the bribery of a foreign public official, or property of a corresponding value to such proceeds, are to be subject to seizure and confiscation or to the imposition of monetary sanctions of comparable effect.[22] Where a Party has made bribery of its own public official a predicate offence for the purpose of the application of its money laundering legislation, that Party shall also apply the same terms for the bribery of a foreign public official, without regard to the place where the bribery occurred.[23]

[19] Organization for Economic Cooperation and Development, *Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions* (hereinafter "OECD"), Article 1, para. 1.

[20] OECD, Article 1, para. 2.

[21] OECD, Article 3, para. 1.

[22] OECD, Article 3, para. 3.

[23] OECD, Article 7.

Each Party shall also take such measures as may be necessary, in accordance with its legal principles, to establish the liability of legal persons for the bribery of a foreign public official.[24] In the event that criminal responsibility is not applicable to legal persons under the legal system of a Party, that Party "shall ensure that legal persons shall be subject to effective, proportionate and dissuasive non-criminal sanctions, including monetary sanctions, for bribery of foreign public officials."[25]

Regarding jurisdiction, each Party is obligated to establish its jurisdiction over the bribery of a foreign public official when the offence is committed in whole or in part in its territory.[26] Additionally, where a Party has jurisdiction to prosecute its nationals for offences committed abroad, it shall take such measure as may be necessary to establish its jurisdiction in respect of the bribery of a foreign public official by one of its nationals, according to the same principles. Each Party shall also "review whether its current basis for jurisdiction is effective in the fight against the bribery of foreign public officials and, if it is not, shall take remedial steps."[27]

The investigation and prosecution offences regarding the bribery of a foreign public official shall be subject to the applicable rules and principles of each Party, but they "shall not be influenced by considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved."[28] Any statute of limitations applicable to the offence of bribery of a foreign official shall provide an adequate period of time for the investigation and prosecution of this offence.[29]

The Convention also provides obligations regarding accounting practices and auditing standards. Within the framework of its laws and regulations regarding the maintenance of books and records, financial statement disclosures, and accounting and auditing standards, each Party shall take such measures as are necessary "to prohibit the establishment of off-the-books accounts, the making of off-the-books or inadequately identified transactions, the recording of non-existent expenditures, the entry of liabilities with incorrect identification of their object, as well as the use of false documents, by companies subject to those laws and regulations, for the purpose of bribing foreign public officials or of hiding such bribery."[30] Effective, proportionate and dissuasive civil, administrative or criminal penalties shall be provided for such omissions and falsifications in respect of the books, records, accounts and financial statements of such companies.[31]

With respect to international co-operation, each Party shall, "to the fullest extent possible under its laws and relevant treaties and arrangements, provide prompt and effective legal assistance to another Party for the purpose of criminal investigations and proceedings brought by a Party concerning offences within the scope of this Convention and for non-criminal proceedings within the scope of this Convention brought by a Party against a legal person." Importantly, a Party "shall not decline to render mutual legal assistance for criminal matters within the scope of this Convention on the ground of

[24] OECD, Article 2.

[25] OECD, Article 3, para. 2.

[26] OECD, Article 4, para. 1.

[27] OECD, Article 4, para. 4.

[28] OECD, Article 5.

[29] OECD, Article 6.

[30] OECD, Article 8, para. 1.

[31] OECD, Article 8, para. 2.

bank secrecy."[32] Bribery of a foreign public official shall also be deemed to be included as an extraditable offence under the laws of the parties and any extradition treaties between them; and, if no treaties exist between two Parties, they may consider the Convention as the legal basis for extradition. Each Party shall also assure that it can either extradite its nationals or that it can prosecute its nationals for the offence of bribery of a foreign public official. If a Party declines a request solely on the ground of nationality, it shall submit the case to its competent authorities for the purpose of prosecution.[33] Where dual criminality is a requirement for mutual legal assistance or for extradition, it shall be deemed to exist if the offence for which the assistance or extradition is sought is within the scope of the Convention.[34]

Of long term significance is the fact that the Convention provides for a mechanism for monitoring and follow-up. Article 12 obligates the Parties to "co-operate in carrying out a programme of systematic follow-up to monitor and promote the full implementation of this Convention." Unless otherwise decided by consensus of the Parties, this programme shall be carried out in the framework of the OECD Working Group on Bribery in Intentional Business Transactions. The OECD has already embarked on a programme of evaluation and assessment of Parties' efforts to implement the convention, and each Party is subject to a review and assessment by two other Parties and the results are subject to review by the Working Group.

IV. COUNCIL OF EUROPE

In September 1994, the Committee of Ministers of the Council of Europe, following a proposal of the 19th Meeting of the European Ministers of Justice (Malta, June 1994), established a Multidisciplinary Group on Corruption (GMC) to examine what measures might be suitable to constitute a programme of action against corruption, to make recommendations, and to examine the possibility of drafting model laws or codes, including an international convention, and of organising or promoting research project, training and exchanges of experiences.

In November 1996, a Programme of Action against Corruption, developed by the Multidisciplinary Group on Corruption, was adopted by the Committee of Ministers of the Council of Europe. The Programme of Action, examined the nature and reasons for corruption, and set out a work programme that included examining and making recommendations in a number of areas, including criminal law, administrative law, fiscal aspects, civil law, institutions and categories of persons with special roles and responsibilities as regards corruption, prevention, investigation and sanctioning of corruption, international co-operation and a number of areas related to financing of political parties, role of lobbyist organisations, role of the media, and research, training and exchange of practical experiences.[35] The Committee of Ministers mandated the Multidisciplinary Group on Corruption (GMC) to develop international instruments to give effect to the Programme of Action and to implement the Programme of Action before December 31, 2000.

At the 21st Conference of European Ministers of Justice, held in Prague, Czech Republic, in June 1997, Ministers recommended accelerating the

[32] OECD, Article 9.

[33] OECD, Article 10.

[34] OECD, Article 9, para.2, and Article 10, para. 4.

[35] Multidisciplinary Group on Corruption (GMC), Programme of Action Against Corruption, GMC (96) 95.

implementation of the Programme of Action against Corruption, and intensifying efforts with a view to the early adoption of, among other things, a criminal law convention that would provide for the co-ordinated incrimination of corruption offences among states, enhanced co-operation for the prosecution of such offences and an effective follow-up mechanism open to both Member States and Non-member States.

At the Second Summit of Heads of State and Government of the Member States of the Council of Europe, held in Strasbourg on October 10 to 11, 1997, an Action Plan was adopted which included an instruction to the Committee of Ministers to adopt guiding principles against corruption and to secure the rapid completion of international legal instruments pursuant to the Programme of Action against Corruption.

On November 6, 1997, at its 101st session, the Committee of Ministers of the Council of Europe adopted the 20 Guiding Principles for the Fight against Corruption. These principles set out a number of goals that should be achieved to fight corruption, and addressed a number of areas such as public awareness, co-ordination at the national and international level, adequate resources for and independence of those fighting corruption from undue and improper influences, seizure and deprivation of proceeds of corruption, corporate liability, transparency of public administration and procurement procedures, appropriate auditing procedures, systems of public liability and accountability, codes of conduct and rules for financing of political parties and election campaigns, and effective remedies and sanctions against corruption[36] The Committee of Ministers also instructed the GMC to rapidly complete the elaboration of an instrument to establish a mechanism to monitor the observance of the Guiding Principles and the elaboration of the international legal instruments to be adopted.

On May 5, 1998, the Committee of Ministers adopted Resolution (98) 7 authorising the establishment of the "Group of States against Corruption" (GRECO) in the form of a partial and enlarged agreement which aims at improving the capacity of states to fight corruption by following up compliance with their undertakings in the fight against corruption. GRECO will monitor implementation of the Convention and the application of the 20 Guiding Principles, as well as other conventions and legal instruments developed by the Council of Europe in the area of corruption. The Committee of Ministers invited Member States and Non-member States having participated in the elaboration of the Agreement to join the GRECO. GRECO will come into force when 14 States have indicated their desire to join it, which occurred in early 1999. GRECO started operating in May 1999.

On November 4, 1998, the Committee of Ministers adopted the Criminal Law Convention and decided to open it for signature on January 27, 1999. On January 27, 1999, 21 European states signed the Criminal Law Convention, and as of September 15, 1999, 30 states have now signed. It will come into force when ratified by 14 States. The Convention is open to the accession of Non-member States. The Criminal Law Convention on Corruption seeks to achieve co-ordinated criminalisation of a wide range of corrupt practice by harmonised national legislation and improved international co-operation.

[36] Council of Europe, Committee of Ministers, *Resolution (97) 24 on the Twenty Guiding Principles for the Fight against Corruption*.

It complements existing legal instruments and covers the following forms of corruption and corrupt behaviour:

- Active and passive bribery of domestic and foreign officials;[37]
- Active and passive bribery of national and foreign parliamentarians, which exercise legislative or administrative powers,[38] and members of parliamentary assemblies of international or supranational organisations of which a Party is a member;[39]
- Active and passive bribery in the private sector (i.e, active or passive bribery by "persons who direct or work for, in any capacity, private sector entities") ;[40]
- Active and passive bribery of international civil servants;[41]
- Active and passive bribery of domestic, foreign and international judges and officials of international courts;[42]
- Trading in influence;[43]
- Money-laundering of proceeds from corruption offences;[44]
- Accounting offences (invoices, accounting documents, etc) connected with corruption offences.[45]

"Active bribery" is defined to mean the intentional "promising offering or giving by any person, directly or indirectly, of any undue advantage "to any public official, for the benefit of that official or for anyone else, in order that the public official refrain from acting in the exercise of his or her functions.[46] "Passive bribery" is defined to mean the intentional request or receipt by any public official, directly or indirectly, of any undue advantage, for the benefit of that public official or anyone else, or the acceptance of an offer or a promise of such an advantage, in order that the public official act or refrain from acting in the exercise of his or her functions.[47]

"Trading in influence" means intentionally "promising, giving or offering, directly or indirectly, of any undue advantage to anyone who asserts or confirms that he or she is able to exert an improper influence over the decision-making" of any public official, member of a public assembly, member of an international organisation, parliamentary assembly or court within the scope of the Convention, in consideration thereof. It is irrelevant whether the undue advantage is for himself or herself or for anyone else. The term "trading in influence" also applies to the intentional "request, receipt or the acceptance of the offer or the promise of such an advantage, in consideration of that influence, whether or not the influence is exerted or whether or not the supposed influence leads to the intended result."[48]

[37] Council of Europe, *Criminal Law Convention on Corruption*, (hereinafter "COE"), Articles 2, 3 and 5.

[38] COE, Articles 4 and 6.

[39] COE, Article 10.

[40] COE, Articles 7 and 8.

[41] COE, Article9 (i.e., "any official or other contracted employee, with the meaning of the staff regulations, of any public international or supranational organisation or body of which the Party is a member, and any person, whether seconded or not, carrying out functions corresponding to those performed by such officials or agents").

[42] COE, Article 11.

[43] COE, Article 12.

[44] COE, Article 13.

[45] COE, Article 14.

[46] COE, Article 2.

[47] COE, Article 3.

[48] COE, Article 12.

"Accounting offences" refers to the following acts or omissions, when committed intentionally, in order to commit, conceal, or disguise a corruption offence within the scope of the Convention:

(a) creating or using an invoice or any other accounting document or record containing false or incomplete information; or
(b) unlawfully omitting to make a record of a payment.[49]

Under the Convention, Parties are obligated to establish jurisdiction over the Convention offences where:

(1) the offence is committed on its territory;
(2) the offender is one of its nationals, one of its public officials, or a member of one of its domestic assemblies; or
(3) the offence involves one of its public officials or members of its domestic public assemblies, or any person referred to in any of the articles establishing corruption offences who is one of its nationals.[50]

The third basis of jurisdiction is intended to include the exercise of jurisdiction where the person who is bribed is a national of the Party.

Parties are also obligated to ensure that corporate liability exists in respect of the criminal offences of active bribery, trading in influence and money laundering where the offence is committed for the benefit of the legal person by any natural person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person. This leading position can be based on a power of representation of an authority to take decisions on behalf of, or an authority to exercise control within, the legal person. Additionally, a Party shall ensure that a legal person can be held liable where the lack off supervision or control by the natural person, who has a leading position, has made possible the commission of the criminal offence for the benefit of the legal person. Any liability for the legal person does not exclude any criminal liability against the natural person.[51]

Each Party is obligated to provide that the criminal offences established have effective, proportionate and dissuasive sanctions and measures, including, in the case of natural persons, penalties involving deprivation of liberty and in the case of legal persons, non-criminal sanctions and monetary sanctions. Likewise, Parties are obligated to confiscate or otherwise derive the instrumentality's and proceeds of Convention criminal offences or property, the value of which corresponds to such proceeds,[52] and to adopt such legislative or other measures as may be necessary, including those permitting the use of special investigative techniques, to facilitate the gathering of evidence and to identify, trace, freeze and seize instrumentalists and proceeds.[53] These measures include the authority to order that bank, financial or commercial records are made available or seized and that bank secrecy not be an obstacle to any of the measures provided.[54]

The Convention also contains provisions to ensure that persons or entities specialised in the fight against corruption have the necessary independence to carry out their functions free from undue pressure and are adequately trained and

[49] COE, Article 14.
[50] COE, Article 17.
[51] COE, Article 18.
[52] COE, Article 19.
[53] COE, Article 23.
[54] Ibid.

financially resourced,[55] public authorities and public officials co-operate with investigating and prosecuting authorities,[56] and effective and appropriate protection is provided for those who report Convention criminal offences or who are witnesses.[57]

With respect to international co-operation, Parties are obligated to co-operate to the widest extent possible for the purposes of investigation and proceedings concerning Convention offences, and may use the Convention as the basis for co-operation where no bilateral or other international instrument or arrangement exists.[58] Mutual legal assistance may be refused if the requested Party believes that compliance with the request would undermine its fundamental interests, national sovereignty, national security or public order, but shall not invoke bank secrecy as a ground of refusal.[59] Likewise, the Convention can be used as the basis for extradition with respect to Convention offences, and Parties are obligated to recognise Convention offences as extraditable offences. If extradition is refused solely on the basis of the nationality of the person sought, or because the requested Party considers that it has jurisdiction over the offence, the requested Party shall submit the case to its competent authorities for the purpose of prosecution[60]. The Convention also contains provisions concerning the provision of spontaneous information by a Party to another Party when it considers that disclosure might assist an investigation[61], as well as the use of Central Authorities[62], and direct communications between judicial authorities in the event of urgency.[63]

V. UNITED NATIONS

In 1990, the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders adopted a resolution on *Corruption in Government* [64] which, in addition to inviting and urging Member States to review the adequacy of their laws and procedures to respond to corruption, requested that the United Nations organisation provide technical cooperation and assistance to develop anti-corruption programmes, law reform, training, etc. The organisation was also requested to develop a code of conduct for public officials and to develop a manual on practical measures against corruption.

In 1993, the United Nations published a manual addressing practical measures against corruption.[65] The manual contains a number of chapters addressing issues such as penal laws, administrative and regulatory measures, procedures for the detection, investigation and conviction of corrupt officials, forfeiture of property and proceeds, economic sanctions against enterprises and training, and exchange of international experience.

At the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Cairo, Egypt, in 1995, a special session was devoted to the subject of corruption. A *Background paper prepared by the*

[55] COE, Article 20.
[56] COE, Article 21.
[57] COE, Article 22.
[58] COE, Article 25.
[59] COE, Article 26.
[60] COE, Article 27.
[61] COE, Article 28.
[62] COE, Article 29.
[63] COE, Article 30.
[64] United Nations, Economic and Social Council, Resolution 1990/23 of 24 May 1990.
[65] United Nations, "Crime Prevention and Criminal Justice in the Context of Development: Realities and Perspectives of International Cooperation, Practical Measures against Corruption", 41 & 42 International Review of Criminal Policy (1993).

Secretariat on international action against corruption was distributed.[66] The paper presents various characteristics of corruption, as well as its adverse effects on development. Various measures against corruption and recent international initiatives are discussed, as well as the role of international organisations in the fight against corruption.

In the autumn of 1996, the United Nations General Assembly adopted two resolutions concerning corruption. The first, *Action Against Corruption*, to which was annexed an International Code of Conduct for Public Officials.[67] The resolution on the Code of Conduct had been prepared by the UN Commission on Crime Prevention and Criminal Justice. The Code addresses areas such as loyalty to the public interest, effective and efficient administration of public resources, fair and impartial performance of functions, conflict of interest and declaration of possible conflicts, improper use of public property, disclosure of assets, acceptance of gifts or favours, confidentiality of information and political activity. The resolution called upon States to implement the resolution and Code of Conduct.

The second resolution, adopted the *United Nations Declaration against Corruption and Bribery in International Commercial Transactions*.[68] The Declaration called upon States to commit themselves *inter alia* to take effective and concrete action to combat all forms of corruption, bribery and related illicit practices in international commercial transactions and, in particular, to criminalise the bribery of foreign public officials in connection with an international commercial transaction, deny the tax deductibility of bribes, develop accounting standards and practices that improve the transparency of international commercial transactions, develop business codes, standards or best practices, examine the criminalisation of illicit enrichment, afford the greatest possible cooperation and assistance to other States in the criminal investigation and prosecution of corruption and bribery, and ensure that bank secrecy does not impede or hinder criminal investigations.

Pursuant to General Assembly resolution 51/59 and ECOSOC resolution 1995/14, a report was prepared in 1997 by the Secretary General that reviews various forms of corruption and several anti-corruption initiatives taken by international bodies and describes possible elements and means to implement the above-mentioned General Assembly resolutions and to promote the International Code of Conduct.[69] While observing that the fight against organised crime and corruption is predominantly presented as a challenge to the law enforcement community, it recognises that crime prevention concepts and techniques can be employed in the fight against corruptions and organised crime, particularly in limiting the opportunities for corruption.

At the sixth session of the UN Commission on Crime Prevention and Criminal Justice (1997), states were called

[66] United Nations, Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, A/Conf.169/14, 13 April 1995.

[67] United Nations General Assembly, 51st Session, Resolution 51/59.

[68] United Nations General Assembly, 51st Session, Resolution 51/191.

[69] United Nations, Economic and Social Council, "Promotion and Maintenance of the Rule of Law and Good Governance; Action against Corruption, Action against Corruption and Bribery, Report of the Secretary-General, E/CN.15/1997/3, 5 March 1997.

upon to commit themselves to take further action further to General Assembly resolution 51/191. It was also agreed that "combating corruption" would be a theme to be a addressed at a workshop to be held at the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, to be held in Vienna, Austria, in April 2000. At the seventh session of the Commission (1998), a resolution was adopted to request the updating of the *UN Manual on Practical Measures on Corruption* and for an experts' group to develop an international strategy against corruption. A meeting of experts was held in Paris in April 1999, and its recommendations were considered and welcomed by the Commission at its eighth session in May 1999.

Recently, the newly structured Centre for International Crime Prevention in Vienna, Austria, has prepared a *Global Programme Against Corruption* which is an outline for action against corruption in terms of research and technical cooperation and assistance. The research component is to undertake a global study on corruption, including identification of types and the effectiveness of anti-corruption measures, particularly in the areas of public administration, business and political-financial corruption. In addition, an international database is to be created which would contain information on best practices, relevant national legislation and regulatory measures of different countries and international instruments against corruption. The technical cooperation component, which is to be multidisciplinary in nature, is designed to strengthen or assist Member States to build and strengthen their institutional capacity in preventing, detecting and fighting corruption. Governments in which technical cooperation activities are to be implemented will be invited to sign a National Anti-Corruption Programme Agreement, which will express their political will to be bound to a technical assistance component to deal with the commercial aspects of corruption and bribery in international commercial transactions.

Currently, members of the United Nations are negotiating a Convention on Transnational Organised Crime. One of the proposals under consideration is to include a provision on corruption that would obligate states to criminalise acts of corruption committed by organised groups. The proposal is similar to that contained in the Council of Europe convention and would criminalise the offering or giving to a public official of an undue advantage to act or refrain from carrying out his or her functions or the receipt of such an advantage by the public official. Of some controversy is the proposal to extend the obligation to criminalise such acts to include also foreign public officials, international civil servants and judges, and officials of international criminal courts. Also being considered by the committee negotiating the Convention is the question whether much broader provisions against corruption, which address aspects other than criminalisation, should be the subject of a future protocol to the Convention or be the subject of a separate international Convention. The Committee is to report to the Commission on Crime Prevention and Criminal Justice on its recommendations.

VI. GLOBAL FORUM ON FIGHTING CORRUPTION

The first *Global Forum on Fighting Corruption: Safeguarding Integrity Among Justice and Security Officials* was held in Washington, DC, from February 24 to 26, 1999, hosted by US Vice President, Al Gore. High-level representatives from 89 governments and others shared

experiences and examined the causes of corruption and the practices that are effective to prevent and fight it, particularly as regards corruption of justice and security officials. The costs of corruption on democracy, economic and social development and the rule of law were noted and participants called on governments to co-operate in appropriate regional and global bodies to rededicate themselves to adopt effective anti-corruption principles and practices and to assist each other through mutual evaluation.

While there were calls for a global convention to be negotiated, there was no consensus whether such a convention should be negotiated immediately or following the negotiation and implementation of regional anti-corruption conventions. Nevertheless, participants were committed to act and a second Global Forum on Fighting Corruption is to be held in the Netherlands in 2000. Immediately before the Global Forum, Ministers from eleven African countries meeting in Washington, DC, drafted a set of 25 principles on anti-corruption, good governance and accountability. There was a sense at the forum that these principles could be adopted by other African countries and serve as the basis for an African Convention Against Corruption, which could be negotiated within the Organization of African Unity.

VII. CONCLUSION

The political priority given to the issue of corruption has resulted in the negotiation of a number of regional and other international Conventions against various forms of corruption. This paper has attempted to survey a number of these initiatives, setting out their major elements. While most of these Conventions have been of a regional nature or of inter-governmental organizations of limited membership, there is a clear recognition that global solutions, including a global convention of some form, is required. It is anticipated that regional and other limited international Conventions will continue to be negotiated in the near future, but with the realisation and goal that a truly global convention is required and that its negotiation is imminent.

GOOD GOVERNANCE: A MERE MOTTO OR A PRAGMATIC ENDEAVOUR FOR A REALISTIC STRATEGY? (THE FRENCH EXAMPLE OF AN ANTI-CORRUPTION AGENCY)

*Laurence Giovacchini**

I. INTRODUCTION

Increasing international awareness of the negative impact of corruption is fostering new devices and strategies with a view to protecting the rule of law, threatened by bribery. Appropriate criminalization, adequate offences, deterrent punishments and codes of ethics rank among the customary tools used to tackle the corruption problem. Nonetheless, the use of sentencing guidelines is not sufficient. Forward-looking methods are needed, from safeguards against the abuse of power to enhancing and promoting efficient decision-making. Preventive techniques against corruption favor the elaboration of good management tools, far from the various enumerations of misdemeanors to be avoided by public officials.

How can we, other than by the imposition of a code of behaviour, implement conditions conducive to the loyalty of public officials? Conditions which function positively when, for instance, problems related to conflicts of interest arise, when compartmentalized controls risk missing their target, when misinterpretations of complex data are likely to occur.

Excessive regulation and, inversely, lack of regulation both offer opportunities for manipulation and fraud. The latter cannot be prevented simply by norms and laws. The risk of corruption must be evaluated by an overall view of the situation, one which will facilitate the possible discovery of hidden connections, sham processes, forgery, etc. Fragmented information may, indeed, be as useless as no information at all, and can even be deceptive and lead to distorted analyses.

Consequently, monitoring mechanisms, training, risk detection techniques, supervisory accountability, whistleblowing, and so forth: all these tracks can be explored in order to improve the investigation and the prevention of cases of corruption. The "what-to-do" approach must open the way to the "how-to-achieve-the-goal" strategy. The promotion of "anti-corruption know-how" is crucial. It has three aims:

- to dissuade public officials from breaching their duties;
- to scrutinize the weak points and loopholes of administrative processes;
- to put an end to the mistrust of public service - whether justified or based on rumor - in the public opinion.

Corruption is a topic of high priority on the international agenda of many institutions. The OECD Convention (December 17, 1997) criminalizing the bribery of public officials in international business transactions is a breakthrough. The United Nations and the Council of Europe have also taken significant steps. This new context has triggered the

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necessary review of the assets and hindrances of anti-corruption strategies. What makes them successful? What are the obstacles likely to stifle the efforts carried out according to the well-know "where there is a will there is a way"? A practical viewpoint is indispensable because a prescriptive approach is necessary, but insufficient. Workable solutions must be tested and their feasibility proved.

First of all, we have to dismiss the objection that corruption is tricky to deal with when public officials in charge of fighting bribery can be bribed themselves. Such an argument reduces to a stalemate whatever attempts are made at curbing fraud. Practical, workable solutions help avoid the obstacle by a subtle process of checks and balances, quite different from the endless process of "who will control the controller and so forth?". An unbiased public service requires loyalty and managerial skills, which, in the framework of the fight against corruption, can be defined as follows:

(i) loyalty: to refrain from acting against the law and keep potential bribe-givers at bay;
(ii) management: to implement laws by overcoming obstacles to their enforcement and to make corrupt schemes fail by detecting and disclosing shady deals, and by deciphering the moves shrouding them.

Since both aspects are complementary, neither should be overlooked. Individual loyalty is of crucial importance, because it is the core of resistance against attempts at corruption. An honest public official will obviously refuse a kick-back and the bribe-giver will not be able to succeed, being deprived of the bribe-taker counterpart. Nonetheless, individual integrity must be supported by ethical management in order to effectively cope with the risk of pervasive and widespread bribery. Otherwise, however adamant and honest public officials may be, they can feel isolated and threatened by crooks connected through fraudulent networks. When corruption is on the verge of taking the upper hand on administrative channels, its organisational grasp has to be equalled by the same organisational efficiency on behalf of ethics. Individual commitment must be strengthened by the group's involvement. This is not an unrealistic view and the remedy does not suppose that the patient has already recovered. A "leverage technique" can be put into practice, allowing a small group (trained in ethical management techniques) to defeat a larger one where the loopholes have been identified. Thus, the negative statement according to which "nothing can be done, because everything is rotten, due to bribery" is not valid. The anti-corruption fight should not be understood as a crusade (doomed to failure sooner or later), or as a daunting prospect which entails so many efforts that its costs become unbearable.

A leverage process enables its users to make the most of prevention techniques and of scattered sources of information. "An ounce of prevention is worth a pound of cure" and demands awareness of the existence of problems lurking beneath the surface. These problems are not solved by mere control-tightening, which, on the contrary, is liable to favor red tape. A roadblock can be put on corrupt paths by scrutinizing the way corruption operates through various networks. There is obviously no cure-all to eradicate it, but a professional team specialized in anti-corruption techniques (described below), has the means to step up action thanks to a pro-active strategy, characterized by two features:

(i) the ability to transform fragmented clues into intelligence of an overall problem and its intricacies;
(ii) the possibility to report right on cue about the very irregularity which, although it may seem petty, is highly relevant for kicking off a whole process of further examination.

II. AN INTERNATIONAL CONTEXT FAVORING THE ANTI-CORRUPTION FIGHT

A. End of the "Grease-the-Wheels" Argument

This argument is no longer valid, according to which bribery can be an efficient way of getting around burdensome regulations and ineffective legal systems. This rationale has not only inspired sophisticated academic models but has legitimized the behavior of private companies that are willing to pay bribes to get business. On closer examination, this argument is full of holes. First, it ignores the enormous degree of discretion that many politicians and bureaucrats can have, particularly in corrupt societies. They have discretion over the creation, proliferation, and interpretation of counterproductive regulations. Thus, instead of corruption being the grease for the squeaky wheels of a rigid administration, it becomes the fuel for excessive and discretionary regulations. This is one mechanism whereby corruption feeds on itself.

In addition to some academic writings, one school of "corruption apologists" argues that bribery can enhance efficiency by cutting the considerable time needed to process permits and paperwork. The problem with this "speed money" argument lies in the presumption that both sides will actually stick with the deal, and there will be no further demands for bribes. For example, one high-level civil servant who had been bribed could not process an approval any faster given the multiple bureaucrats involved in the process, yet he willingly offered his services to slow the approval process for rival companies".[1]

B. Promotion of the "Zero Tolerance" Argument

The damaging effects of corruption are emphasized in the main international fora, among them:

1. <u>The United Nations</u>

"(...) international organizations and many industrialized and developing countries have deplored the pernicious effects of corruption, whether international in scale or national. This is because corruption undermines the legitimacy of Governments and institutions, and compromises social and economic development".[2]

2. <u>Council of Europe</u>

"... aware that corruption represents a serious threat to the basic principles and values of the Council of Europe, undermines the confidence of citizens in democracy, erodes the rule of law, constitutes a denial of human rights and hinders social and economic development ..." (cf. 20 guiding principles for the fight against corruption, adopted by the Committee of Ministers 6 November 1997.)

3. <u>OECD</u>

"... The governments of OECD countries share the conviction that bribery and corruption undermine democratic institutions, distort international trade, investment relations and development co-operation. The OECD Public Management Committee (PUMA) has, since its inception, focused on ways to improve the

[1] In "Corruption: The Facts", article by Daniel Kaufmann, p. 114 of "Foreign Policy", Summer, 1997.

[2] In "Model Law on Corruption".

efficiency and effectiveness of public sector management. In particular, the Committee has addressed the issue of probity in public sector operations in its work on financial management, organisational performance and management of the civil service".[3]

4. European Union

"The Convention on the protection of the European Communities' financial interests was drawn up by the Council and signed by the Representatives of the Governments of the Member States on 26 July 1995. A First Protocol to the Convention was drawn up and signed on 27 September 1996. The Protocol is aimed primarily at acts of corruption that involve national and Community officials, and damage or are likely to damage the European Communities' financial interests."

The backbone of every draft or international recommendation is that corrupt practices should not be tolerated, whatever the circumstances.

C. Significant Steps in the Criminalization of Corrupt Behaviours

"Laws and customs differ from one country to another". This sort of statement is no longer a pretext for governments to neglect corruption in countries where it is rampant. Actually, no country is "corruption-proof". One can no longer justify corrupt behaviors by explaining that they are "normal, acceptable" in other countries. The maze and the haze of vague notions ("what can be regarded as corruption? where does it begin? " etc) are replaced by a judicial technical review designed to shape adequate offences, entailing predictable and dissuasive sanctions. Two complementary orientations can be pointed out:

(i) *Remedies for Loopholes*

Progress has been made in criminal law by agreeing on the definition of corruption as an offence, instead of relying on mere individual morality to refrain from committing wrongdoings. The very core of corruption is defined, which is not reducible to other frauds or misdeeds. There is, indeed, an agreement to regard corruption as *"requesting, offering, giving or accepting directly or indirectly a bribe or any other undue advantage or the prospect thereof, which distorts the proper performance of any duty or behaviour required of the recipient of the bribe."* This rough description involves two actors - the bribe-giver and the bribe-taker-and both are liable to sanctions. The bribe-giver cannot argue that s/he was "compelled" to corrupt a public official in order to gain markets and obtain authorizations. Nor should the bribe-taker explain that "it is routine, everybody is doing so", or that s/he had been deceived. Responsibilities are clearly defined by law; the bribe-giver and the bribe-taker are equally responsible, all the more so because the undue advantage can be non-material (a promise of promotion, for example. The fact that money has not been paid directly or immediately is no excuse, quite the contrary. The existence of the secret bond between the two protagonists, in order to gain an advantage by abuse of power, is sufficient to characterize corruption.

From a legal point of view, ways of escape are blocked. This does not mean that offenders are caught and prosecuted, but rather that, if and when they are prosecuted, they cannot use as a pretext their ignorance of law and of the criminal consequences of their misdeeds. The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (signed on December 17, 1997) goes a step forward:

[3] In "International Symposium on Corruption and Good Governance", Paris, 13-14 March 1995.

- not even bribery of domestic private officials is criminalized but also the complicity in - including incitement, aiding and abetting - or authorization of an act of bribery of a foreign public official shall be a criminal offence. Even the attempt to bribe a foreign public official is criminalized;
- accomplices and intermediaries are thus, also taken as responsible for the corrupt scheme;
- the liability of legal persons for the bribery of a foreign public official is also punishable. Such a provision regarding liability opens a large field for action and prosecution because companies, for example, are legal persons.

(ii) *Corruption Regarded as Victimization*

Contrary to other crimes, corruption is often regarded as "victimless" and a short-sighted viewpoint denies seriousness to a fraud entailing neither blood nor violence. Nonetheless, international recommendations aim at requiring each party to provide in its internal law effective remedies for persons who have suffered damage as a result of corruption, in order to enable them to defend their rights and interests, including the possibility of obtaining compensation for damage. There are, of course, prerequisites for a claim for damages. In order to obtain compensation, the plaintiff has to prove the occurrence of the damage, whether the defendant acted with intent or negligently, and the causal link between the corrupt behaviour and the damage. This provision does not give a right to compensation to any person who merely claims that any act of corruption has affected, in one way or another, their rights or interests, or might do so in the future. However, it is not inconceivable that persons having suffered damage as a result of an act of corruption should have the possibility to sue public officials, as well as the possibility to sue their public officials for the reimbursement of any loss for which they are judged responsible. Progressively, the stress is put on the necessity of enabling victims of acts of corruption by public officials to have effective procedures and reasonable time to seek compensation from the State.

Such a conceptual evolution deserves to be noticed because it entails a demanding concept of public service. The risk of being sued for corruption, in a civil trial, puts some kind of pressure on public officials, combined with deterrent criminal sanctions. Of course, such a scenario is a mere prospect, presently. The question is: to what extent and how long will it remain so? The extension of the process of "criminalization" (the characterization of misdeeds as wrongdoings, crimes, offences), coupled with the surge of the idea of "victimization", allows us to foresee the tightening up of the anti-corruption fight.

The fact that corruption can briefly be summarized as the misuse of public power for private profit should not lead us to overlook the sophistication of criminal notions, including other related offences such as in France, the trading in influence [a tripartite offence where the person who is actually bribed for exerting real or pretended influence] is different from the person who is influenced in the decision. Only public officials (elected politicians or civil servants) can be target persons and the "taking of illegal interest" (the offender takes or receives a personal interest in a company, for example, with which they are involved in the administration or surveillance task, or where they have the duty to carry out payments). Those significant steps in the criminalization of corrupt behaviour lead us to examine the critical position of public officials: targets or shields in respect to the issue of corruption?

D. Attempt at Defining Internationally the Notion of "Public Officials"

The above-mentioned OECD Convention provides that: "foreign public official" means any person holding a legislative, administrative or judicial office of a foreign country, whether appointed or elected." The Council of Europe emphasizes that: "public administrations play an essential role in democratic societies and that they must have at their disposal suitable personnel to carry out properly the tasks which are assigned to them. Public officials are the key element of the public administration, they have specific duties and obligations, and they should have the necessary qualifications and an appropriate legal and material environment in order to carry out their tasks appropriately".

This recommendation offers a compendium of the rights and duties of public officials. It sheds light on the issue of corruption because bribery intends to alter this very core of rights and duties: "*the purpose of this Code is to specify the standards of integrity and conduct to be observed by public officials, to help them meet those standards and to inform the public of the conduct it is entitled to expect of public officials*". Standards of integrity do exist, can be listed and explained; corruption manipulates those standards all the more easily when they are only implicit. Their specifications in a written code, approved by several countries, help the public to be more aware of the risk of abuse of power by public officials. Information makes corruption recede. Whimsical, arbitrary, odd, self-oriented interpretation of regulations are no longer valid and are replaced by "duties in accordance with the law" and neutrality. As a result, the offenders are deprived of any means of justification. They can no longer take advantage of the alleged inaccuracy of the rules and of the supposed pressure of circumstances. The very articulation of a model code of conduct for public officials does not suppress, of course, the possibilities of fraud, but it makes them more risky and less profitable. This Code highlights key-notions:

- arbitrary behavior;
- conflict of interest;
- declaration of interests;
- advantages;
- reaction to improper offers;
- reporting;
- susceptibility to influence by others;
- misuse of official position;
- making decisions;
- official information;
- public and official resources;
- incompatible outside interests;
- political or public activity;
- records;
- integrity checking;
- supervisory accountability;
- leaving the public service;
- dealing with former public officials;
- observance of the code and sanctions.

The above-listed items set up safeguards which protect public officials from undue suspicion, by avoiding their being placed in ambiguous positions (conflict of interest, revolving door, political interference). The Code also promotes responsible management (integrity checking, supervisory accountability, transparent decision-making and reporting), which provides a clear picture of the adequate manner of carrying out public duties. The Code offers, in a concise text, a review of sensitive problems. These two criteria (accuracy and concision) contrast with the blurring *modus operandi* of corruption, which thrives on the accumulation and successive stratification of texts eventually leading to opacity and arbitrary interpretations.

A framework with solid judicial grounds is, thus, ready to make corrupt pretexts and schemes groundless. The credibility of the international recommendations is enhanced by monitoring provisions.

E. Follow-up Measures are the Heart of the Matter

"Monitoring" and "evaluation" have become key-words. Monitoring aims at making loopholes less numerous. There can be many kinds of loopholes, such as:

- the lack of criminal penalties (but the international texts we have referred to are a first step to remedy the situation);
- the alleged "national economic interest" (but article 4 of the above-mentioned OECD Convention is explicit: *"Investigation and prosecution of the bribery of a foreign public official shall be subject to the applicable rules and principles of each Party. They shall not be influenced by considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural persons or legal entities involved"*).

This monitoring is coupled with evaluation processes, because the Convention sets up a Working Group on Bribery to monitor national implementation. This Group is specifically directed to work on a system of "mutual evaluation" of the effort of each OECD country. The Council of Europe has established the "Group of States Against Corruption - GRECO" (5 May 1998), *"which aims at improving the capacity of its members to fight corruption by following up compliance with their undertaking in this field"*.

The stress put on the necessity of evaluation enhances what could be labelled as a "culture of audit", the Council of Europe, for example, urging to *"ensure that appropriate auditing procedures apply to the activities of public administration and the public sector"* and to *"endorse the role that audit procedures can play in preventing and detecting corruption outside public administrations"* (cf. "20 Guiding Principles for the Fight against Corruption"). Not only is an anti-corruption doctrine taking shape, but also practical tools of implementation are being come up with and assessed:

- How to comply with the law?
- How to resist the temptation of corruption?
- How to detect corrupt practices?

Those three questions may receive some beginning of an answer thanks to the "toolbox" described below.

III. THE "TOOLBOX" ASPECT CONNECTED WITH A SYSTEMATIC APPROACH TO THE ISSUE OF CORRUPTION

A. The "Toolbox" as an Expertise

"An understanding of management principles is required to recognize and evaluate the materiality and significance of deviations from good business practice. An understanding means the ability to apply broad knowledge to situations likely to be encountered, to recognize significant deviations, and to be able to carry out the research necessary to arrive at reasonable solutions".[4] In this definition, many terms can be emphasized, among them:

- recognize,
- evaluate,

[4] "Normes pour la pratique professionnelle de l'audit interne" by The Institute of Internal Auditors, p.40.

- broad knowledge,
- research,
- reasonable.

All the ingredients of a diagnosis are, thus, mentioned: recognize (because corruption is the art of camouflage), evaluate (because problems have to be classified with due consideration of their potential impact and the risks they entail), broad knowledge (because a multidisciplinary expertise is required to ensure that adequate coverage exists for the organisation as a whole, with a minimum amount of duplication), research (to transform partial data into accurate and reliable information) and reasonable (because radical proposals, by their very exaggerated connotations, may be the smokescreen hiding the escape from one's responsibilities: they are so unrealistic that they will not be implemented and corruption will continue to thrive). The term "reasonable" deserves to be stressed:

- It is used in the definition of accountability supervisory (Code of Conduct for Public Officials - Council of Europe - above-mentioned): *"The public official who is responsible for controlling or directing other public officials has duties as a supervisor. He should be required to account for the wrongful acts or omissions of his staff if they are so serious, repeated or widespread that he should have been aware of them if he had exercised the reasonable level of leadership, management and supervision required of a person in his position"*.
- The notion of "supervisory accountability" for public officials is matched by the notion of "due professional care" for private auditors: *"Due professional care calls for the application of the care and skills expected of a reasonably prudent and competent internal auditor in the same or similar circumstances. Professional care should, therefore, be appropriate to the complexities of the audit being performed."*[5]
- The aim is "to promote effective control at a reasonable cost"[6], and to *"include sufficiency of information obtained to afford a reasonable basis for the conclusions reached"*[7]. So as *"reasonable assurance is provided when cost-effective actions are taken to restrict deviations to a tolerable level"*.[8]

We refer to this kind of expertise with the figurative term of "toolbox" because it supposes: fine tuning, monitoring, and directions for use of warning indicators.

(i) *Fine Tuning*

Controls should not be stifling by overtightness, nor so delayed and unproductive that the situation gets out of hand when the potential loss associated with any exposure or risk is outweighed by the cost to control it. Controls should be carried out in order to prevent and detect irregularities, not to hinder action. Consequently, they should be seen as instruments of management, ranging from preliminary assessments to detailed tests. *"Establishing standards for the operation to be controlled, measuring performance against the standards, examining and analysing deviations, taking corrective action, reappraising the standards based on experience"*[9]: this process, which is described in the private sphere, is also valid for public administration, especially regarding the issue of corruption, which

[5] Op. cit. ibidem.

[6] CIA REVIEW - Certified Internal Auditor - GLEIM, p.86.

[7] Ibidem p. 95.

[8] Ibidem p. 116.

[9] Op. cit. p. 188.

must be put under constant scrutiny.

(ii) *Monitoring*

"*Monitoring encompasses supervising, observing, and testing activities and appropriately reporting to responsible individuals. Monitoring provides an ongoing verification of progress toward achievement of objectives and goals*".[10] It means that factors of risk have to be identified. Check-lists help to do so. We can briefly summarize three examples of check-lists, aiming at:

1. <u>The Transparency of Procedures of Tendering in Public Procurements</u>

   - Threats must be identified (especially the attempt to exert undue influence in the bid process and collusion with other suppliers to form a cartel);

   - The counter-measures can consist of solemnly affirming that illegal arrangements are not tolerated: such a statement can be a deterrent if the prospect of black-listing looms large. Obvious irregularities should be recognized right away, when, for example, suppliers are constantly successful in winning contracts. One company has suggested "*visiting unsuccessful bidders to provide them with an opportunity to air any grievances*".

2. <u>The Prevention of Ethical Risks</u>

It goes without saying that "*staff assignments should be made so that potential and actual conflicts of interest and bias are avoided. The director should periodically obtain from the audit staff information concerning potential conflicts of interest and bias*"[11]. But how is this information gathered? Sensitive sectors, such as city planning and zoning regulations, have to be carefully examined. There is conflict of interest when, for example, a public official belongs to a commission in charge of allotting funds to renovate housing - "home improvement loan" - in the very place where s/he owns, real estate. Conflict of interest also looms when this public official participates in the activity of a non-trading real estate investment company, which happens to be involved in operations planned by the general assembly (of a local entity or community), where this public official notes or reports. Building permits, generally speaking, can be the target of direct corruption (a bribe is given to obtain the authorization) or of indirect manoeuvres, by influencing the future decision of constructibility regarding zones which have not yet been classified. Obviously, when a public official finds themself in a situation of potential conflict of interest (because his spouse, for example, owns some piece of land in this area), s/he becomes a weak link in a chain of responsibility which is, thus, likely to be moulded by corrupt practices.

It is not so difficult to list the risks of conflicts of interest in various key-sectors. Public officials can be encouraged to report on them for fear of getting sanctioned in case of actual deviation. In this acceptation, the "toolbox" consists in the inventory of risks and of potential irregularities. In the third example of aforementioned check-lists, the stress is put on:

3. <u>The Detection of Fraud</u>

"Indicators of treachery" are elaborated, such as: "Danger Signs Pointing toward the Possibility of Embezzlement" (Sawyer and Dittenhofer, Sawyer's Internal Auditing, p. 1189):

- Borrowing small amounts from fellow employees.

[10] Op. cit.116.

[11] Op. cit. p. 61.

- Placing personal cheques in change funds - undated, post-dated, - or requesting others to "hold" cheques.
- Personal cheques cashed and returned for irregular reasons.
- Placing unauthorized IOUs in change funds, or prevailing on others in authority to accept IOUs for small, short-term loans.
- Inclination toward covering up inefficiencies by "plugging" figures.
- Pronounced criticism of others, so as to divert suspicion.
- Replying to questions with unreasonable explanations.
- Gambling in any form beyond ability to stand the loss.
- Buying or otherwise acquiring through "business" channels expensive automobiles and extravagant household furnishings.
- Explaining a higher standard of living as money left from an estate.
- Getting annoyed at reasonable questioning.
- Refusing to leave custody of records during the day; working overtime regularly.
- Refusing to take vacations and shunning promotions for fear of detection.
- Constant association with, and entertainment by, a member of a supplier's staff.
- Carrying an unusually large bank balance, or heavy buying of securities.
- Rewriting records under the guise of neatness in presentation.

Those indicators quoted from Sawyer should not be used in a simplistic way which might lead to absurd conclusions: a conscientious employee "working overtime regularly" is not necessarily guilty of embezzlement !. Only the convergence of various factors of suspicion can be regarded as a warning indicator. A "toolbox" is not a mere aggregate of instruments chosen and used at random. Directions for use are indispensable, especially insofar as corruption is concerned.

(iii) *Directions for Use*

The need for efficiency of the anti-corruption fight should not lead us to overlook the protection of public and individual liberty. Some "warning indicators" to detect fraud may turn out to be intrusive if used without judicial background and safeguards. For example, the disclosure by public officials of assets and liabilities, coupled with the reversal of the burden of proof in corruption cases, may be damaging to the fundamental rights of the accused. This is why an independent judiciary is indispensable to protect those rights from infringements. With such guarantees, efficient methods to fight corruption can be tested, especially when individuals or entities under investigation appear to have in their possession or availability, directly or indirectly, goods and means clearly beyond their normal financial standards.

The "toolbox" represents an attempt at a systematic approach, which is not reducible to a collection of devices. This systematic approach is intended to match the "systemic" nature of corruption.

B. The Systematic Approach to the Issue of Corruption

1. What "Systemic" Corruption Means

Corruption is not a transient fraud, because it aims at setting up durable networks substituting their own regulation for the legal one. Thus, it cannot be tackled as a temporary aberration. This pervasive, undermining nature of corruption may cause reluctance on the part of public authorities, who fear that the remedy may be so demanding as to be unaffordable and worse than the evil itself. The problem is to determine how to initiate the process of recovery when the whole administrative

and political body seems to be seriously ill. When the roots of corruption are so deep and entangled, how is it possible to eradicate them without turning everything upside down?

2. A Systematic Strategy Based on a "Leverage Technique"

A modest, even down-to-earth, clue can be usefully exploited when it is analysed thoroughly, thanks to a multidisciplinary technique based on accounting, administrative law, commercial and business law, rules banning unfair competition, and tax laws. A systematic approach to the issue of corruption goes beyond criminal law. For example, administrative provisions, such as what we call in France "*le statut général de la fonction publique*" ("Civil servant status" as a body of rules encompassing the whole career of a civil servant) offers guidelines about remuneration which can be combined with tax law regarding the control of the statement of income. Another example may be quoted from the French "*contrôle de légalité*" (control of compliance with law) for which the "*Préfet*" (a high-ranking civil servant representing all the ministries in a district or territorial subdivision) is responsible. This kind of administrative control makes it possible to detect cases of favouritism in tendering, for example, by shedding light on irregularities such as a secret, preliminary agreement between an elected public official and a company which obtains the market without the legal authorization of the collegial body. Another example concerns the implantation of supermarkets, which needs the approval of a commission. Generally speaking, collegiality and the codification of terms and conditions ("*cahier des charges*", in France) contribute to limiting arbitrary gratifications.

We have mentioned basic rules on purpose because the review of these fundamental principles proves that the anti-corruption fight does not begin *ex nihilo*. Actually, the presence of irregularities does not necessarily mean that a corrupt scheme is underway on a large scale. However, those very irregularities can be the visible part of a corrupt iceberg. Thus, the anti-corruption fight should not be regarded as a breaker, but as a patient and subtle review of the elementary procedures for checking irregularities. Of course, this is only a step to trigger the process off, but it is the first step which is often the most difficult. The basic and obvious devices that we have alluded to can be used in a sophisticated and innovative manner, in order to track corrupt practices. The audit method that we mentioned above is likely to enhance the impact and the relevance of those basic rules, which protect the public interest and individual liberty. Basic administrative procedures become quickly routine, and those who use them, unless made aware of the fact, are perhaps blind to their capacity to reveal corrupt practices. Once the detection of corruption is defined as a goal, irregularities immediately become relevant. The question is then: what kind of organisation and management will facilitate this awareness by casting new light on the risk of corruption?

IV. "COMMAND-AND-CONTROL PARADIGM" VERSUS THE "LEARNING ORGANISATION MODEL"?

"Command-and-control management" is on the way out. Its replacement, the "learning organisation model", contradicts all the assumptions about work espoused in the command-and-control paradigm and represents a radical transformation of the organisation of work"[12].

[12] "Internal Auditor" review, June 1999, p.29.

Such an analysis contrasts the object of control (which is compliance) and the object of shared vision (which is commitment). The former supposes a top-down, hierarchical structure, whereas the latter encourages reflection and inquiry among all members of the organisation, the group of people functioning as a whole. This second model suggests that a group of individuals can achieve a level of intelligence higher than any one individual in the group. It favors value-added, win-win, synergistic solutions, rather than the hollow win-lose decisions. *"The apparent reactive solution is often no solution at all, but rather a short-term fix that serves only to postpone and exacerbate the root problem. When things go wrong it is more likely that the business process has a fundamental disconnect rather than somebody failed a specific task. In today's businesses, formal controls, such as policies, procedures, written authorizations, organizational charts, and "chain of command" practices, are less valuable and effective than informal controls, which include intangible attributes such as ethics and values, corporate culture, trust, teamwork, open communications, and professionalism".*[13] What are the consequences, for the anti-corruption fight, of this contrasted vision of management?

A. Hierarchy is the Back-Bone of Reporting and of Responsibility

Supervisory accountability explicitly refers to the kind of leadership implied in the very notion of supervisor. Disciplinary sanctions should be taken by the supervisor, in case of a breach of duty by a public official placed under their authority. Nonetheless, public administration is composed of various agencies and departments which may turn out to be reluctant to point their finger at "black sheep" inside their staff, for fear of being stigmatised as a corrupt department as a whole. Keeping silent about misdeeds, getting rid of the guilty public official by promoting him/her to another department prevent the very issue of corruption from getting to the forefront. Disciplinary responsibility should be exercised for transparency's sake. This administrative aspect of sanction should not be overlooked, especially when penal prosecution is time-barred, which happens very often in cases of corruption. Nevertheless, hierarchical disciplinary power does not solve the problem if the supervisors themselves are manipulated and even involved in corrupt schemes.

B. The "Command and Control Paradigm" and the "Learning Organisation Model" are Complementary

The "learning organisation model" can be useful to highlight potential risks of wrongdoings. It reverses the well-known pretext, *"why should I make a fool of myself by refusing a bribe when everybody accepts it? "*, by *"why should I keep aloof when mutual control and assessment allow me to know what really takes place in the whole organisation? "*. This is what *"a work culture of reflection and inquiry among all members of the organisation"* suggests, enhancing *"each participant's understanding of the total process under review"*.[14]

This overall view favors transparency: seniority is no longer a protection from inquiry and, vice versa, supervisors can rely upon a self-assessed staff. Corrupt schemes are not necessarily disclosed, but the contradictions favoring them are revealed when, for example, pressures to improve short-run performance promote unethical behavior, or when *"emphasis on strict adherence to chain-of-command*

[13] Ibidem p. 30.

[14] Ibidem p. 31.

authority may provide excuses for ignoring ethics when following orders."

In the "learning organisation model", the emphasis placed upon the issue of corruption is not regarded as shameful for the image of the whole organisation. Quite the contrary, it reflects a means of achieving greater perspicacity and of improving performance. True "anti-corruption engineering" takes shape as risks of corruption are openly analysed and discussed through cases studies. This is not an idyllic conception of training because it requires greater supervisory accountability and due professional care. The "*I did not know that corrupt practices were occurring because I could not know the intricacies and far-reaching consequences of the activity I am responsible for, because I am not ubiquitous*", - such an argument tends to be less and less valid. Does this mean that every employee, every public official can be a potential whistleblower?

V. THE EVOLUTION OF THE "WHISTLEBLOWING" FUNCTION

"'Whistleblowing' is a new label generated by our increased awareness of the ethical conflicts encountered at work. Whistleblowers sound an alarm from within the very organization in which they work, aiming to spotlight neglect or abuses that threaten the public interest".[15] Whistleblowing is the ideal way to alert those concerned about corrupt practices before they take hold. Nonetheless:

A. The Whistleblower Can Feel Ill at Ease and Manipulated

"Moral conflicts on several levels confront anyone who is wondering whether to speak out about abuses or risks or serious neglect. In the first place, he must try to decide whether, other things being equal, speaking out is in fact in the public interest. This choice is often made more complicated by factual uncertainties: who is responsible for the abuse or neglect? How great is the threat? How likely is it that speaking out will precipitate changes for the better? In the second place, a would-be whistleblower must weigh his responsibility to serve the public interest against the responsibility he owes to his colleagues and the institution in which he works. A third conflict for would-be whistleblowers is personal in nature and cut across the first two: even in cases where they have concluded that the facts warrant speaking out, and that their duty to do so overrides loyalties to colleagues and institutions, they often have reason to fear the results of carrying out such a duty. However strong this duty may seem in theory, they know that, in practice, retaliation is likely".

The prospect of professional suicide is not particularly attractive. But, from another point of view, the prospect of being accused of complicity by not reporting suspicions of corruption is not seductive, either. The second possibility is not theoretical, since there is a growing demand, from public opinion, for more effective prosecution of cases of corruption. One may be accused for not having blown the whistle. The remedy can be found when:

B. An Institution Plays the Role of Whistleblower

Instead of worrying about one's personal career, instead of risking manipulation (hints of false information that, even in good faith, the whistleblower takes for granted and reports), instead of feeling isolated when the pros and cons are weighed, the would-be whistleblower could take advantage in reporting their suspicion to an independent institution which will take the responsibility itself of referring it

[15] p. 292 "Ethical Theory and Business" by Tom L. Beauchamp and Norman E. Bowie - Prentice Hall.

or not to the judge or any other public authority appointed by law. In France, such an independent institution exists. It is called the *"Service Central de Prévention de la Corruption"* (SCPC).

VI. THE NEED FOR SPECIFIC AUTHORITIES FOR THE PREVENTION AND REPRESSION OF CORRUPTION: THE FRENCH EXPERIENCE

A. The Genesis of the French Service Central de Prévention de la Corruption

It is not taken for granted that such a need exists. Thus, before emphasizing what the "specific authorities" are or what they should be, I would like to shed some light on the target they must hit, on the process which triggers our analysis. How can such a need be assessed? If I can put it in this way. It may be a controversial issue when the so-called "need" is regarded as a groundless fancy. Therefore, in order to make the most of those specific authorities, we have to answer thought-provoking objections regarding their relevance. One could consider that traditional agencies already provide adequate tools. What is the point in creating new ones? Are they likely to improve efficiency in the absence of any process of trial and error? Won't they be inclined to focus on mere trifles instead of tackling important issues and cases involving "big fish"? And so on and so on: this list of objections is not exhaustive, obviously.

The fact that corruption is a specific problem deserving specific treatment has inspired the creation of the French *Service Central de Prévention de la Corruption*, in charge of coping with:

(i) *The Difficulty of Giving Evidence of Corruption*

Corruption involves secret dealings and it is not easy to point to a clear link between illicit trafficking, for example, and the subsequent profit in money or other benefits. It is difficult to establish a cause-effect relationship. It may be hard to prove the connection between a mere promise and the improvement of "life style" in return for a favor. Corruption has no "victims", in the literal sense of the word, and for this reason, it is rare that an act of corruption will be reported to the competent authorities by a participant in a corruption scheme.

Since the real impact of corruption is to a great extent unclear, there is a dangerous shortcut: in the absence of diagnosis, corrupt practices are either over - or under - estimated, which entails the same inefficiency: nothing can be done, either because the illness does not exist or because the patient does not exist any longer (s/he is dead). We do not share such fatalism.

(ii) *The Complexity and Sophistication of Corrupt Practices*

The more technologically proficient the society, the more the means of control are simultaneously strengthened and weakened. Criminals are skilled in the modern technologies of computers, information systems, databases and financial networks. "White-collar corruption" is highly sophisticated. In addition, there are sensitive sectors, such as international business transactions. In this field, corruption proliferates by manipulating complex rules and regulations, as well as commercial and financial circuits featuring a combination of traditional operators, new companies looking for foreign markets and criminal organizations. Financial circuits and bank networks are put to use by the operators of international trade equally for legal

operations and for operations which are either illegal or carried out by illegal means, among which the payments of various types of commissions and kickbacks.

This example highlights the fact that corruption takes advantage of the intricacy of regulations in order to make illegal processes appear to be legal ones. The involvement of an increasing number of operators and intermediary companies complicates the issue. Corruption goes beyond individual crimes by setting up real networks which plan even the minor details. Nothing is done at random; corruption tends to work as a system. Far from being a mere aggregate of cunning and deceitful people, it operates through channels which cannot be called precarious, quite the contrary.

(iii) *Corruption as an "Upstream" Phenomenon*

With this image, I mean to convey the fact that corruption is not one fraud among others but the privileged instrument, the lever of other frauds. As we have seen previously, it helps structure networks, which can be activated for various fraudulent purposes. It is for this reason that corruption can be so pervasive and, without contradiction, perfectly adequate to the specific aim pursued by dishonest individuals and groups. Corruption in public procurements, for example, or that linked with public health policies (for instance the purchasing of expensive new equipment such as scanners, the introduction on the market of pharmaceutical products) have their own specificities.

Corruption is closely linked with "slush funds" and this vicious circle operates as follows: money used to corrupt generates benefits which can be invested once again in corrupt practices, which, by facilitating the fraud, makes it more profitable and so forth.

These three characteristics make it paramount to go beyond traditional strategies to reduce corruption. The specificity of corruption demands the specificity of authorities in charge of anti-corruption. What are the requirements they must meet?

B. Objectives and Requirements

(i) *The Centralisation of Information*

By nature, the crime of corruption is difficult to establish. Sources of information are scattered and there is not necessarily any communication between the various authorities in possession of such information. Furthermore, in certain cases, there may be difficulty getting access to information. Thus, a system of coordination should be set up between the various services, administrations and other institutions working under the Public Authority, to ensure that all information sources work together to expose criminal acts.

(ii) *A Global Approach Combining Prevention and Repression*

A case by case repressive approach would only favour new and more sophisticated techniques of corruption, with every chance of escaping the vigilance of the Public Authorities, if there is no will to take the problem firmly in hand with priority given to the detection of mechanisms favorable to the proliferation of corruption.

On the other hand, prevention without repression would be neither reliable nor credible. Dissuasive mechanisms or deterrence is the goal to reach in order to make corrupt practices less and less profitable. For example, the ability to decipher the corrupt practices (they are real "codes") and describe them in a public

report is one aspect of deterrence because criminals will have to invent new procedures. It will complicate their "task": they will lose time and meanwhile the mission of inspectors, generally speaking, will be facilitated by knowing what to check and the approach to be taken.

(iii) *Rapidity and Flexibility*

We have to keep up with the evolution and diversification of corrupting phenomena. Few cases are dealt with in the courts, and corruption techniques are always a step ahead of what is known and has been detected. New professions have appeared which modify our schemes. Here I am thinking of lobbying which may be conducive to trading in influence. Resilience and responsiveness should not be the privilege of tricky organizations. A question arises as to whether these aforementioned objectives cannot be met by strengthening traditional departments instead of setting up additional agencies. I think specialization (such as training in supposed "abstruse" financial matters) is an important step but not a sufficient one: independence and a long-range policy are necessary. By independence, I mean that the anti-corruption agency should be at the disposal of other authorities but also able to check into possible irregularities. Autonomy is indispensable to aid in the carrying out of legal action and of administrative missions, the combination of both aspects being indispensable. In the event of any threat of corruption, the organism can alert Public Authorities and point to loopholes in various regulations.

By a long-term policy, I mean the ability to identify vulnerable sectors and to anticipate trends rather than deal only with cases. The "anti-corruption fight" is a "full time job" requiring a staff devoted to this specific mission. Being adamant by not tolerating corruption is not sufficient if we do not go beyond rhetoric. Watchdog committees created to answer a particular problem cannot cope with the complex issue of corruption, which is closely connected with other crimes: for example, in France, what we call *"abus de biens sociaux"* (misappropriation of corporate funds). A long-range policy involves a "template" (what are our aims and how are they to be achieved?), tactic combining legal approaches and deep insights into economical mechanisms and, lastly, a kind of "participative management" to make all feel committed.

There are many biases which can hinder an anti-corruption strategy: a corporation, for example, is willing to use any means, no matter how devious, to secure a contract. Such a "goal-oriented" attitude, in contrast with a "moral principle-oriented" philosophy, has its ethical justification: the corporation will indeed explain that the contract is vital for its future otherwise the threat of unemployment looms large-cheating becomes a virtue.

So, we have to take such "twisted statements" into account in order to demonstrate that they undermine the whole economy. A specific authority can avoid the risk of oversimplification by pointing to the social cost of corruption which jeopardizes equality among citizens. Thus, awareness of the problem must be increased. "Specific authorities" are not operational if they cannot persuade everybody to cooperate, not only public officials, but also corporations, foreign partners and, above all, citizens. Cooperation means the monitoring and disclosure of devious procedures and deeds. It has nothing to do with "denunciation" intended as slander and in which few are willing to participate.

The *Service Central de Prévention de la Corruption* strives to meet the above-listed requirements. It is an inter-ministerial

administrative agency, created by Law No. 93-122 of the 29th of January, 1993, concerning the prevention of corruption and transparency in economic affairs and public procedures. Its overall mission is defined in Article I, Paragraph I of the law in these terms: *"the centralisation of all information necessary for the detection and prevention of active and passive acts of corruption, for any abuse of influence by persons exercising an official function or by individuals, the misappropriation of public funds, illegal meddling or disrespect of regulations aimed at protecting the freedom and equality of candidates for public procurements"*.

The creation of such an agency was suggested by a Commission for the Prevention of Corruption presided over by a former Attorney General, in a report to the Prime Minister in December, 1992. Set up by the Minister of Justice on March 9th, 1993, the Agency began to function in October, 1993. Headed by a high-ranking magistrate, a former Attorney General, the *Service Central de Prévention de la Corruption* is run by civil servants (one magistrate from the *ordre administratif*, a member of the *corps préfectoral*, a chief of police, a chief customs inspector, a tax inspector, a head of the *Service départemental de la D.G.C.C.R.F.*, and a head of the administrative service at the Ministry of Public Works and a representative of the Ministry of Defence.

This type of organisation is evidence of the inter-ministerial nature of the agency which guarantees its efficiency. Its simple and straightforward structure reflects the desire to create a team of highly specialised experts. As explained in the preamble to the Law of January 29, 1993, the *Service Central de Prévention de la Corruption*, was created to ensure more efficient detection of acts of corruption by means of a systematic processing of centralized information, towards the aim of greater efficiency in the prevention and repression of corruption.

How is a problem brought to our attention? We may focus on highly sensitive sectors (public procurements, international business transactions, public health policy, zoning regulations, financing of sects, merchandising, professional education and training). We can be requested to check the vulnerability of an activity or an institution. We can also examine mere suspicions of corruption and then, if the issue goes beyond suspicion, we refer the case to the tribunal. Ours is a preventive agency, which we could refer to as having a "whistleblowing" function. We work before the case may or may not get to the judge and our aim is to be ahead of the game, and to point out loopholes to the responsible authorities so that they can act before illegal actions are committed.

C. Our Method and Main Achievements

1. A Multidisciplinary Method Combining Audit Techniques and a Legal Approach

"Turning raw information and data into actionable intelligence is fast becoming the most critical management tool".[16] Raw information about suspicion of corruption is almost useless: it has to be analyzed and filtered to be "eye-opening". Raw information is a juxtaposition of unrelated opinions with no contextual link. It has no signalling value and cannot be used as a warning indicator. The *Service Central de Prévention de la Corruption* does not boast a large amount of raw information because it is not a mere "information collector", so to speak. This agency strives to promote the gathering of relevant and accurate information. For example, falsifying inventories to cover thefts or delinquencies,

[16] "Competitive Intelligence" by Larry Kahaner, Simon and Schuster edition, p.15.

or altering dates on deposit slips to cover stealing and, generally speaking, petty falsifications and tampering, when discovered by investigative authorities, should sometimes be related to an overall context of slush funds intended for the purpose of bribing public officials. Instead of condemning a "bunch of crooks", a few corrupt individuals, a network could be disclosed, involving public officials, either appointed or elected. Since corruption is the art of camouflage, one should not be satisfied when pointing at various frauds without revealing the corrupt link existing between them. Relevant information reveals unsuspected connections.

This expertise regarding the standards of the information needed, the sources of that information and the ways to obtain it has enabled us to carry out a time-and-cost saving activity of assistance:

(i) *Assistance in Detecting Cases of Corruption*

By giving investigators auditing documents that we have elaborated on various sectors (public procurements, for example), we help them to keep up with the pace of "speedy money" or, at least, retrace it.

(ii) *Assistance in Anticipating the Risks of Corruption*

At its peak, corruption may be defined by four criteria:

1. A mixture of public and private financing, favoring the opacity of the transactions and the abuse of discretionary power;
2. Dissemination of controls because the activity involves so many regulations in various disciplines and areas that it is almost impossible to encompass the whole process;
3. The alleged respectability of the sector, prohibiting scrutiny of its methods. Whatever attempt at shedding light on them is stigmatised as an unacceptable interference;
4. Tacit complicity, or at least unquestionable agreement, of all the actors involved (in order to avoid the disclosure of irregularities), because they are sources of profit and of protracting advantages.

Those four features remind us that strict legislation is of no use when it is weakly implemented. This problem of enforcement and implementation is brought to our attention because we have various interlocutors, thanks to:

2. <u>The Broad Accessibility which Characterizes our Agency</u>

Public and private entities, mayors, public authorities and administrations, private persons, auditing bodies, investigative bodies, etc, can request advice, expertise on suspicion of corruption, assessment on codes of ethics, spotlighting of weaknesses conducive to slush funds, and so forth. Fundamental debates about the financing of political parties or the tightening limitation of prosecution of cases of corruption due to time-bar: our agency has been invited to articulate its analysis. For example, the offence of "misappropriation of corporate funds" is often used, as we mentioned above, in place of "corruption" to indirectly prosecute corrupt behaviours. This situation is not satisfactory because the blame is put mainly on the bribe-giver, whereas the bribe-taker is no less responsible. The SCPC does not, obviously, favour red tape but insists on the necessary optimization of controls.

It is difficult to measure a hidden phenomenon such as corruption; it is all the more difficult to assess the impact of prevention. Nonetheless, the relevant question is not "how many cases of

corruption have been deterred? ", but "to what extent are detection and deterrence facilitated?". The SCPC is not an overseer but a facilitator. It makes a point by showing that preventive methods work, that they do not necessitate either large budgets or excessive administrative effort. The fact that the SCPC is in charge of prevention makes would-be whistleblowers more willing to report; the repressive function of an agency bearing a connotation of threat for the reporter, for fear of getting involved to a certain extent.

The creation of specific authorities for the prevention and repression of corruption is advocated by international institutions. The Council of Europe, for instance, recommends "*to promote the specialisation of persons or bodies in charge of fighting corruption and to provide them with appropriate means and training to perform their tasks*".[17]

The SCPC takes part in the international negotiations about corruption issues.

VII. THE EXPERT GROUP MEETING ON CORRUPTION AND ITS FINANCIAL CHANNELS (PARIS, 30 MARCH TO 1 APRIL 1999)

A. The Context of This Meeting

This meeting was held in Paris, inspired by a French proposal presented at the 7th session of the United Nations Crime Prevention and Criminal Justice Division, followed by a resolution of the Economic and Social Council (July 28, 1998). The aim of these United Nations initiatives is to "*urge States to develop and implement anti-corruption measures, to increase their capacity to prevent and adequately control corrupt practices, and to improve international cooperation in this field. The Council also requested the Secretary-General, inter alia, to review and expand the manual on practical measures against corruption; to coordinate and cooperate with other United Nations entities and relevant international organizations in anti-corruption efforts; and to keep the issue of action against corruption under regular review.*"

Key-terms can be emphasized: "implement", "to increase their capacity", "prevent and adequately control", "manual on practical measures", "to coordinate and cooperate", "under regular review". There is, actually, a will to achieve feasibility and practical impact and to elaborate a compendium of anti-corruption provisions enabling the authorities to:

- review the adequacy of their [the Member States] criminal laws, including procedural legislation, in order to respond to all forms of corruption and related actions designed to assist or to facilitate corrupt activities, and should have recourse to sanctions that will ensure adequate deterrence;
- devise administrative and regulatory mechanisms for the prevention of corrupt practices or the abuse of power;
- adopt procedures for the detection, investigation and conviction of corrupt officials;
- create legal provisions for the forfeiture of funds and property from corrupt practices;
- adopt economic sanctions against enterprises involved in corruption.[18]

This idea of a compendium stems from concern for coherence and consistency,

[17] In 20 Guiding Principles For The Fight Against Corruption.

[18] The items are quoted from the introduction of the Manual on Practical Measures against Corruption.

required by a systematic approach to the issue of corruption. The purpose of the Manual is to review the most common problems encountered by policy makers and practitioners in their efforts to deal with corruption. The adaptability of this Manual to each domestic context and legislation is a priority. Thus, the process of review is coupled with a process of revision of the Manual itself, in order to take into account the evolution of the international instruments devised in the various *fora*.

In order to distinguish between what has been done and what remains to be done, a sustained effort is required, aiming at coordination and cooperation ("*the phenomenon of corruption has become transnational in nature as a result of increasing globalization and liberalization of trade. It is no longer possible to deal with it effectively only through national action. The international community is in urgent need of a common basis for cooperation that would promote the values of good governance and would insure that development and growth are not impeded by corrupt practices.*").

B. "A Common Basis for Cooperation" and a Significant Step Forward

Since corruption is an abuse of power to gain undue advantages (on the behalf of the bribe-giver) and to achieve personal enrichment (on the behalf of the bribe-taker), the core of the matter is the crucial role played by financial channels. Let us imagine an absurd scenario depriving the bribe-taker of the possibility to profit from their pecuniary advantages. Bribery would become much less attractive. This picture is not unrealistic thanks to the tracks explored by the Expert Group Meeting on Corruption and its Financial Channels, with a view to strengthening, or at least, favoring:

(i) provisions against money - laundering, so that they cover bribes and the proceeds of corruption: if the proceeds of corruption were seized ("forfeiture of the assets of corruption"), there would be less of a guarantee of personal enrichment...;
(ii) vigilance and monitoring of financial transactions: banks could play the role of "whistleblowers" when faced with suspicious transactions;
(iii) ways to convince underregulated financial centres to adopt rules enabling them to trace and take action against the proceeds of organized crime.

The off-shore places can be characterized mainly thanks to the following criteria:

- prevailing banking secrecy;
- lack of regulations and control;
- large possibilities of setting up shell-companies which conceal the identity of the real beneficiary of the transactions;
- restrictive rules of international cooperation in the administrative and judicial areas.

The impact of such places cannot be ignored; they play a prominent role. Experts consider that almost half of the amount of the international money volume uses the channels they offer. They are very often the indispensable instrument of corrupt agreements. This is why the problem of corruption has to be tackled from at least three angles:

- the supply side (the OECD Convention, for example, illustrates this approach);
- the demand side (the ethical code for public officials aims at preventing misdeeds);
- the financial channels (whose role must be highlighted and scrutinized).

The detection of criminal financial transactions, the improvement of the procedures to retrace the proceeds of corruption suppose that the problem of financial channels receive due consideration by underlining the necessity of:

1. Cooperation
   - 42 countries and 12 international organisations were represented in Paris at the Expert Group Meeting;
   - The initiatives of the United Nations, OECD, European Union, Council of Europe, and the commitment of G8, International Monetary Fund, World Bank...give impetus to an irreversible synergy which makes, by contrast, the position of the off-shore places groundless (if I can put it in this way with no pun intended);
   - Since the problem of financial channels is identified as a priority, the urge for transnational cooperation is emphasized. If money crosses domestic boundaries, the international response to the problem has to be coordinated;
   - The strengthening of cooperation requires that the same coordination be a reality when involving various domestic administrative departments such as the police, justice and tax offices.

2. Responsibility
   - A sustained commitment can no longer be delayed because political authorities are aware of the threat represented by corrupt money, using those financial channels which are likely to endanger the whole financial system;
   - The need for a clear position is all the more important because, for example, Pablo ESCOBAR placed, a few years ago, a very large amount of money in a single non-nominative bank account in a country belonging to the European Union;
   - The commitment of the United States was made clear on the occasion of an international conference organised by the Department of State (from 24 to 26 February 1999);
   - The awareness that corruption fosters insecurity at all levels and that monitoring and procedures of declarations of suspicion - if they fail to be put into practice - will entail the necessity of devising protective systems.

An "international economic order" is taking shape, which allows us to contemplate the possibility of forbidding (partially or totally) financial transactions when it is obvious that too many loopholes exist. The struggle against transnational organised crime and the fight against corruption bolster each other by a global strategy of deterrence. Such a strategy can be effective thanks to:

(i) *Cross-Fertilization*
The exchange of best practices between various countries and various administrative departments to expand the scope of deterrence by showing that those procedures work.

(ii) *Training and Assistance*
"*Multidisciplinary training and educational programmes can be developed at the international, regional or sub-regional levels, in order to pool expertise and resources that are often inadequate at the national level.*" Since the anti-corruption commitment has become a landmark for judicial security, endangered by corrupt practices, technical and financial assistance can be provided according to this criteria (taking into account the effectiveness of the effort and initiatives

undertaken).

The path becomes more and more obvious, pursuing "*the ongoing development of a comprehensive international convention against transnational organized crime*". It is highly relevant that the UN Commission on Crime Prevention and Criminal Justice "*takes note with appreciation of and subscribes to the conclusions and recommendations of the Expert Group Meeting on Corruption and its Financial Channels, held in Paris from 30 March to 1 April 1999, which are contained in the report of the Expert Group Meeting*". This official reference enhances the impact of the conclusions of the Experts Group Meeting, and allows a specialized corpus of coherent rules to achieve completion and coherence.

VIII. CONCLUSION

Corruption has been identified by the international community as a serious issue deserving full attention. This is an important step which should not be interpreted naïvely. "Naïvely" would consist of welcoming a "new era" where corrupt behaviors would be progressively banned. This utopian conception is contrasted by the sarcastic comments according to which corruption has been brought to the international agenda, simply because it has reached such proportions that nobody can afford any longer to spend a huge amount of money. Anyhow, whatever the motivations, one cannot deny that the interest in the issue is momentous, and is far from being transient. It is difficult to imagine that the body of rules taking shape presently might be wiped out in the future. Its implementation is at stake, supposing macro-economic initiatives (at a global and international level) and micro-economic vigilance, monitoring and whistleblowing.

CORRUPTION PREVENTION - THE HONG KONG EXPERIENCE

*Thomas Chan**

I. INTRODUCTION

This paper describes the Hong Kong experience in fighting corruption. It briefly outlines a number of factors that are conducive to corruption and fraud and then details some of the activities of the Hong Kong Independent Commission Against Corruption, better known simply as the ICAC. While the corruption prevention practices have been developed to suit the Hong Kong environment, it is believed that many corruption problems stem from common causes and may respond to similar approaches.

II. CORRUPTION IN SOCIETY

Corruption can be found in all walks of life ranging from matters involving petty and relatively insubstantial issues to those of great significance and value. Nonetheless, corruption has commonly been associated with major development activities such as:

- infrastructure projects including dams, harbour works, bridges, highways, airports, railways, and mass transit systems;
- licenses and/or leases for extractive industries and other concessions (e.g logging, mining and oil leases, fishing concessions);
- large scale industrial, commercial or residential developments (e.g mass housing programmes, resorts, new towns, theme parks, science parks);
- the design, specification and supply of transportation and telecommunications equipment (railway rolling stock, bulk handling);
- bulk purchases of supplies, such as petroleum, fertilisers, cement, chemicals and pharmaceuticals;
- service and consultancy activities (feasibility, land tenure studies, etc).

A more detailed examination of cause and effect indicates that there are a number of common factors that generate corruption risk. These generally comprise of:

- any level of decision-making involving the exercise of discretionary power;
- arrangements involving patronage or conflict of role;
- approval, licence or permit systems which involve granting of a benefit or generating a financial gain;
- situations involving security or confidentiality that can be compromised; and
- situations where the standard operating rules and procedures are not clearly defined.

These factors bear no relationship to the value of a purchase or transaction. Thus, cases of bribery and corruption may arise from routine licensing arrangements and approvals as well as from immigration and customs breaches, electoral malpractices, and all types of cash collection arrangements. Corruption may involve the leakage of confidential information in police operations or in procurement; in administrative decisions on welfare benefit

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entitlements and housing allocation; or in the distribution and location of hawkers' stands and market stalls.

Public attention is drawn to the more obvious cases where the incentives for corruption are greater and which entail major decisions involving large sums of money. However, the risk of corruption is just as real for everyday transactions where more elaborate protective mechanisms cannot be economically employed. Given the number and scope of such pursuits, the cumulative exposure to risk may well exceed that of the larger contracts, while the moral impact is equally damaging.

Nonetheless, both motivation and opportunity must come together in order for corruption to occur. Unless the opportunity presents itself to individuals, corruption will remain just a theoretical possibility. This intermingling of motivation and opportunity must always be considered when structuring an effective anti-corruption strategy.

III. THE IMPACT OF CORRUPTION

What damage is caused by corruption? The most obvious effect is to directly increase the cost of a transaction. If a bribe of 5% or 10% is paid, it seldom comes out of the seller's pocket. They will merely build it into the price to be met by the purchaser. Indeed, the fact that a bribe is being paid often makes it possible for the seller to inflate the price by considerably more than the bribe amount.

It is not easy to find definitive statistics on the likely economic cost of corruption. A 1996 Hong Kong fraud study, published by consultants KPMG, estimated a total cost (to local respondents) of HKD $230M. The consultants highlighted that this figure was probably significantly understated. KPMG also reported that the most prevalent areas were purchase fraud, which accounted for 26% of reported cases. Twenty percent of the frauds could be categorised as corruption related offences such as kickbacks. Similar figures were reported in another KPMG International Fraud Report, which highlighted kickbacks and procurement fraud as particular problems but also identified employee fraud as being the most prevalent source of malpractice. The amount of internal employee involvement provides an indication of where one needs to start with corruption prevention measures.

KPMG's 1995 Australian Fraud Survey estimated corporate fraud at A$16B to A$20B per year. Another survey by Ernst & Young in 1996 reported that 95% of Australia's top 500 companies experienced fraud over the preceding five years, and for 68 % of those cases it was over A$1M. The Australian Commonwealth Auditor-General estimates the level of organisational fraud to be 2-5% of private sector turnover.

These figures, together with other anecdotal evidence, indicates that corruption can add between 2% to 15% to the cost of business, depending on the country and local environment. Despite such obvious losses, it is disconcerting to note that until recently, firms based in some developed nations have been prepared to fund corruption in many developing nations.

The direct increase in cost is by no means the only effect. Once the possibility of personal gain becomes a factor, it rapidly becomes dominant - pushing aside quality and other legitimate considerations in the awarding and performance of contracts or in the provision of services. The result is that economic decisions are skewed; the wrong suppliers and/or contractors are selected; and materials, quality standards

and safety are compromised. Supplies or projects that are not needed may be given priority over more important projects for no better reason than the fact that they enable decision-makers to obtain large bribes.

The moral damage is perhaps more serious. Bribery involves a breach of trust or a violation of a relationship. The damage to confidence, reputation and image inflicted on a corporation or on public sector administration is debilitating, while the loss of faith in the integrity of decision-makers can even destroy the social fabric of a nation. While seemingly benign on the surface, corruption breeds distrust and may contribute to more violent crimes as the social injustices accumulate and become more obvious.

IV. THE HONG KONG ICAC MODEL

The ICAC was established in 1974 in response to rampant corruption within the police force and other sections of the public sector. It has adopted an integrated three-pronged attack on corruption based on the strategic components of investigation, prevention and education. These three anti-corruption offensives are reflected in its structure, which comprises three functional departments - the Operations Department, Corruption Prevention Department and Community Relations Department.

The Operations Department receives reports and investigates complaints. This investigative and enforcement role is without doubt the most visible activity of the Commission, attracting intense public and media interest in major cases. The corruption cases are identified from complaints received from a number of sources including a 24-hour hot-line report centre.

The Community Relations Department is responsible for the education, publicity and moral leadership roles of the Commission. Its role is directed towards mobilising public support in the fight against corruption. In addition to broad community-based programmes using the mass media, specific programmes have been developed for various sections of the community. These activities explain anti-bribery laws in layman's language, educate the young at schools and universities, and encourage business organisations to adopt appropriate corporate codes and corruption prevention measures. The general confidence-building and outreach programmes are designed to raise the level of public awareness and willingness to report promptly any suspicion of corruption offences. They also include the operation of a number of regional community offices that are readily accessible to the public. The end result is that the ICAC maintains a high public profile and 'mind-share' within the community.

The Corruption Prevention Department's mandate is to prevent corruption within organisations by examining their internal operations and proposing corruption-resistant management and administration systems. This objective has been successfully implemented within the public sector by the establishment of effective and transparent systems, thus providing an example of the principle that prevention is much better than cure.

V. CORRUPTION PREVENTION ROLE

From the time the ICAC was established, maintenance of the integrity

[1] In "Corruption: The Facts", article by Daniel Kaufmann, p. 114 of "Foreign Policy" - Summer 1997.

[2] In "Model Law on Corruption".

of public institutions was considered to be a priority. Given our primary role to advise government departments and public bodies on reducing corruption opportunities, the legislation therefore empowers us to act with considerable authority when dealing with corruption prevention in the public sector.

The legislation also provides that we must give advice on request to any person and any private sector organisation. For the private sector, the acceptance of our prevention advice is not mandatory. To strengthen the scope of our scrutiny we can apply to have organisations designated as 'public bodies' where they enjoy particular monopolies or have significant community roles e.g the Hong Kong Jockey Club, Mass Transit Railway Corporation, Airport Authority, Utility Companies, Universities, Hospital Authority and so forth. In total there are currently 85 declared public bodies.

The Department is relatively small with only 59 staff members and is split into functional groups that specialise in particular areas of work or client groups. A high proportion of the staff is professionally qualified. Staff members are appointed at a relatively senior level since they must be sufficiently experienced and knowledgeable to liaise closely with senior company management and government officials on corruption prevention matters that can substantially affect operating practices.

VI. CORRUPTION PREVENTION METHODOLOGY

Our prevention strategy is based on a systems approach, with a methodology founded on operational audit principles. Our major workload comes in the form of assignment studies where priority assignment areas are identified and then examined in detail, culminating in a comprehensive report containing a series of recommendations. To generate maximum input and commitment to the process, client (i.e the organisation whose procedures are being reviewed) involvement is encouraged at all stages. Draft recommendations are normally discussed with the client prior to release of the report to take account of any practical factors in implementation and thereby facilitate their adoption.

Strict confidentiality has been maintained on the report contents to instil confidence in the process. Accordingly, there has been little publication of the recommendations except in general articles covering anti-corruption issues or as source material for the development of "Best Practice" approaches. To date we have completed more than 2300 assignment reports covering a wide range of public sector activities.

The sources of work are Operations Department investigations; areas identified by our own staff or by joint ICAC/ client liaison groups; and requests from the clients themselves. As a liaison strategy we meet regularly with the directorate officers of major government departments and the senior management of public bodies. These Corruption Prevention Group meetings discuss priorities, explore problem areas and review the implementation of previous studies. They have proved very productive.

A considerable number of private sector referrals come through the services of the Community Relations Department and their network of regional offices. Previously, much of this work was directed towards specific problem areas such as stock control, purchasing, and rules for staff on accepting advantages, but the scope of work has been expanding with a greater focus on system risk analysis,

managerial accountability and corporate governance. Ethics development work is typically conducted in association with our Community Relations colleagues as part of a co-ordinated programme of enhanced ethical and corruption awareness training linked with the promotion of Corporate Codes of Conduct.

An increasing proportion of staff time is involved in consultative work. Government departments commonly ask the Department to study the implementation of new policies and procedures and we are represented on both ad-hoc and standing working groups or committees. Involvement in the policy development process enables us to have effective input at an early stage, where accountability and effective controls are best identified. Typical examples include our representation on a treasury review of government tendering and procurement procedures and membership of the Construction Advisory Board, which provides advice to government on issues related to the construction industry. Other examples of our procedural development work are the analysis of tendering arrangements for major extensions of the Kowloon and Canton Railway Corporation and Mass Transit Railway Corporation; examination of Housing Authority policies; and involvement in all stages of construction of the new Hong Kong Airport and related infrastructure projects.

VII. CORRUPTION RISK FACTORS

Our reviews of corruption risk concentrates on areas identified as being prone to fraud and corruption. Assignment recommendations then focus on mechanisms for reducing or minimising corruption opportunities while optimising administrative performance, system controls, transparency and accountability. This strategy of promoting system change is based on the belief, that whilst corruption may be investigated and offenders prosecuted, unless the underlying management deficiencies are corrected, the same or similar corrupt acts could easily re-occur.

Fact-finding involves identification and assessment of a range of possible risks, along with current controls and possible control improvements. These observations do not imply that corruption is occurring, but highlight areas where internal controls are absent or deficient and the system is potentially at risk. Our reviews therefore extend beyond the scope of financial audits to examine management issues which might allow misconduct such as:

- misuse of power and discretionary authority;
- neglect of duty or omission;
- favouritism;
- administrative deviations and breaches of regulations;
- inappropriate legislation;
- information and confidentiality breaches; and
- conflicts of interest.

Various techniques and risk indicators are used in analysing the existing system for weak-points and loopholes that might expose the unit or operation to potential corruption. These include:

- internal control weaknesses reported through internal audit reviews or previous corruption cases;
- discrepancies or deficiencies in the implementation of previous remedial action(s);
- weaknesses in the system chain of controls;
- reported deviations from management controls;
- role playing and "what if?" scenarios;
- identification of system control

features able to be bypassed by higher authorities or alternative procedures; and
- inconsistencies in the matrix of management authorities and accountabilities.

The report recommendations can be wide-ranging and may include proposals for revamping administrative systems; review of asset management policies and procedures; introduction of enhanced transparency and procedural arrangements for purchasing and tendering; better documentation and review standards; new or revised management and quality assurance manuals; and the adoption and promulgation of performance pledges, ethical guidelines and Codes of Conduct.

While some organisations may initially feel some trepidation in agreeing to an assignment study, the use of competent and experienced staff and close attention to detail in formulating the recommendations has resulted in a high level of client satisfaction. Conducting the study in a spirit of close co-operation with the client no doubt helps to achieve this outcome. The work is conducted at no cost for private clients and the acceptance and implementation of the recommendations remains at the company's discretion.

VIII. A CASE STUDY IN CONSTRUCTION

Engineering construction is an important element in Hong Kong's economy and today contributes about 9% of Hong Kong's gross domestic product. Of this, public sector construction contributes about 45% and the private sector 55%. Public sector projects are handled transparently with advance publication of construction programs, pre-qualification and open competitive tendering exercises and increasingly stringent quality and safety requirements, subject to on-site supervision and third party testing and certification. Contractors performing public sector construction work are subject to financial and technical assessment and are chosen from approved lists maintained by the central policy Works Bureau.

The newly completed Hong Kong Airport Project constituted one of the most massive infrastructure undertakings in the world. The core projects were completed under very stringent time and cost constraints and contained all of the elements that might be prone to corruption such as:

- sensitive planning and land use approvals;
- selection and appointment of widely divergent consultant teams;
- complex contracts (hundreds) with highly technical specifications;
- negotiated contracts and value selection of contractors;
- use of international and joint venture contractors;
- fast-tracking of planning, design and construction;
- large sums of money;
- numerous variations and claims arising from design changes;
- a multiplicity of sites and numerous interface issues with contractors and consultants; and,
- the involvement of diverse skills, nationalities and languages.

Given the immense size and tight time scale for the undertaking, the standard form of government contract was modified, and revised contractual, administrative and claims procedures were adopted. From the beginning, the procedural arrangements and tendering processes were developed in close consultation with the Corruption Prevention Department. Particular attention was paid to include

mechanisms that would ensure transparency and equity in consultant and contractor selection, effective contract execution and close monitoring of all performance aspects, including claims and variations. The evidence so far is that this liaison was very successful, with few allegations of corruption.

IX. A PROCUREMENT EXAMPLE

Procurement is one of the areas most prone to corruption. In analysing procurement systems, our objectives are to ensure:

- the best possible value-for-money outcomes;
- minimal risk of fraudulent or corrupt activity in the selection of firms and final contract awards through structured processes; and,
- reinforcement of all legal requirements and ethical standards by incorporating guidelines and contractual conditions relating to Best Practice, Prevention of Bribery Ordinance, corporate conduct, conflict of interest etc.

We require that the procurement process demonstrates the necessary elements of fairness and impartiality to survive full disclosure and critical public scrutiny. The resulting level of transparency needed to avoid any potential claims of favouritism or conflict of interest may involve very detailed procedures and extensive documentation depending upon the product, service or project.

For many procurement cases the quality of performance is a significant factor, and we recognise that selection may not be based purely on price competition. In fact, uneconomic contract prices can provide a further incentive for corruption during contract execution, as the participants attempt to recover costs and achieve greater profitability by any means possible. Value assessment and supplier selection is accomplished by nomination of suitable assessment criteria that are weighted in proportion to their importance to the contract performance or specification. We provide extensive advice on these techniques and the attendant procedures.

Government and public bodies are required to adopt open competitive bidding methods, except under defined circumstances requiring full justification and documentation. Notwithstanding a competitive award policy, negotiation can be employed but is normally restricted to high value contracts because of the extensive documentation required and time constraints, contractual difficulties, perceived corruption opportunities and overall costs of the process.

Other anti-corruption techniques are to restrict the discretionary role of the procurement officers, to codify the procedures, and to apply separation of functions so as to require greater (and therefore less likely) collusion if corruption is to occur. Open advertising, pre-qualification exercises, formalised lists of suppliers and contractors, adoption of objective selection criteria with advance notice to bidders, detailed tendering and evaluation procedures, balanced selection panels, full documentation, monitoring of purchasing patterns and vendor relationships, random checking by senior management and effective audit programmes, are all strongly encouraged.

X. THE KEY TO PREVENTION - TRANSPARENCY AND PUBLICITY

We believe the best ally in corruption prevention is the public. When dealing with the public sector, if people know and understand their entitlements and rights, they will be aware of any shortfalls in service quality. Therefore we consider it

essential to ensure that the public is kept well informed as to the expected time to issue licenses; when, how and where to apply for services; the costs of services; and the necessary documentation to be submitted. The provision of clear self-explanatory forms and supporting documentation forms part of the necessary publicity and education programme.

All government offices now routinely publicise the key aspects of their operations, with prominently displayed application forms and other public notices. We also support the implementation of performance pledges that give greater transparency and clear guidance as to the reasonable expectations of minimum service standards. This principle of transparency extends to everyday events and activities. Studies relating to utility works and roadworks have resulted in recommendations leading to notices on street excavations showing the expected date of completion and other details enabling identification of the contractor and contact persons.

Another area requiring good and complete public information is where more then one government department is involved in a process. For example, in licensing a restaurant, the hygiene, fire safety, structural safety and ventilation requirements all involve different departments in the Hong Kong licensing system. Satisfying these different requirements can be baffling for a licence applicant and good publicity to guide the applicant through the maze of the various licensing processes is essential. To be successful, this type of guidance needs to be easily available at low or zero cost and written in plain and non-technical language. The Department routinely gives advice on the structure and development of such information packages.

XI. OVERCOMING RESISTANCE TO CHANGE

Notwithstanding our progress in introducing initiatives to combat corruption, there is sometimes a degree of entrenched organisational resistance to change. Key decision makers may refuse to accept that the most effective way to reduce corruption and other workplace crime is to establish revised practices or procedures within the organisation that have an anti-corruption goal. Powerful individuals may also resist change because of habit or inertia, or fear of the unknown, or because they are afraid they do not have the necessary skills if the changes are implemented and they fear losing some of their power.

Organisations, like individuals, also sometimes resist change because of fear of the cost, or a perception that they do not have the necessary resources. Sometimes key decision-makers fail to understand the alternative. Subtle resistance is often embedded in the resource allocation procedures, with reluctance to adopt new policies or refusal to change an established policy.

Resistance typically involves affected groups such as middle managers, supervisors, units or groups who are opposed to a given corruption prevention strategy. In the worst case scenario there may be active opposition represented by :

- denial of the need for an anti-corruption strategy;
- refusal to recognise responsibility and accountability;
- refusal to implement an anti-corruption strategy initiative that has been adopted by the organisation; and
- sabotage or dismantling of an anti-corruption strategy after implementation has begun.

Such potential resistance must be both recognised and managed. At the working level, our response is firstly to involve the client as deeply as possible in the assignment study so that they are committed to a successful outcome. Secondly, we attempt always to set standards, objectives or time lines against which progress may be assessed so that there is an effective means of monitoring implementation. In addition to formal monitoring studies, we also have standard follow-up procedures to track the level of acceptance of report recommendations and their implementation. This process has proved very successful and often gives rise to continuing liaison with the client and more extensive work.

XII. FACTORS FOR SUCCESS

The success we have achieved in fighting corruption and fostering change has been based on a number of factors, of which I shall nominate a few:

- support from the highest levels of government providing the political will, legislative framework and funding necessary to ensure our independence and focus on the job at hand;
- recruitment of staff with the skills and experience to deal with practical real life situations, such as accountants, engineers, quantity surveyors, ex-policemen and experienced public servants;
- involvement of the client in all phases of our studies - from the determination of the work to be done through to the development of prevention measures and how they are to be implemented;
- concentrating on more structured ways to exercise discretion such as inspection check lists, objective marking schemes for performance monitoring and marking systems for tender assessment;
- adopting a more global approach to preventing corruption by examining not just the symptoms but the underlying causes such as poor management structures, poor morale, lack of information, unenforceable rules and inadequate legislation; and
- adherence to the principle of transparency.

XIII. NEW CHALLENGES

New challenges are emerging as a result of economic, social, political and technological changes. Hong Kong's rapid transition from a light manufacturing economy to a predominantly service-based economy has made anti-corruption work more complex and difficult, while the public expectation of effectiveness, transparency and accountability is rising.

New business structures are being created as the practices of outsourcing and privatisation or corporatisation have become more prevalent. Both public sector and private sector organisations now contract out a wider range of services ranging from data preparation and processing, management consulting and human resource functions, to research and development services, professional advice and the operation of independent business entities.

The outsourcing business model typically involves a small number of management professionals responsible for contracting, supervising and monitoring services provided by external firms such as contractors, manufacturers, third-party sales and distribution networks, and suppliers of corporate and administrative services. It represents a desire to focus on core business fundamentals in a drive to achieve world competitive practices and

realise benefits from improved access to specialist expertise.

Outsourcing brings with it greater demands for overall co-ordination and closer relationships between the various parties to the contract with a consequent shift towards new forms of performance monitoring and control, and different legal and contractual frameworks. Much of this trend is being driven and supported through developments in telecommunications and information technology.

Developments in outsourcing may introduce management issues having corruption implications. Close examination of the overall client and supplier alliance may reveal new areas where corruption can enter the process and affect the outcome. Since many operational activities are no longer performed solely "in-house", greater emphasis needs to be placed on the development of "self-regulatory" systems, with the adoption of appropriate Codes of Conduct.

The computer in its various guises now pervades every walk of life. Millions of dollars are handled daily over national and international networks, and personal information is captured for a myriad of transactions. Vast databases are being developed containing extremely detailed information on individuals and organisations. Information technology has provided new opportunities for data collection and management, facilitating demographic segmentation (data mining) and new and more extensive forms of management information analysis. With these developments have come associated concerns for the privacy and security of the financial and personal data and attendant corruption opportunities in the potential misuse of this data.

Some systems are undoubtedly well protected and properly resistant to security breaches, but the relaxed attitude of many organisations to information security stands in stark contrast to the procedures found necessary by banks and other financial institutions. An ever-present danger is that some computer systems, designed many years ago, still remain in operation and may be potentially subject to new forms of attack as companies move to embrace e-commerce.

One of the disturbing features is that too few organisations have undertaken any risk analysis of their own corporate information systems and may be unable to tell when or whether or not a crime has been committed. An essential task of the future will be to ensure that the integrity of these systems is not compromised by corruption. Appropriate physical barriers, software barriers, system administration controls, functional separation of key activities and the monitoring of critical transactions will be essential.

Procurement practices are also undergoing significant change as purchasers and suppliers grapple with best practice developments in supply sourcing and the complexities of international law, fair trade requirements and the impact of new technology. Some of the emerging technological developments include electronic commerce and electronic funds transfer and payment systems; interconnected materials procurement management and manufacturing systems; corporate card purchasing; and electronic tendering. The growth of the Internet and electronic commerce introduces the prospect of a new generation of information and monetary transfers that are more difficult to track and could make bribery payments less traceable.

Each of these developments brings a new perspective to the maintenance of system integrity. They introduce problems associated with security and confidentiality that commonly form key elements in the typical chain of corruption. Management systems, which once seemed secure, may be prone to attack as organisations adapt to these changes.

XIV. OUR RESPONSES

As technology advances and political and economic boundaries begin to blur, corruption has taken on a global perspective and the need to develop regional and international liaison will continue to grow. To this end we have actively pursued a policy of greater involvement with our colleagues in other jurisdictions such as the Royal Canadian Police, the Australian Federal Police and the US Federal Bureau of Investigation. The ICAC now acts as the Regional Information Co-ordination Centre in the Asia-Pacific region and publishes a regular newsletter. This liaison with our counterparts will continue and expand.

The proven effectiveness of our corruption prevention work will ensure its continuation, albeit somewhat modified to take account of emerging trends. More expertise will be needed in systems and risk analysis and we have had a policy for some time of recruiting staff for prevention work with strong and up-to date computer and information technology skills.

Greater emphasis will be placed on managerial accountability in a more self-regulatory environment. The adoption of performance pledges, Best Practice approaches and quality management and quality assurance programmes already form part of our armoury. The introduction of specific probity-related clauses in tendering requirements and the widespread introduction of appropriate Codes of Conduct is being strongly pursued.

We have expanded our capacity to assist both the public and private sectors by introducing a quick-response consultancy support system offering advisory services. Together with this more responsive approach, we have introduced a corruption prevention telephone hot-line.

In conjunction with the Community Relations Department's drive for expanded moral and ethical education programmes, we have taken a pro-active approach to enlisting greater support from the private sector with extensive mailings, visitation programmes and speaking engagements. In addition, we have embarked upon a series of targeted training and development seminars directed towards particular industry areas.

We have formulated no fewer than 15 Best Practice modules covering key industries and their operations which are now being widely distributed as part of our advisory services. These modules are designed to provide guidance to organisations developing or reviewing their own internal systems. In time, these modules should cover the majority of the key operational areas found to be prone to corruption.

Finally, in the midst of this change we have also grasped the benefits of new technology with revamped internal operational procedures and improved information technology capabilities. This will enable us to better analyse trends, perform better research and improve our overall productivity. These changes include expansion of our Internet Web presence to provide greater public access and enable us to reach a wider audience.

XV. CONCLUSION

The enforcement of a strong anti-corruption law based on a zero tolerance approach, backed by effective prevention and educational programmes, has had a marked impact in Hong Kong. The populace is sensitive to corruption issues and acutely aware of the ICAC role and mechanisms for reporting corruption. The community culture has changed from one of tolerance of corruption to rejection.

The nature of much corruption means that staff already working within an organisation are responsible for most failures. Internal access to administrative, operational and information networks therefore may present a far greater risk than the spectre of physical entry or external access. Software and system access controls subject to internal attack can easily become ineffective due to laxity, complacency, under-estimation of risk and undue reliance on trust.

Corruption prevention is an organisational, as well as individual, ethical responsibility. While corruption depends on individuals, it may be unwittingly encouraged or protected by certain features of an organisation's activities or structural deficiencies. Many problems can be traced back to poor control exercised by senior management.

An organisation can lift some of the burden from individuals, not only by placing greater emphasis on teams and shared decision-making, but also by adopting effective corruption prevention practices. The detection of corrupt practices is also a management responsibility, achieved partly by setting up effective supervisory and control systems, and also by managers being alerted to indicators of corruption.

Effective prevention programs will provide incentives for managers to educate themselves regarding the attitudes and values held by their subordinates, to locate the areas in which corruption is likely to occur, to exert positive leadership and more quickly curtail abusive and corrupt activities. Increasing awareness of corporate governance principles may see greater use of senior management performance indicators that include evidence of the implementation of effective fraud/corruption prevention plans and risk management strategies.

While the lessons to apply must take account of individual social and work ethics, there are a number of common features worth noting. Firstly, complex, unnecessary and unenforceable rules increase the risk of fraud or error with consequential increase in the likelihood of corruption. The solution may be to simplify the system.

Secondly, many licence, approval and benefit arrangements incorporate perverse actions and seek excessive detail unrelated to corruption or fraud preventive measures. The answer is to set minimum standards for efficient and effective administration and redirect resources to prevention strategies.

Thirdly, poor co-ordination, communication and co-operation between various agencies or organisations may facilitate corruption. Provided the system requirements meet the criteria of simplicity and effectiveness, the answer is to monitor service levels, measure performance against objective standards and penalise non-compliance through transparent mechanisms.

Prevention, however, involves more than risk assessment and the introduction of monitoring and supervisory reviews. It

requires the development of an ethical culture reinforced by a code of conduct to deal with specific issues faced by staff. The code should address a variety of internal and external issues affecting the organisation, including the way it interacts with business associates.

With changing work patterns and increasing globalisation, the principles of individual and organisational integrity and accountability may need to be further reinforced. As governments and business alike strive to achieve their objectives in the most cost effective and efficient manner, business plans will need to take into account suitable corruption prevention strategies.

The Hong Kong experience is that with close co-operation between business, Government and the ICAC, the adoption of a broadly based and integrated preventive approach can realise the objectives of minimising corruption. The message we have given and will continue to send is a simple one. Corruption does not pay and will continue to be driven to the very margins of our society.

RECENT INNOVATIONS IN TACKLING CORRUPTION IN THE CIVIL SERVICES IN INDIA

*R. K. Raghavan**

I. BACKGROUND

A generally accepted historical fact is that, like human deviance, human ingenuity has not known its limits. The cruellest crime is also often the most bizarre. Deviant behaviour, for their own benefit, by those entrusted with the task of rendering service to the community, loosely called 'corruption', is a malaise that has afflicted even ancient society, although its dimensions and ramifications have varied with time. The Indian subcontinent is no exception. For instance, the classic treatise *Arthasashtra* by Kautilya in the 4th Century B.C gives a lucid account of corruption as it prevailed in the Mauryan administration. Indian history of subsequent times is also replete with graphic accounts of official misconduct. In this context, we know that just as many forms of social control have sought to restrain individual proclivity to deviance. Civilized and democratic governments have found it necessary to regulate the conduct of their civil servants in different ways, so that there is no dilution of the major objective of a free and fair delivery of service to the common citizen.

The Central Bureau of Investigation (CBI) of India, a pre-eminent federal investigating agency, deals not only with anti-corruption matters but major conventional and economic crime as well. Founded under the name Special Police Establishment (SPE), it was primarily intended to look into cases of corruption involving the handling of federal government funds by federal civil servants, starting with World War II, when large military and naval contracts were awarded and there was a need to keep a vigilant eye on public expenditure. The Delhi Special Police Establishment Act, promulgated in 1946, lends statutory backing to the CBI, which acquired its present nomenclature in 1963.[1]

The birth of the CBI itself was a sequel to the report of the Committee on Prevention of Corruption (popularly known as the Santhanam Committee after its distinguished Chairman who was a former Minister and Member of Indian Parliament) set up in 1962 *inter alia* with the following terms of reference:

(i) to suggest measures calculated to produce a social climate both amongst public servants and in the general public in which bribery and corruption may not flourish; and

(ii) to suggest steps for securing public support for anti-corruption measures.

In the first of its two reports submitted in 1963, the Santhanam Committee sought the creation of a Central Vigilance Commission headed by a Central Vigilance Commissioner (CVC) with considerable autonomy and status so as to consolidate

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[1] Legal support to anti-corruption work was strengthened in 1947 with the enactment of the Prevention of Corruption Act, that was replaced by a more Draconian legislation of the same name in 1988, which considerably expanded the definition of 'public servant'.

the fragmented anti-corruption work that was being performed by the various Ministries of the federal government. In the Committee's view, the two main tasks of the CVC were:

(i) prevention of corruption and maintenance of integrity; and

(ii) ensuring just and fair exercise of administrative powers vested in various authorities by statutory rules or by non-statutory executive orders.

The CVC has been performing an exemplary advisory role since 1963, although there is a school of thought that the Commission could have been more effective had it been given legal authority under a parliamentary statute. Sensitive possibly to this point of view, the Supreme Court of India, in the celebrated Vineet Narain case (1998), issued many directives regarding the selection and appointment of the CVC and the Director of the CBI. For the first time, the Director of the CBI was to be given a minimum tenure of two years in office. The Court also vested the superintendence of the CBI in the CVC. While the two functionaries have been appointed in accordance with the procedure prescribed by the Court, a bill conferring statutory authority on the CVC is pending in Parliament.

The CBI is the sword-arm of the federal government for investigating corruption-related cases. But the fight against corruption is also carried on by a system of Vigilance Officers headed by a Chief Vigilance Officer (CVO) in each government ministry, as well as government-owned Public Sector Undertakings (PSUs). Preventive vigilance throughout the country is exercised through these CVOs who are expected to scrutinize major contracts entered into by the departments/ undertakings concerned, and also conduct vigilance checks on erring employees. The efficacy of CVOs can be argued, but the fact remains that internal vigilance has contributed to a significantly lower rate of corruption than countries which do not have this system. 'Agreed Lists' of civil servants who had come to adverse notice are also maintained both by the CBI and the departments. These serve as a guide for career advancement and for placing them in positions which offer minimum opportunity for indulging in corruption.

In addition, every state - there are 25 in India - has its own Anti-Crruption Bureau (ACB), manned by police officers and headed by the Director-General of Police, that looks into the conduct and affairs of state government employees. The Vigilance Commissioner of each state oversees the ACB's work and obtains government sanctions for prosecuting government officers at various levels before the courts of law.

II. DIMENSIONS OF THE PROBLEM

The high level of corruption in public establishments has been a matter of great concern to successive governments. There are indications that the ill is all pervasive, and afflicts even those who have the authority to take crucial decisions involving large sums of publc money. Transparency International, which ranks countries on the basis of a Corruption Perception Index, in its last report, put India in 68th place. Statistics from *Crime in India 1997*, an official publication of the National Crime Records Bureau (NCRB) functioning under the Ministry of Home Affairs (MHA), are illustrative, though only partially, of the situation (Annexures A and B).

III. MECHANICS OF ANTI-CORRUPTION WORK IN INDIA

Anti-corruption organizations in India generally adopt two means to combat the evil. Whenever they suspect corruption, or have received a definite report of an instance of corruption in a government agency, they initially opt for a Preliminary Enquiry (PE) or a Detailed Enquiry (DE), as it is called in a few states. This is a purely administrative action aimed at unearthing more facts than are available. While there is no statutory provision for this, courts have countenanced this as admissible preparatory work before launching action under the Prevention of Corruption Act. Once the PE or DE concludes that, *prima facie*, the facts collected make out an offence under the Prevention of Corruption Act, a Regular Case (RC) is registered under the Act and a full-fledged investigation, as set out in the Criminal Procedure Code (Cr. PC) 1973, is launched. Where material unearthed is insufficient for an RC, a report is sent to the head of the government department concerned for such appropriate action, including proceedings under disciplinary rules which may or may not result in a penalty (such as censure, removal, dismissal or reduction in salary or rank), depending on the evidence adduced in a domestic enquiry. There are tribunals available to handle these enquiries.

A direct manner in which brazen acts of corruption are tackled is to trap a public servant while accepting money or any other valuable security from a member of the public. Courts have prescribed certain safeguards, such as obtaining a written complaint from the aggrieved citizen from whom money had been demanded by a corrupt public servant, before a trap is laid. This is done with a view to eliminating frivolous and motivated complaints that could demoralize the civil services. Traps have often proved effective in bringing to book errant government officials, provided the procedure recognised by the courts is adhered to rigidly.

IV. SOME RECENT INNOVATIONS

A. Elimination of Loopholes in the Anti-graft Law

In contrast to the expression 'civil servant', we in India use the word 'public servant'. In earlier years, this term was meant to include only civil servants, but various court-based interpretations of law have brought within its ambit political figures and elected representatives of Legislatures who are also being prosecuted under the corruption laws in our country. Indeed, the definition of public servant has been enlarged to such on extent that except for employees of voluntary agencies, anybody who receives a salary from government or quasi-government bodies and works in the public interest is deemed to be a 'public servant' and can be prosecuted for criminal acts of negligence.

A very significant move against corrupt public servants has been the inclusion of a clause in the Prevention of Corruption Act 1988 which makes it criminally negligent for a civil servant or public servant to cause loss to the government or the state by an apparently wrong decision, even though he or she may not benefit from it directly. Thus, awarding contracts without following proper procedures, wasteful schemes and other items of expenditure and delayed projects could come under the ambit of this clause, and usually it is possible to prove that the civil servant (public servant) entered into collusive conspiracy with non-government officials to cause loss to the government. The rationale is that in a developing country like India, where public finances are gathered by taxing people who are not very well-off, it is important to safeguard the

use and distribution of public funds.

The CVC has also been active in the area of tightening law and procedure with a view to enhancing the deterrence of anti-corruption measures in the country. Two significant moves by the Commission are worthy of mention here. One is the request to the government to notify under the Benami Transactions Prohibition Act 1988, how to confiscate *benami* property (that is, property held by a person in the name of another in an attempt to conceal his/her ill-gotten wealth) and also how to empower the CVC in this connection. Secondly, the CVC has forwarded to the Government for its acceptance a draft legislation called the Corrupt Public Servants (Forfeiture of Property) Act, prepared by the Law Commission of India. These recommendations, if accepted by the Government, are expected to give a new thrust to the battle against corruption in the civil services.

B. Grant of Autonomy to the CBI

A traditional criticism of the CBI is that it is toothless in respect of corruption in high places, and that it usually goes after only the 'small fish'. There was some substance to this charge till a few years ago, because of the so-called single directive issued by the Federal Government, which required the CBI to secure the clearance of the Government before launching investigations against senior bureaucrats. There were in fact delays in a few instances in issuing such a clearance. The Supreme Court of India, in the already cited Vineet Narain case, struck down this directive in an obvious effort to streamline anti-corruption work and confer greater autonomy on the country's most crucial anti-graft agency. Under the new dispensation, the CBI is free to register regular cases, even against top civil servants, without being bogged down by red tape. This has given a new dimension altogether to the fight against corruption in high places, and accounts for the large number of investigations started lately by the CBI against very highly placed officials.

C. Induction of Specialists

The CBI and State ACBs are now assisted by technical and specialised staff who advise them in the course of investigation, particularly in respect of complex issues of taxation, excise and related matters, as well as banking procedures. Indeed, in the recent past, the Reserve Bank of India had set up a Banking Advisory Board to assist the CBI. This board examines apparent irregularities committed by bank officials which are brought up for its scrutiny, and identifies instances of grave criminal misconduct pointing to *malafide*, so that these are considered by the CBI for appropriate legal action. The point at issue is that banking decisions cannot be equated with routine civil servants' decisions, and are attended by a degree of commercial risk which such a board alone can not appreciate before offering an opinion on whether a detailed criminal investigation by the CBI is warranted.

D. Use of Computers

The quality of anti-corruption work by the CBI and similar agencies in the states has been markedly improved through the use of computers. Investigators are encouraged to use computers for maintaining their day-to-day records. As a result, the load of scriptory work has come down appreciably, saving precious investigation time. Also, the review of case pending by supervisory officers has become easier, so that investigators are driven hard to speed up their work. It should be mentioned here that a major charge, one that is not without substance, against the CBI and the ACBs is that their investigations take enormous time, making their final action pointless.

Computerisation has contributed at least a little to taking care of this charge, although a lot more speed is still definitely called for.

One positive step is the CBI decision to create a website for itself. It offers a wide spectrum of information on several aspects of the agency's work, making it more transparent and people-friendly. There have already been more than 15000 visitors to the site in the year during which it has been operational. The latest decision to incorporate a 'Contact Us' module in the website offers hope that the public will be encouraged to pass on information on corruption in the civil service without fear of harassment or their identity being exposed.

E. The Role of the Central Vigilance Commission

The Central Vigilance Commission (CVC) in its reconstituted version is a multi-member body. At present, apart from its chairman (Central Vigilance Commissioner), there is one more member, who is a retired senior police officer. There is provision for a few more members to bring in the required wide-spectrum expertise. A bill outlining its composition and powers is pending before the Select Committee of Parliament. As per the Supreme Court directive and the earlier ordinance (since expired) issued to give effect to the court directive, the CVC was to exercise powers of superintendence over the CBI. This provision was intended to give needed insularity to the CBI from extraneous pressures in its investigative work. At the same time, this mechanism was expected to act as a check on possible abuse of authority by CBI functionaries. This new experiment has a lot to commend for itself.

In specific terms, the CVC is yet another forum for the common person to bring their complaint of corruption to the attention of the appropriate department of the Government, or by the CBI itself through a preliminary enquiry, or by registration of a Regular Case (RC). This function of the CVC enlarges the network of information available to the CBI and thereby helps to broaden its operations. Moreover, it lends certain credibility and quality to information that requires CBI verification, because the CVC officer applies their mind to such information before passing it on to the CBI.

One more feature of the CVC that sharpens anti-corruption work is the discussions that the Commission holds with CBI investigators on select cases referred to it by the government for advice. On such occasions, the CBI officials will have to justify their conclusions in an investigation, or else the recommendation (either for prosecution of a civil servant in court, their arraignment before a departmental enquiry authority or for closure of a case for want of sufficient evidence) could be overturned by the CVC while forwarding its own recommendation to the government. This procedure assures that a CBI investigator will have to be objective and thorough in their investigation, and that only quality cases are pursued for action. In my view, this enhances both CBI performance and accountability.

F. Transparency in Anti-Corruption Work

The CVC has its own website that packs a lot of information on the crusade against corruption. The site has recently posted the names of senior civil servants who have come to the adverse notice of the Commission. This action has generated an animated public debate and has received wide media attention. The CVC has also directed all federal government offices to display prominently a board to the effect:

"DO NOT PAY A BRIBE. IF ANYBODY ASKS FOR A BRIBE, COMPLAIN TO THE CVO/CVC". This is a novel experiment that aims at exerting considerable psychological pressure both on the bribe-taker and the bribe-giver. It further seeks to empower the public through transparency.

G. Mobilising Public Opinion

The CVC's focus on building public opinion in favour of rooting out corruption in the services is gratifying. Through lectures to a cross-section of the public, the CVC has been spreading the message that without the community's active cooperation, no anti-corruption campaign can succeed. An attempt has been made to involve the youth and the Non-Governmental Organizations (NGOs) in the country in this endeavour. An appeal has been made to draw on the support of bodies such as the Confederation of Indian Industry (CII), Federation of Indian Chamber of Commerce and Industry (FICCI) etc, which represent the private sector, the quality of whose interaction with the civil service at all levels is crucial to tackling corruption in government.

V. THE FUTURE

The future of anti-corruption work in India is directly linked to the role of government in the lives of people. If this shrinks, as it is expected to in India, the scope for corruption by public servants should correspondingly minimize, although new forms of deviance could emerge. In the context of the government's focus on privatisation and globalisation, there is a definite prospect of the average civil servant having much less say in economic decision making. This could greatly affect the quantum of corruption. Nevertheless, for the present, this is a knotty problem that requires dexterous handling by those heading the administration in India.

Several experiments in the past have proved only modestly effective. As a result, in the language of the CVC, corruption has become "a high profit, low risk" enterprise in the country. More than anything, there appears to be a need to tackle the mindset that has, over the years, afflicted the administrative culture and placed a premium on sloth and lack of objectivity. It is widely believed that new measures, such as according statutory status to the CVC through suitable legislation; greater autonomy to the CBI, including a minimum tenure for its Director, and mobilising NGOs and the youth in building popular opinion against administrative corruption, could pay rich dividends in course of time. There is the hope that there will be increased judicial support of these new strategies.

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ANNEXURE A

STATEMENT OF COGNIZABLE CRIMES REGISTERED, AND THEIR DISPOSAL BY ANTI-CORRUPTION AND VIGILANCE DEPARTMENTS OF STATES AND UTS UNDER THE PREVENTION OF CORRUPTION ACT AND RELATED SECTIONS OF THE INDIAN PENAL CODE DURING 1997

Pending investigation from previous year	1	3972
Cases registered during the year	2	2788
Total cases for investigation	3	6722
Cases investigated	4	5486
Cases not investigated or investigation dropped	5	335
Cases transferred to local police	6	23
Cases declared false etc during the year	7	95
Cases charge sheeted	8	1586
Cases pending dept. sanction for prosecution	9	1000
Cases sent for trial and also reported for dept. action	10	657
Cases reported for regular dept. action	11	124
Cases reported for suitable action	12	31
Cases in which charge sheet was not laid but final report submitted	13	400
Cases pending investigation at end of year	14	4573
Cases resulted in recovery or seizure	15	257178
Value of property recovered/seized (in Rs.'000)	16	149369
Percentage of cases charge sheeted to total cases investigated	17	28.9%
Cases pending trial from the previous year	18	8019
Cases sent for trial during the year	19	1766
Total cases for trial	20	9371
Cases withdrawn/discharged or otherwise disposed of	21	60
Trials completed during the year	22	875
Cases convicted	23	296
Cases acquitted or discharged	24	603
Pending trial at the end of year	25	8569
Percentage of cases convicted to trials completed	26	33.8%
Total amount of fine imposed during the year (in Rs.'000)	27	5751

(Source: *Crime in India 1997*, National Crime Records Bureau, New Delhi).

ANNEXURE B

STATEMENT OF PERSONS ARRESTED IN COGNIZABLE CRIME CASES UNDER THE PREVENTION OF CORRUPTION ACT AND RELATED SECTIONS OF THE INDIAN PENAL CODE IN STATES & UTS DURING 1997

Persons in custody/bail during investigation at beginning of year	1	3798
Persons arrested during the year	2	3603
Persons released by police/court before trial	3	226
Persons in custody/bail during investigation at end of year	4	3853
Persons in whose cases charge sheets were laid	5	27732
Persons under trial at beginning of year	6	12825
Total persons under trial	7	1416
No. of cases withdrawn or otherwise disposed of	8	588
Persons in custody/bail during trial at end of year	9	12573
Persons in whose cases trial was completed	10	1047
Persons convicted	11	355
Persons acquitted	12	733
Percentage of persons convicted to trials completed	13	33.9%
Persons reported for regualar dept. action	14	212
Persons reported for suitable action	15	163
Persons punished departmentally		
• Dismissed from service	16	9
• Removed from service	17	3
• Awarded other major punishment	18	53
• Awarded minor punishment	19	64
Gazetted or equal status officers involved in public undertakings		
• Group A officers	20	185
• Group B officers	21	266
Non-gazetted or equal status officers involved in government or public undertaking	22	2568
Private persons involved	23	493

(Source: *Crime in India 1997*, National Crime Records Bureau, New Delhi).

STRENGTHENING INTEGRITY: THE IMPORTANCE OF TRANSPARENCY AND ACCOUNTABILITY IN ECONOMIC SUSTAINABILITY

*Tunku Abdul Aziz**

I have chosen to discuss strengthening a national integrity system because integrity has an important bearing on our social, political and economic wellbeing. Each year, my organisation, Transparency International (TI), publishes its Corruption Perceptions Index.[1] The index is based on the perceptions of the international business community about the levels of corruption in the countries in which they operate. For a country to be included in the TI Corruption Perceptions Index in any given year, that country must have been the subject of at least 3 or more separate surveys. Eighty-five countries were included in the 1998 TI-CPI. How did the South East Asian group of countries fare? Singapore was placed at number 7, Malaysia at number 29, South Korea at 43, the Philippines at 55, Thailand at 61, and Indonesia at 80. The bigger the number, the more corrupt a country is perceived to be.

Many detractors are quick to dismiss the index as being of no real significance. It is interesting to note, however, that the countries which are facing the greatest economic turmoil today are those perceived by the international business community to be among the most corrupt. Indonesia, South Korea and Thailand are on IMF life support systems, while the Philippines has been kept afloat by the IMF and the World Bank, on and off, for the last 35 years or so. On the other hand, Singapore, once described by Habibie as " a little red dot on the map" was perceived to be among the least corrupt in the world. It has survived this crisis relatively unscathed. I leave you to draw your own conclusions about these different countries and the relevance of the TI Corruption Perceptions Index.

While we may not always like the way we are perceived, particularly by the international business community, we have to agree that although their perceptions may indeed have no basis in fact, they are, nevertheless, real. Their effects on our regional economies have been devastating, to say the least. How have these negative perceptions come about? Have we not, in this region, been mismanaging our economic and financial affairs, and totally ignoring best practices? What our foreign investors and partners have seen of the quality of corporate governance in our part of the world has given them neither the level of comfort nor the degree of confidence they require for the protection of their investments in the long term.

For a start, the countries in this region, almost without exception, consign transparency to the back seat. The lack of transparency in the disposal of public assets through privatisation is causing concern and disquiet. Equally worrying has been the practice in many countries of awarding mega-infrastructure and other contracts on the basis of closed door negotiations, rather than the fairer, and more democratic, open bidding. What about ready access to information and the

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[1] For the Corruption Perceptions Index, please see our website <http://www.transparency.de/>.

blanket use of the Official Secrets Act? All this, in a country such as my own that is promoting information technology through the Multi-Media Super Corridor as an article of faith!.

It is this cavalier attitude to best practices in both the privatisation and public procurement procedures that has given rise to the expression "crony capitalism." Long before Thatcherism and privatisation ever became fashionable, another Tory leader, Edward Heath, described the sort of behaviour we now speak of as the "unacceptable face of capitalism." Both these expressions share a common characteristic - transparency and accountability - the two important pillars of good governance, do not form any part of the policy equations of many of the governments of Asian countries. Therein, I believe, lies the root of so many of our current economic and financial problems.

Now, let me say straightaway, that corruption is not an exclusively Asian contribution to civilisation. The developed nations of the world, including Japan, are themselves replete with scandals, great and small, that will make your hair stand. Worse still, until the recent adoption of the OECD Convention prohibiting the bribery of foreign officials, countries such as Germany gave tax breaks to those of their companies that had resorted to bribery in order to win overseas contracts. The demand side of corruption is fairly well documented; TI is now focusing on the supply side. Corruption, as my Minister for International Trade and Industry once said, was like the tango, because you need two people to dance it. I agree with her, but I have to say in all fairness, unlike the tango, there is nothing elegant about corruption.

It is lack of confidence in the way some of us continue to manage our economic affairs that is apparently the cause of the jitters in the market place. If this is true, and I believe it is, then quite obviously the common sense thing to do is to reverse, at once, negative foreign investors, and for that that matter, domestic investors perceptions about our national integrity. How do we go about restoring confidence? Can we step aside and leave governments to put matters right? The answer, I am afraid, quite simply is, no!. This is because, even with the best intentions in the world, most governments, including that of my country, find themselves falling short of the level of political will required to finish the job properly. And without the support of all sections of society, working as coalition partners to address the issue of confidence building as part of a long-term strategy to develop and strengthen our national integrity systems, the task is an impossible one. The empowerment of civil society and other components of our population, so that they can all play their part in rebuilding our shattered national credibility, is crucial to the success of this effort.

You and I, ordinary men and women, the corporate sector, and civil society need to be directly involved in this damage control operation because national integrity is too precious a part of our democratic values to be left to the tender mercies of politicians. Society as a whole must be an active "custodian" if good governance is to become a reality in our countries. Without accountability to society, and transparency in government, as well as in the private sector, and without integrity in national life, sustainable human development (of the level and quality to which we aspire) has little hope of finding its true expression. Sadly, in our Asian political tradition of "Father Knows Best", these apparently heretical thoughts will probably not sit too well with some people in power in your country, or for that matter, mine. I am not here to dispute the mandate and legitimacy

of elected governments, but...

Unfortunately, experience elsewhere has shown all too often that even enlightened governments tend to forget that the legitimacy they enjoy is derived from an unspoken social contract with the people. In return for the right to govern, a government agrees to honour and defend the constitution. By reason of this contract, an elected government must be prepared to subject its official behaviour, for example, to public scrutiny and to be held totally accountable for its actions to its constituents. By implication, the mandate given must be applied to achieving one object only - to put, as James Wolfensohn, the President of the World Bank says, "the interests of the many over those of the few". It is under a moral obligation, in carrying out its functions, to adopt universally recognised and accepted "best practices", consistent with the economic, social and moral needs of an ethical and caring society. In other words, good governance is a price that a responsible government is be expected to pay, and pay willingly, for the sacred privilege and trust it enjoys. It goes without saying that the principle of trusteeship is central to the whole concept of stewardship, both in the governance of a nation, as well as (in the case of the private sector) the management of public companies.

I turn now to the role of the private sector, specifically, in promoting corporate transparency. In his paper 'Civil Society in the Fight Against Corruption', presented at the 8th International Anti-Corruption Conference in September, 1997 in Peru, Dr. Peter Eigen, Chairman of Transparency International, after arguing that it is governments that have a formal responsibility to reform national and international integrity systems, goes on to say; "*The private sector has a unique input to make. It is the dominant engine of the economy and an effective anti-corruption campaign can hardly be sustained against the opposition of the corporate community.*"

Let no one underestimate the power for good that the private sector can wield, if it so chooses. It is, therefore, encouraging to see that the private sector in many of our countries is beginning to be concerned about the colossal damage done to our national economies and prestige by corruption, a word defined by Transparency International as the "abuse of entrusted power for private profit." This definition includes also corrupt practices within the private sector community itself. It is entirely proper that the desire to reform and bring about transparency and accountability in the way we do business has come, in this case, from within the corporate community.

The wide-ranging institutional reforms being undertaken, for example, by the Securities Commission and the banking sector in my country, and no doubt other Asian economies as well, encompassing all of the important areas requiring reform, such as the desirability of developing a corporate disclosure policy, the importance of adopting much greater transparency in corporate financial reporting, the need for better banking practice and regulation, and the need to ensure that there is a clear understanding of what international institutional investors expect and want from the companies in which they invest, are obviously all steps in the right direction. These are only some of the examples of the hard-nosed, practical approach that the corporate sector is apparently capable of bringing to bear, as part of its own reform initiatives, on the economic and financial problems afflicting our countries today.

One question is should we not, perhaps, have bolted the financial stable doors

before the international investors had time to make a dash for greener pastures? It is, of course, pure conjecture, but if we had taken the trouble to recognise their concerns about the way we managed our businesses, might we have helped to stem the tide? Perhaps, but the important thing is that the various individual, as well as the collective initiatives on sustainable corporate governance, appear to confirm a long-held suspicion that we ourselves were not entirely happy with things as they were, and that we wanted to change our business culture in a way that foreign, as well as local, investors might reasonably expect that the field on which they would be invited to play the "money game" would not only be level, but also guaranteed to be free of hidden traps; and that the goal posts would not be shifted while the game was in progress. Investors value predictability and detest uncertainty.

The current crisis is, in many ways, a blessing in disguise. This period of economic downturn has given us, the government and the private sector alike, an excellent opportunity to look inwards. This should be a time for introspection, a time to search our collective soul, a time to ask all the right, but difficult questions, to challenge operating systems, policies and procedures hitherto accepted without a murmur, irrespective of their merit or virtue. It is also now the time to ferret out the real, and not just the politically convenient, reasons for our current economic condition and, dare I say, stop blaming the likes of Mr. Soros, as my Prime Minister so often does, because, for the most part, the problems are of our own making and he is only doing what he does best - finding chinks in our financial and economic armour and cutting us down ruthlessly and efficiently. That is the name of the game. I believe that while external influences are important, they are only as strong as our internal weaknesses. We must, therefore, strengthen our systems and institutions.

This coming to terms with reality will, I am sure, help strengthen our resolve and determination to address, in a business-like fashion, the many issues and apparent distortions and contradictions in our economic management that have brought about all those negative perceptions in the first place. The challenge before us is real, and so is the world we inhabit. That challenge (which will, without doubt, test the true measure of our wisdom and maturity) must be taken up if Asia is not to be remembered merely as a footnote when the economic and social history of this century comes to be written.

It is well to remember that the globalisation of our economies means only one thing; the rules are no longer ours to lay down and manipulate according to our mood. We either play by the new global rules, which demand of us much greater transparency and accountability than we were used to in the past, or remain, at best, mere spectators on the sidelines. There is no halfway house. We are either in or out of the global economic game. As there is really no viable alternative, it makes enormous sense to put our house in order, get our act together, and conform to globally recognised best practices.

We have in the last year or so been continually reminded by leaders that "Our economic fundamentals are strong". Accepting that they are indeed as strong as the authorities say, the question worth repeating is: why was it that we were so savagely and mercilessly attacked, leaving us in such a frightful economic and financial mess? The truth of the matter is that investors had lost confidence in our systems and institutions and decided to pull out. They had seen too many instances of intimate relationships between the

government and certain select groups within the private sector. In the case of my own country, this pattern of economic behaviour goes under the rather grand name of Malaysia Inc., which, in the minds of many people, rightly or wrongly, is nothing more than a convenient formula for unfettered cronyism and abuse of public power for private gain.

All of these might have been perfectly harmless and innocent, but for the fact that so many deals have been struck under circumstances perceived to be less than innocent. In the absence of transparency, and given the scarcity of authoritative, accurate and timely information, is it any wonder that the good, old-fashioned grapevine or the equally old-fashioned bush telegraph is winning the battle for information hands down?

In many countries around the world, the demand for the "democratisation" of information has assumed battle cry proportions. The information age has arrived, and societies that are unwilling to accept this new reality, as part of the global business equation, are inflicting serious economic injury upon themselves. The floodgates of global information are opening, and no power can reverse the process.

We Malaysians were upset that foreign investors failed to recognise our special financial economic position. With our eight percent annual growth rate for nearly two decades, foreign investors had the cheek to lump us together, somewhat unceremoniously, with the likes of Thailand, Indonesia and the Philippines. We wondered aloud about those ill informed, somewhat naive investors/ speculators (the words were used interchangeably) who did not see the inherently strong fundamentals underpinning our political and economic system. Our fundamentals notwithstanding, they perceived (again rightly or wrongly) similar unhealthy trends in all of the countries of East Asia. Some of the countries of ASEAN were home to some of the world's greatest proponents of Asian values. Sadly today, these values are seen in reality as part of a morally indefensible and decadent heritage, one grounded in complete and utter disdain for transparency and accountability in the management of those matters that have "public interest" implications.

In retrospect, Asian values were used to justify excesses in both human and economic terms. They became part of a political culture that demanded complete acquiescence and conformity, regardless of the damage to the human spirit and enterprise. Happily, both Dr. Mahathir and Mr. Lee Kuan Yew are now silent on the much-touted virtues of the Asian values that, according to them, had much to do with the Asian economic miracle. So much for self-deception.

Recognising as we do the important role of the private sector in national economic development, it is entirely proper that we should, as part of our quest for corporate transparency, consider seriously the urgent need to develop a national code of business ethics to regulate our business transactions, both within our own country and with the outside world. Such a code of ethics has to have a clear set of objectives, and must, among other things, include measures to combat extortion and bribery in business transactions. After all, the whole purpose of transparency is to reduce opportunities for corrupt practice in society as a whole. The ICC (International Chamber of Commerce), the Paris-based world business organisation, issued an important and far reaching policy paper, Document No.193/15 in 1996, setting out actions that needed to be taken by

"international organisations, governments and by enterprises, nationally and internationally, to meet the challenging role of greater transparency in international trade." All of us have a major contribution to make to the process of building and strengthening confidence in the totality of our national integrity systems.

In February last year I visited Thailand on a special Transparency International mission to assess the impact of corruption on the state of the economy. It was refreshing to hear the views of a large cross-section of business, professional, academic and media leaders who, without exception, all agreed that the absence of an integrity system both in government and the private sector had contributed enormously to their current problems. Refreshing because of the candor with which they discussed and analysed the role of corruption in bringing about the collapse of their economic base. More important was a willingness, on the part of the Thais, to find a solution and take the bitter pill, if that was required, in order to put the country back on its feet. I am pleased to note that international perceptions about Thailand are improving each day. Thailand, a proud country, is not too proud to admit where it had gone wrong.

In Bangkok I was privileged to be invited to attend the first annual lecture organised by the Asia-Europe Foundation and delivered by Khun Anand Panyarachun on 'Good Economic Management and Governance'. Asia's best known democrat and a man of the highest personal integrity, Khun Anand, two-time Prime Minister of Thailand who gave his country what is regarded as the best an anti-corruption national constitution anywhere in the world, observed that it had to take a financial crash to drive home the point that many of the Thai institutions were ill-equipped to operate effectively in the global economy. He said that in the case of his own country, the integration into the world economy was far from smooth. For example, while the Thais adopted readily enough Western-style capitalism, this had created an internal contradiction because they continued to retain their traditional system of patronage networks, a system built on personal connections to allocate values and resources. While maintaining that personal connections could be innocent, he warned that when they became a factor in public affairs, they could be deadly, because patronage was not based on merit and tended to breed inefficiency and corruption.

Khun Anand recognised that good governance would not bring about some idyllic utopia. In fact, it could be rather messy-the chattering masses could be difficult to satisfy-but he thought this was preferable to the government taking public policy decisions in secret or by a small group of ministers or officials, which in the end would compromise and harm the public interest. He went on to say: *"To avoid such occurrences, the decision process must be transparent and open to scrutiny. The people must be given free access to all information pertaining to public policies and projects"*. Khun Anand, as you might have gathered, does not subscribe to the "Father Knows Best" culture. He obviously believes in the"People Know Best" principle.

It is only through full disclosure of all relevant information that the public could reasonably be expected make informed judgements and decisions about the matters that affect their lives. Access to information would translate into greater freedom of information across the national spectrum. I see in freedom of information a real victory for transparency and accountability, because where timely and accurate information is readily accessible,

corruption is deprived of oxygen. Information that is freely available is corruption's worst enemy. Freedom of information will enable the people to judge whether the leaders they have elected are looking after "the interests of the many over those of the few" to borrow, once again, the words of James Wolfensohn.

In conclusion, let me just say this: the fight for good governance is not an easy one. It would be naive in the extreme to suggest otherwise. It has become a major global concern because, as Nobel Peace Laureate, Oscar Arias Sanchez of Costa Rica, reminds us, *"Powerful financial organisations have globalised corruption as an accepted tool of business; the fight against corruption must be globalised as well. If people do not act to preserve their democracy, if they lack civic virtue and the commitment of their government, then democracy will fall prey to the vulture of corruption."* Let us therefore ensure that our institutions and systems are strengthened. We must guard their integrity jealously. Corruption takes over when we allow our national institutions and democratic systems to be subverted by unprincipled politicians determined to abuse "entrusted power for private profit".

INTERNATIONAL CASE STUDY : STAMPING OUT CORRUPTION IN MALAYSIA

*Tunku Abdul Aziz**

I. PUTTING CORRUPTION IN A HISTORICAL CONTEXT

In 1957 when Malaya[1] became independent, corruption was hardly an issue. Both British and Malayan officers maintained the highest standards of integrity and the proud traditions of the Malayan Civil Service and were, on the whole, incorruptible. They lived well within their means. Ten years on, in 1967, the Government, sensing a gradual shift of attitude towards corrupt practices, an attitude that could be fairly described as ambivalent, felt constrained to create a special bureau to combat corruption, the forerunner of today's Anti-Corruption Agency. As you can see, the ACA has a longer history than, for example, the ICAC of Hong Kong, arguably the most successful corruption-busting organisation in the world today. It all goes to show that age is not always everything in fighting corruption. Political will is!

In my experience, it is impossible for us to even begin to understand the impact of corruption on a country without our being acquainted, however superficially, with that country's social, economic and political background. I make no apology, therefore, for delving a little into Malaysia's recent history, so that we may have a clearer idea of the causes of corruption in Malaysia and the efforts made to curb it.

When Malaya became independent in 1957, it inherited a form of government based on the Westminster model which, with a few local adaptations, remains very much in place. Of equal significance, it also inherited an economy based on British colonial mercantile interests, centred almost exclusively on the export of rubber and tin. Palm oil came a little later. Malaya boasted the most efficient plantation economy in the world, so efficient, in fact, that in the immediate post-war years, Malayan foreign exchange earnings enabled Britain to repay much of its American war debt. It was not for nothing that Malaya was known as Britain's Dollar Arsenal. Economic prosperity, by the standards of Asia, is nothing new to Malaya or Malaysia, as it became later on. But it was a different kind of prosperity, an agriculture-based economy, offering nothing like the opportunities on which corruption was able to thrive in the 1970s.

As a result of the race riots in Kuala Lumpur in 1969 between the Malays and the Chinese, the Government, recognising that economic disparity between the two major races was at the heart of the tension, decided that unless the politically dominant, but economically deprived, Malays were brought into the mainstream of the nation's modern economic life, prospects for lasting peace and economic prosperity would be greatly reduced. The prescribed solution came in the form of massive social and economic engineering, going under the somewhat grand name of

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[1] Malaya became Malaysia in 1963 following the merging of British North Borneo, Sarawak and Singapore with the Federation of Malaya. Singapore was given independence by Malaysia in 1965.

the New Economic Policy or the NEP, for short.

A. Opportunities for Corruption Unlimited

The NEP was to be implemented over a 30 year period. It ran into controversy from day one, and was seen by Western liberals as unwarranted discrimination against a section of the Malaysian population. Its motive, though, was wholly transparent; it did not pretend to be anything other than positive discrimination, in the interest of national unity.

The Malaysian Government's diagnosis was spot on, and the prescribed remedy, painful and unpopular though it was, produced the desired results. Economically, the country took off, and with it came political stability which Malaysia continues to enjoy to this day. In less than 30 years, an agricultural economy was totally transformed, and, apart from a hiccup here and there, the country has not looked back. The lesson that Malaysia recognised, and learnt quickly, was that in a multi-racial and multi-cultural society, extreme economic disparities along racial lines, if neglected, could and would quickly create political and social instability, to the detriment of the democratic values we profess to uphold and cherish.

While the NEP has generally been successful in meeting nearly all of its main social and economic objectives, the creation of dozens of public enterprises to implement hundreds of socio-economic measures (enjoying wide discretionary powers) produced some not totally unexpected results. As with most government-inspired initiatives anywhere in the world, more often than not operating without the benefit of effective central coordination, they soon create enormous problems of their own; the most pervasive was corruption, both grand and petty. In the closing years of the 1970s, corruption had become a factor of quite considerable significance in the national business equation.

Corruption and abuse of power had reached such unprecedented heights that the normally staid The New Straits Times, Malaysia's oldest English language newspaper, was moved to run an editorial on the subject;

> *"There was a time when a Malaysian could indulge in a little smile of condescension when stories about corruption in developing countries - other countries, of course-were detailed. That pride was entirely justified: virtually every aspect of public administration was clean, abuse of power was unheard of, departmental morale was high, public confidence vibrant. Perhaps there was a tendency to take this state of affairs for granted. For whatever reason, the present conditions have called forth a litany of exhortation from the various rulers, the Prime Minister, his deputy, and a number of ministers and departmental heads."*

Malaysia had taken the first eager step on the slippery slope of national degradation.

II. GOVERNMENT ANTI-CORRUPTION MEASURES

A. The Early Years

As mentioned earlier, the Anti-Corruption Agency was set up in 1967. Its main function was to combat corruption, previously handled by the police. It was thought that with the growing sophistication of the economy, specialists were required to deal with white-collar crimes, including corruption. In the initial

years, the ACA, with full government backing, notched several notable successes, including the prosecution and conviction of several political leaders and senior civil servants.

Harun Hashim, the first Director of the ACA, and arguably the most effective in a long line of dedicated officers, recalled recently that his first duty was to know the extent of corruption in the country - what, where and who. Let him tell us what he did in his own words;

> *"Initially, pleas for information on corruption from the public, with the assurance that their identities would be kept a secret, did not meet with much response. The people were afraid of being victimised by the very people they had bribed. Bribery is a secret transaction between two individuals and if the secret is not kept, it must have been revealed by the giver. Victimisation is a natural consequence. But I had to know. So I established P.O Box 6000. The public were invited to write to me on anything they knew about corruption in government, or by any of its servants, without having to disclose their identity if they did not want to. Postage was free. The response was tremendous. Sometimes I received about 200 letters in a single day from all over the country. I read them all. I was then able to implement a plan of action of instituting measures to prevent corruption (the primary objective of the Agency) and where there was sufficient evidence, to sanction criminal prosecutions. The public would not have kept writing to the Agency if they did not see any result. Indeed the Agency could not have functioned without the assistance rendered by the thousands of anonymous letter writers who gave vital information."*

I have quoted Harun Hashim at some length because there are important lessons to be learnt from his pioneering work. The most important lesson is that combating corruption requires public support and cultivating public confidence in the system is crucially important. This involves, among other things, guaranteeing an informer that their anonymity will not be compromised, and they will not be victimised. Every scrap of information is important, nothing should be consigned to the waste paper basket without checking out and verifying the information given. As the saying goes, "nothing succeeds like success", and nothing is more encouraging to the public than a few successful prosecutions. The ACA, under Harun Hashim, was perceived to be free to act. The fact that he also had the power of a deputy public prosecutor was not lost on the corrupt.

B. Methods of Stamping Out Corruption in Malaysia

In the 1970s, when the NEP was installed, the Government intervened actively in economic activities, setting up large numbers of agencies to regulate and control every aspect of commercial and industrial life. Licensing, in particular, was the key instrument used to enforce the new requirements of the NEP. It is said that the British invented the red tape and the Indians subsequently improved it by tying it up in knots. The Malays, ever resourceful, turned it into a profitable personal revenue service.

Without naming names, the departments of government that exploited the opportunities presented to them by the need to obtain various approvals before a manufacturing license was granted, were those with powers to grant or withhold specific approvals. The approval process

was complicated and extremely time consuming. Several departments were involved and many businessmen were forced by circumstances to oil the wheels of bureaucracy. I speak from personal experience as a former businessman of the procedures involved, though not, mercifully, of having to bribe anyone. Foreign investments soon dried up, and the Government, recognising the need to reduce opportunities for corrupt practices, streamlined the procedures and introduced what came to be known as a one stop approving authority. The new system worked like magic; foreign, as well as local investments, poured in and, the rest, as they say, is history.

In time, various administrative reforms were put in place to improve civil service discipline. Among the more visible ones:

(i) Clocking-in and clocking-out, involving every member of the civil service, the police, the armed forces and members of the cabinet, including the Prime Minister. Even judges are not exempt.

(ii) The wearing of name tags by civil servants so that they can be identified.

(iii) The introduction and improvement of the desk file and office procedures manuals.

These measures were intended to improve time management, accountability and facilitate work and decision-making processes. Subsequently, other innovations, including quality control circles, total quality management, clients' charter, and more recently, the ISO 9000 were introduced. While the emphasis has been on making the civil service more efficient, attention has also been given to improving the conduct and discipline of public servants (a recent Hong Kong based survey put Malaysia just behind Hong Kong and Singapore in a public service efficiency poll. The comparison of two tiny city states with vastly different problems, is not, in my view, strictly valid. Malaysia is placed ahead of Japan, Taiwan and South Korea in terms of efficiency).

In 1993, the Public Officers (Conduct and Discipline) Regulations came into force. Disciplinary Board Regulations were introduced. In December 1994, the Judges' Code of Ethics was put in place, followed in 1995 by the adoption of Ethics in the Administration of the Institution of His Majesty the King. The recently retired head of the Anti-Corruption Agency, Dato' Shafee Bin Yahaya, believes that *"all these measures have made the Malaysian Civil Service more efficient and less prone to corruption. This has definitely contributed towards Malaysia's high rate of growth in the last eight to nine years."*

III. FURTHER MEASURES AGAINST ABUSE OF AUTHORITY & FINANCIAL MISMANAGEMENT

As early as 1988, the government recognised the need for a high-level national body to address weaknesses in public service financial administration. For this purpose, a Special Cabinet Committee on Government Management was set up under the chairmanship of the Minister of Finance. Matters highlighted by the Auditor-General, the Anti-Corruption Agency and the Treasury, are given serious attention, and remedial action taken. Compliance by heads of departments is crucial to the success of the Committee's work. Creative switching from one expenditure head to another goes on all the time, and eternal vigilance is the name of the game as far as the Committee is concerned.

In Malaysia, members of the public who are aggrieved by bureaucratic misconduct may take their complaints to the Public Complaints Bureau or PCB. The PCB comprises of the Director-General of the Public Services Department, the Director-General of the Anti-Corruption Agency, the Senior Secretary-General of the Prime Minister's Department and the Director-General of the Malaysian Administrative Modernisation and Management Planning Unit. The PCB is responsible to the Chief Secretary of the Government, the country's top civil servant. To date, more than 70% of the complaints received have been successfully resolved.

A. Conflicts of Interest in the Public Service

The Federal Constitution prohibits a member of the Executive Council from engaging or taking part in any decision of the Executive Council respecting any trade, business or profession which may have a bearing on their pecuniary interests. Members of the Administration and Public Officers who abuse their position in order to obtain financial or other advantages will be subject to criminal proceedings, as provided under the Emergency (Essential Powers) Ordinance No. 22/70. The Ordinance has been enacted *"to widen the campaign against bribery and corruption, and now makes a penal offence any practice that comes within the definition of corrupt practice in the Ordinance, which previously would have escaped the net of the Penal Code*", Mr. Justice Chang Min Tat in a Federal Court ruling. In practice, the Ordinance has proved to be an important instrument in preventing corrupt practices among members of the Administration, Members of Parliament, both State and Federal, as well as public officers. *"Over the years, the Anti-Corruption Agency has been fairly successful in taking action against the corrupt practices of public officers and politicians...."*, Director General, ACA, August 1997.

IV. INTEGRITY - A NEW FOCUS

A. New Legal Framework & Greater Resources

In April 1997, the Government took another important step to develop and strengthen its own integrity system by setting up a high-powered Cabinet Committee on Integrity in Government Management. It is significant that the Government has chosen to embrace integrity, a word first used widely in the context of good governance when TI started to be active in Malaysia with a series of integrity seminars, as part of its anti-corruption public awareness programme. Coalition building is TI's strong point; working with individuals, civil society and organisations, both government as well as the private sector, fighting the same battle. In Malaysia, we have been able to develop an active, and effective, professional relationship with the Anti-Corruption Agency.

To give practical effect to public concerns about the damage caused by corruption to national life and prestige, the Government passed the Prevention of Corruption Act 1997, the most important weapon in the Government's legal arsenal with which to deal with the new, more sophisticated forms of corruption the country was facing. For the first time, the ACA was given wider investigative powers. Other features new to the corruption-busting scene are:

(i) Minimum of 14 days mandatory imprisonment and a ten thousand ringgit fine or 5 times the amount or value of the bribe received, whichever is the higher.

(ii) Requiring a suspect to explain how s/he has acquired their assets to the satisfaction of the Public Prosecutor.

If s/he fails to do so, s/he will be presumed to have acquired their wealth by corrupt means. The court may order forfeiture of the assets in such circumstances.

As part of its ongoing "cleaning up" process, the government has established, in departments and agencies in a position to engage in corruption, a departmental Committee on Integrity, Quality and Productivity. Quite apart from improving efficiency and transparency, the inculcation of "high moral values and good work ethics" is an important element in preventing corruption in the public service. The ACA has been revamped. Its functions have been expanded, and it is now required to:

(i) Examine the practices, systems and procedures of public bodies in order to facilitate the detection and discovery of corrupt practices and to secure such further improvements as to make it difficult for corruption to rear its ugly head.

(ii) Instruct, advise and assist any person, upon request, on ways in which corruption can be prevented.

(iii) Educate the public against corruption.

(iv) Enlist and foster public support in combating corruption.

The ACA is committed to working in partnership with civil society, and is prepared to ensure, under the law, that members of the public reporting corruption cases, are protected against victimisation. In this context, the Director-General has said "*Through public support, cases of corruption could be brought to light, the perpetrators prosecuted, and punishment meted out accordingly. The ACA also believes that members of the public will be more inclined... to come forward to give information on corruption and other malpractices when their identities are concealed and protected.*"

The relevant provision in the Act states:

> "*Except as hereinafter provided, no complaint as to an offence under this Act or any prescribed offence shall be admitted in evidence in any civil or criminal proceeding whatsoever, and no witness shall be obliged or permitted to disclose the name or address of any informer, or state any matter which might lead to his discovery.*"

I have taken you through a maze of methods, measures and legislation which have been put in place to minimise opportunities for corruption in my country. You may well ask, at this juncture, how effective the various measures have been in stamping out corruption in Malaysia?

V. CONCLUDING REMARKS

The measures I have described, unfortunately, have not succeeded in stamping out corruption. No anti-corruption measures known to man, and no country in the world, can claim to have succeeded in stamping out corruption. All that we can hope to do is contain it, and make corruption a risky and an unprofitable business.

That is precisely what Malaysia has been doing since the ACA was first established in 1967. The seriousness with which the Government views corruption is evident in the range of legal and administrative measures and resources that it has put at the disposal of the ACA. The political will is apparently there, but it is important for the Government to accept that corruption is not just about

bribery; corruption is about the abuse of entrusted power for personal profit, a definition widely used by Transparency International. Corruption thrives in the absence of transparency and accountability. A grave shortcoming in the Malaysian anti-corruption mechanism is that the ACA is not an independent commission. It is a government agency, and members of the public suspect its impartiality, reporting as it does to the Prime Minister.

Happily, for the present at any rate, the Government has taken to heart the lessons of good governance, and the days of crony capitalism, the misuse of public funds for rescue operations of politically connected corporations and negotiated contracts are numbered. Malaysia, therefore, remains a good place in which to do business precisely because corruption, unlike in many countries, is not a major factor in our business equation.

CURRENT PROBLEMS IN THE FIGHT AGAINST CORRUPTION AND SOME POSSIBLE SOLUTIONS: US PERSPECTIVE

*Anthony Didrick Castberg**

I. INTRODUCTION

Official corruption occurs and is fought at several different levels of the criminal justice system in those nations using a federal model. The levels may generally be labeled as enforcement, prosecution, and trial, which in the US occur at both the federal level and the state level. There are fifty-one criminal justice systems in the US. This decentralization offers perhaps more opportunities for corruption, but at the same time provides more agencies to fight against corruption. The US has law enforcement agencies at the federal level[1], the state level[2], the county level[3], and the local level[4]. Prosecution takes place at the federal level (US attorneys), the state level (attorneys general), and the county level (prosecutors)[5]. Trials take place at the federal level and the county level, although the courts in a county are generally state courts and the judges, state judges. This rather complicated system may sound strange to those unfamiliar with the US system of justice, and in fact, very few citizens of the US have a good understanding of it.

This system of government was created during the Constitutional Convention that met in Philadelphia, Pennsylvania, in 1787. The delegates to the Convention originally met to revise the Articles of Confederation, which had established a league of states with a relatively weak national government, but ended up writing an entirely new document that divided the powers of government between the national government and the states. Thus, the US became a country with some powers reserved to the national government, some powers reserved to the states, and some powers that are concurrent. Article I, Section 8, gives Congress the power to establish tribunals (courts) inferior to the Supreme Court, while Article III delineates the powers of the judicial branch of government. The power to establish state courts and state criminal codes was left to the states. But because many of the more influential figures of the time felt that the Constitution established a national government that was too strong, there was great debate about ratification, with the major factions being the federalists (who supported the Constitution) and the anti-federalists (who wanted the power of the national government limited). In a compromise that allowed ratification to take place, the federalists agreed to support amendments to the Constitution that would limit the powers of the national government. These 10 amendments, which became known as the Bill of Rights, were ratified in 1791. Amendments 4, 5, 6, and 8 directly affect the criminal justice process, but until the middle of the 20th century these rights applied almost exclusively to the national government. Through a series of Supreme Court decisions however, almost all of the rights enumerated in the Bill of Rights have been applied to the states through the due process and equal protection clauses of the 14th Amendment. Prior to this incorporation, different standards applied to federal and state law enforcement.

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II. PROBLEMS OF INVESTIGATION

Investigation of corruption depends on a number of variables, the first of which is detection. As official corruption is by definition committed by government officials, its detection may be difficult because of its hidden nature, but also by the ability of government officials to intimidate subordinates who are in a position to reveal the corruption or to threaten the funding of law enforcement agencies which have jurisdiction over them. The federal government and most states have "whistle-blower" laws[6] which protect those who reveal corruption, but there are no protections against retaliation by corrupt politicians against law enforcement agencies who investigate them. Whistle-blowers are responsible for many investigations into corruption, both by providing information directly to law enforcement agencies and by contacting the media, which may launch its own investigation. However information from an informant is only the beginning, as many tips do not result in investigation, let alone conviction.

Official corruption may range from free restaurant meals provided to police officers to bribes paid to high-ranking federal officials by stock manipulators. In the US, many corruption investigations involve illegal contributions made to political campaigns. In such cases, detection is frequently accomplished by agencies created for that very purpose[7], in contrast to other types of corruption that are investigated only after tips provided by whistle-blowers and other citizens. Thus, detection may take place in a proactive or a reactive manner. Regardless of how the alleged illegal activity is detected, a decision must be made to investigate or not. Such decisions should rest solely on sufficiency of evidence, but in practice are influenced not only by evidence but also by the availability of resources[8] and by the political considerations. The resource problem in the US is frequently a function of the federal system and its decentralized law enforcement. While the US has more law enforcement officers per population than most other countries,[9] 60% of all local police departments employed fewer than 10 full-time, sworn officers.[10] Few local law enforcement agencies in the US then have the capability to investigate significant cases of official corruption. Political influences may range from threats of retaliation by those targeted, to fear of exposing community influentials; but it is safe to say that there are virtually always political factors in any decision to investigate official corruption.

There are, of course, legal considerations when undertaking an investigation of official corruption. Law enforcement agencies must observe all constitutional and statutory guidelines, with particular emphasis paid to search and seizure, which may include electronic eavesdropping, and entrapment, frequently an issue in "sting" operations.[11] Law enforcement agencies normally consult with prosecutors on such legal issues. There are 50 different state penal codes, the US Code, and precedent (common law) from appellate courts in each state, federal circuit courts of appeal, and the US Supreme Court, all of which must be considered when undertaking an investigation. Thus, the legal preparation and monitoring of a major corruption investigation is frequently complex and lengthy, and often involves search warrants which must be approved by judges. A successful investigation, therefore, is highly dependent upon adequate resources and the quality of and cooperation between law enforcement, prosecution, and the judiciary. And they are all dependent upon legislation that clearly delineates what constitutes official corruption.[12]

III. POSSIBLE SOLUTIONS

Corruption must be clearly defined in the law, citing specific acts, the elements of which constitute a violation. The example cited above of a police officer receiving a free meal from a restaurant is a typical example. This practice is very common in the US, with some fast-food chains apparently having policies of providing free or discounted food to on-duty police officers. In this corruption? If so, what is the *quid-pro-quo*? What does the restaurant receive in return for the free food provided to the police officer? At best, the restaurant encourages police officers to eat on the premises, thereby affording some form of security. But is this the kind of behavior that should be made criminal?[13] And if so, how much effort should be made to enforce such laws? The law, then, must clearly define what acts are criminal and must make distinctions between breeches of ethics on the one hand and true crimes on the other. Ethical standards can be enforced administratively without invoking criminal sanctions. All government agencies should have standards of conduct, and it is important that such standards be rigorously upheld, as a lack of such enforcement may well lead to violations that are truly criminal in nature.

Redundancy must be built into law enforcement so that the lack of resources will never jeopardize detection or investigation. Jurisdictional jealousies must be put aside in the interests of effective law enforcement, and this may require a higher level coordinating agency. Thought should also be given to an independent agency at both the state and federal levels in a federal system, and at the national level in a unitary system, that specializes in the detection and investigation of official corruption. Governmental agencies themselves should each have a specific internal unit devoted to detection and investigation of corruption, such as the internal affairs units commonly found in US police departments. Finally, law enforcement must be apolitical. Law enforcement agency heads should not be popularly elected nor directly appointed by a political figure, but rather selected by a non-partisan commission of experts in the field, with the commission also deciding whether the head is reappointed.

Law enforcement agencies should be accredited by a national accrediting body which makes periodic visits to the agency, and there should be minimum standards for hiring and training at the state level. Within agencies, recruitment of new personnel and promotion of existing personnel must be done according to strict rules with merit being the only criteria for both. Regular rotation of personnel is also an effective method of reducing the likelihood of corruption. Agencies should also have probationary periods after initial hiring during which time they can assess the abilities of their new employees and be able to fire for cause without civil service protection. Pay must be such that officers do not have to resort to payoffs to support a spouse and children, although it is clear that high ethical standards, rather than pay, are the best deterrent against corruption. Retirement pay should be enough that officials will not feel the need to engage in corruption to prepare for retirement.

IV. PROBLEMS AT THE TRIAL LEVEL

In some nations, investigatory authority rests almost solely at the law enforcement level of the criminal justice system. Where this is the case, the prosecutor relies almost entirely on the police to carry out investigations, making prosecution highly dependent upon the ability of the law enforcement agency in whose jurisdiction the corruption occurred. This issue is discussed in the previous section, but

inasmuch as inadequacies in law enforcement may affect prosecution and therefore the likelihood of conviction, it must be mentioned here as well. In those nations where investigatory authority rests in both law enforcement and prosecution, there is a redundancy that usually enhances the chance of conviction. While virtually all prosecutors in the US have the authority to investigate, lack of resources frequently prevents them from doing so.

There may, however, be poor relations between law enforcement and prosecution, a situation than hinders successful prosecution. There may be corruption and/or incompetence in either or both. And there may be political considerations that affect prosecution. While it is probably true that corruption is more likely to be found in law enforcement agencies than in prosecution, there are exceptions. In Orange County, California, for example, a former deputy district attorney is being held without bail on charges that he was part of a nationwide methamphetamine distribution ring.[14] Prosecutorial corruption in the US is , however, quite rare,[15] and we must be careful to distinguish official corruption from simple law breaking; in the Orange County incident, for example, the deputy district attorney used his official position to obtain information on law enforcement efforts to investigate the ring.

Local chief prosecutors in the US are either elected or appointed.[16] Elected prosecutors may run in either partisan or non-partisan races, while appointed prosecutors are almost always members of the same political party as the person or group who does the appointing. Terms of office of elected prosecutors are usually 4 years, while appointed prosecutors serve at the pleasure of the appointing individual or group. Whenever prosecutors are elected or appointed it is virtually impossible to remove politics from prosecutorial decision-making. Would, for example, a prosecutor approve prosecution for corrupt business practices of a major campaign contributor? Or would a prosecutor prosecute a corrupt member of the cabinet of the mayor who appointed him or her? To what extent will public opinion affect prosecutorial decision-making? Public outcry over a particularly terrible crime may bring about a rush to indict and try a suspect or suspects, and the result may be a poorly prepared case that results in a not guilty plea, the trying of the wrong people, or an ill-advised plea bargain. The failure to obtain a conviction in one high profile case may be a major issue when the prosecutor runs for re-election or is up for re-appointment.

It should be noted that only about 10% of defendants charged with a felony in the US go to trial. The vast majority of cases are settled through a guilty plea by the defendant, almost always as a result of plea bargaining. Plea bargaining involves consideration given by the prosecution in return for a guilty plea, with the consideration often consisting of a reduction in the charges or a sentence recommendation.[17] Plea bargaining is a very low-visibility activity, and except in high-profile cases, is rarely reported by the media. As a result, the public can only evaluate a prosecutor on the basis of a few well-publicized cases rather than on the vast majority of cases handled by the office.

There are no national standards for prosecutors, nor are there standards in most states beyond having been a member of the bar for a specified period of time. Thus, the quality of prosecution varies considerably from county to county. This, coupled with the fact that prosecutors generally earn less money than an attorney in private practice, does not lend itself to having the best legal minds as

prosecutors.[18] Many, if not most, prosecutors however, choose that position out of dedication to the administration of justice rather than out of financial considerations. At the same time, the turnover among junior prosecutors tends to be high in most offices, so that the percentage of career prosecutors in any given office is not great.[19] Many prosecutors' offices in the US, then, are simply not capable of investigating or prosecuting major corruption cases. Because most official corruption is also a federal offense, prosecution is frequently undertaken by US attorneys.

State judges are also either appointed or elected in the US.[20] Regardless of the method by which a judges reaches the bench, however, politics are involved. Terms of office for judges generally range from 4 to 10 years, with the longer terms providing greater judicial independence. Federal judges, by contrast, are appointed for life. As is the case with prosecutors, judicial salaries are not competitive with those in large law firms, so those attorneys who aspire to a judgeship do not do so for economic reasons. As is the case with prosecutors, there are virtually no qualifications for becoming a judge other than having been a member of the bar for a specified number of years (normally 5). Judges in the US are not required to have any training beyond that of law school, and a judge can be elected or appointed to the bench and handle criminal cases without ever having had any criminal law experience. The quality of judicial decision-making, therefore, varies considerably from county to county and state to state.

Defendants in US, criminal cases have the right to a speedy trial.[21] Generally this means that they must be tried within 180 days of being charged.[22] In order to assure the right to a speedy trial there must be a sufficient number of prosecutors, judges and courtrooms. When there are not, there is great pressure to plea bargain, resulting in many criminals receiving less punishment than they would have gotten had they been convicted at trial. If the defendant refuses to plea bargain and the prosecutor must try a case without adequate preparation, the likelihood of a not guilty finding increases substantially, as the state must prove the defendant guilty beyond a reasonable doubt. The alternative is not to charge the suspect until the prosecution's case is solid and thereby run the risk of the suspect's fleeing the jurisdiction. State and local governments can rarely afford the number of judges, prosecutors, and courtrooms that are necessary for the effective administration of justice, so the system is constantly compromised.

There is a tendency in the US to restrict the sentencing discretion of judges. Federal judges must use a sentencing grid that has six criminal history categories along one axis and 43 categories of offense level along the other, while state judges are often restricted by penal codes that specify mandatory sentences for certain offenses or have a "three-strikes" provision.[23] Judges in Hawaii, for example, must sentence a felon to the maximum term as prescribed by law, with the Paroling Authority setting the minimum term.[24] This is part of a "get tough" policy toward crime and a backlash from what many perceive is a tendency on the part of too many judges to hand down lighter sentences than are justified. In some cases, however, light sentences are a function of prison overcrowding.[25] In other cases, the sentences reflect the philosophy of the judge. But without flexibility in sentencing, judges cannot hand down sentences that sufficiently distinguish, for example, between free meals for police officers and payments to police chiefs to overlook methamphetamine laboratories.

Because corruption is such a broad category that encompass a wide variety of criminal acts, it is especially important that the punishment fit the crime. This is not possible when a judge lacks flexibility in sentencing.

V. POSSIBLE SOLUTIONS

Prosecutors must have the legal authority to investigate, an authority shared jointly with the police. Where prosecutors do not have such authority, or where they have it but rarely exercise it, it is not unusual for cases to be returned to the police for further investigation. Because prosecutors must prepare a case for presentation to a grand jury or preliminary hearing, and ultimately for a trial (even if ultimately settled through plea bargaining), their perspective is on admissibility of evidence and proof beyond a reasonable doubt. Police, on the other hand, tend to focus on obtaining evidence sufficient to charge, or a standard of probable cause. Prosecutorial investigation, therefore, should be supplementary to police investigation in order to best use scarce resources. Nevertheless, additional resources will be needed by prosecutors who gain investigatory authority, generally in the form of non-lawyer investigators. In the US, prosecutorial investigators are frequently former police officers.

Election, or appointment by elected officials, of prosecutors necessarily makes the process, and therefore the position, political. The same is true with respect to judges. In the latter case, however, longer terms of office to some extent offset the influence of politics, but this influence can never be completely eliminated. Even those systems combining election and appointment by a commission have not completely avoided politics, but they may hold the key to a better method of appointing both prosecutors and judges. What is needed is a non-partisan commission, perhaps composed of experienced attorneys, which solicits names from the public, evaluates candidates, and makes the appropriate appointments. Members of the commission themselves could be popularly elected. While some may criticize this process as undemocratic and elitist, it must be realized that neither the judiciary nor prosecution is democratic by nature, as decisions may have to be made by both which are not supported by the majority. The judiciary is a check on the tyranny of the majority, the third branch of government which, among other things, protects the rights of minorities. The prosecutor represents the people, not in the same manner as a legislator, but rather as an impartial and relatively independent legal authority. Popularity, then, should not be the criteria for appointment or election of judges or prosecutors but rather independence and legal ability.

Legal ability is not a requirement for appointment or election as a prosecutor or a judge in the US, but prosecutors must be familiar with criminal law and criminal procedure, while judges, because they rarely specialize[26], must be familiar with all areas of substantive and procedural law. This presents the dilemma of seasoned criminal law attorneys facing recently elected prosecutors (who have never practiced criminal law) in a case heard by a judge (who specialized in real estate law before appointment to the bench). There must, therefore, be minimum qualifications for appointment as a prosecutor or a judge. With respect to prosecutors, minimum qualifications should include at least 5 years experience practicing criminal law or one year post-law school training in criminal law and procedure, as well as public administration.[27]

For judges to be truly professional, and therefore free from political influences and resulting corruptive enticement, they must have training above and beyond that of other members of the bar. This training could take the form of post-law school education or an institute dedicated to training potential judges.[28] Because the penal code of each state and the federal government varies, and because criminal procedure also varies from state to state and from the federal system, a national institute for training judges would have to teach principles rather than the law of each state and the federal system. This would be more economical and efficient than having separate training institutes in each state, and would have the added benefit of bringing together potential judges from the entire nation. Specific training in the law of individual states and the federal system could come from an apprenticeship program whereby national institute graduates spend a specified period of time as assistants to veteran judges.

Just as specialized training is important in preparing prosecutors and judges to fight corruption, so too may be specialization within those professions in the handling of corruption cases. Where possible, one or more prosecutors should be assigned solely to corruption cases, and reporting directly to the chief prosecutor. This not only allows dedication to only one type of case, but some degree of independence as well. In smaller offices, however, this may not be possible. One possibility that does not depend upon the size of prosecutors office or court system is to centralize the prosecution and adjudication of corruption cases at the state level, with prosecution handled by a special unit of the Attorney General's Office and adjudication by a court established for that purpose, with branches in the largest cities of the state. The same could hold true for the federal system, with dedicated units in larger US attorney's offices and a court in each federal circuit.

The problem of inadequate resources to provide speedy trials for all who do not waive that right can only be solved by allocating substantial sums of money to the 51 different judicial systems in the US. Any increase in the number of courts and judges would, of course, have to be met by additional prosecutors and public defenders, again a costly proposition. The alternative- more corruption, lighter sentences and dismissal of cases due to 6th Amendment (speedy trial) violations.

Plea bargaining is, at the same time, a standard practice and a hotly debated topic. The system could not operate without it, yet there are acknowledged abuses of it and injustices in its application. It can be particularly controversial in corruption cases, as it leaves prosecutors and judges open to charges of favoritism as well as their own corruption. Part of the problem with respect to plea bargaining is that it is a low visibility process, or a process that lacks transparency, and a process that the public does not completely understand. It is also a problem because it may be used to avoid, rather than as an alternative to, trials. There is very little case law on plea bargaining and it is rarely dealt with in rules of procedure. The solution, then, is to institutionalize plea bargaining while at the same time making it more transparent. There should be specific rules of procedure about plea bargaining and all plea bargains should be judicially approved prior to a formal change of plea. Some plea bargaining involves consideration given to defendants in return for their testimony against collaborators or co-conspirators. This is frequently true in corruption cases, and may result in those guilty of multiple felonies serving no time in prison in return for testimony against high ranking corrupt officials. While this may not sit well with the public, it is essential for the effective

administration of justice that such bargaining not remain hidden. Finally, all parties to the case, including victims, should have the opportunity to make formal input on any and all proposed bargains.

VI. MEASURES TO PREVENT CORRUPT ACTIVITIES OF PUBLIC OFFICIALS

Many of the suggestions discussed above constitute measures that would help to prevent corruption among public officials, but there are more that should be considered. The primary focus above has been on the criminal justice system, but measures are necessary to deter corruption among all public officials. The primary measures are laws and codes of ethical conduct. In the US there are numerous sections of the US Code which contain such provisions, while at the state level there are generally codes of conduct and statutes prohibiting bribery and other abuses of power.[29] In short, then, there is no shortage of laws prohibiting official corruption nor codes of ethical conduct. But do they serve as effective deterrents?

Deterrence is difficult to measure, although one study found that it is a function of likelihood of conviction and length of prison sentences.[30] Bribery of, or acceptance of a bribe by, a public official, for example, is punishable under 18 USC §201 by a fine and up to fifteen years in prison. Is the fine and prison sentence a deterrent to bribery? The answer, of course, depends upon the personalities of those involved, the amount of money of the bribe, and the likelihood of detection and conviction. It very likely deters some and does not deter others. So the question is whether increased efforts at detection and prosecution accompanied by increased penalties will deter more than the current penalties, and whether the increased costs associated with these efforts will be justified. There are other methods, of course, that might not directly involve deterrence but would be more effective in reducing corruption.[31]

Susan Rose-Ackerman suggests the following approaches to reduction of corruption:[32]

1. Program elimination (of corrupt programs)
2. Privatization (of current government services)
3. Reform of public programs (revenue collection, regulation, social benefits)
4. Administrative reform (make administration competitive)
5. Deterrent effect of anti-corruption laws (increase deterrence and reward whistleblowers)
6. Procurement systems (improve the efficiency of government purchasing)
7. Reform of civil service (substitute civil service for patronage and ensure that it is apolitical)

Rose-Ackerman's suggestions tend to be societal in scope, and while institution of such reforms would clearly reduce corruption, their implementation would be difficult, costly and lengthy. This is not to say that the effort should not be made, but rather that initial reforms must start at the micro rather than the macro level. Most of the recommendations I suggest above can be made with a minimum of disruption and political controversy, and a modicum of money, but allow me to suggest several more.

Just as punishment may deter corruption, rewards may achieve the same result. Awards or salary increases could be given to employees and officials who detect and report corruption and to those who themselves are examples of integrity and honesty. Supervisors should be held

more accountable for the actions of their subordinates, so that both rewards and punishment would flow to supervisors as well. Strict laws regulating post-government employment should be implemented and enforced.[33] Transparency, or openness in government, must be increased. The public must be allowed access to all government meetings, documents, rules, regulations, etc, with restrictions only when national security is threatened. Public reporting laws should require all agencies to make available data on corruption and efforts to prevent it. Coupled with this is the importance of a free press. Only when the press is free from government restrictions and censorship can access to information on the operation of government be widely available to citizens. The press in the US has traditionally been the primary watchdog over government corruption.[34]

VII. INTERNATIONAL COOPERATION IN COMBATTING CORRUPTION

Corruption has become a truly international phenomena, thanks to organized crime, modern transportation, and computers. Perhaps the most corrupting international commodity is drugs, as the money involved in its transportation, distribution and sale is astronomical. Bribes to law enforcement officials constitute pocket change for large drug cartels, but for the corrupt official the bribe may be many times that person's annual salary. Despite the best efforts of governments, the international transportation of drugs continues at a high rate.[35] International money laundering is a multi-billion dollar business as well, and while there seems to be little official corruption in the US associated with this activity, that is not the case in many other nations. And while perhaps not a result of corruption, the failure of government regulators to detect and prevent such laundering calls for reform of some kind.[36]

International cooperation is essential in fighting these types of criminal activities. While one can correctly say that the supply of drugs from South America to the US would not take place were there not a strong demand for drugs in the US, that does not mean that the problem is solely that of the US. The corruption that is present in Mexico and Columbia, for example, is damaging to the citizens of those nations while at the same time facilitating corruption in the US. The problem of drugs if far too complex to discuss in this paper, but it is an excellent example of corruption that must be fought through international cooperation, cooperation that must take place at every level, from law enforcement to heads of state.

International cooperation in fighting official corruption, while in the best interests of all nations concerned, is unfortunately affected by politics, both internal and international. Effective cooperation cannot exist, for example, between nations which have no diplomatic relations. Foreign trade issues may be mixed with anti-corruption efforts. Political change within a nation may affect international cooperation. And cultural differences may cause disagreements over what constitutes official corruption as well as the appropriate punishment for it. This, in turn, may affect extradition. Nations jealously guard their sovereignty, and in the end, one cannot compel another to fight official corruption. Only through mutual understanding, frequent dialogue, exchange of officials, and a shared understanding that official corruption is not in the best interests of any nation, can international cooperation prosper.

NOTES

1. Although the FBI (Federal Bureau of Investigation) is the best known federal law enforcement agency, there are many others: Immigration and Naturalization Service, US Marshals Service, Federal Bureau of Prisons, Drug Enforcement Administration (DEA), Internal Revenue Service, US Postal Inspection Service, US Customs Service, and the Bureau of Alcohol, Tobacco, and Firearms (BATF).

2. All states except Hawaii have "state police", but their duties and responsibilities vary considerably. In California, for example, the largest state law enforcement agency is the California Highway Patrol, which, as the name implies, is primarily responsible for traffic enforcement.

3. Traditionally, sheriffs are responsible for law enforcement in counties. In practice, sheriffs generally exercise their law enforcement in unincorporated areas of the county and in those cities and towns which contract for services from the county.

4. Law enforcement authorities in cities and towns are usually called "police", although other terms may be used as well.

5. "Prosecutor" is a generic term for those who prosecute. Actual titles include district attorney and state's attorney, among others. Prosecutors generally enforce state laws as well as local ordinances.

6. See, for example, 5 USC §2302.

7. In the state of Hawaii, for example, the Campaign Spending Commission may investigate alleged violations of campaign spending laws, assess administrative fines, and refer criminal cases to the appropriate prosecutor. See HRS §11-191 - 11-229.

8. Small law enforcement agencies rarely have the resources to pursue large-scale corruption. Where these resources are not available, the case is usually turned over to a larger agency in the same jurisdiction or to federal law enforcement officials.

9. The Bureau of Justice Statistics of the US Department of Justice reports that there were 25 sworn officers per 10,000 residents in 1996: Census of State and Local Law Enforcement Agencies, 1996. NCJ 164618, June 1998, p.2.

10. Ibid, p.5.

11. In the 1978 "Abscam" operation, for example, the FBI used agents posing as wealthy Arabs who offered bribes to US legislators. All of the meetings between the undercover agents and the legislators were videotaped, and one senator and four representatives were ultimately convicted for bribery and conspiracy. The conviction of one representative was overturned, however, due to entrapment.

12. Federal legislation on corruption is much more comprehensive than that found in state penal codes, which generally deal with bribery and codes of ethics that prohibit conflicts of interest, acceptance of gifts, etc. And all legislation is subject to judicial interpretation - a recent US Supreme Court decision held that in order to establish a violation of 18 USC §201, bribery of public officials, the government must prove a link between the gift conferred and a specific official act for which it was given. *US v. Sun-*

Diamond Growers of California, 98-131 (1999).

13. Most, if not all, police departments have administrative rules prohibiting officers from accepting gratuities, with food defined as a gratuity, but they are rarely enforced.

14. *The Orange County Register*, Wednesday, July 14, 1999, p.B04.

15. Prosecutorial corruption, such as the Orange County case, must be distinguished from prosecutorial misconduct, which, while not common, is more frequent than corruption.

16. Those deputies working under the chief prosecutor may be civil service employees or may serve at the pleasure of the chief.

17. Plea bargaining is facilitated by the nature of penal codes in the US, where a given offense may have as many as four or five degrees. In Hawaii, for example, there are five degrees of sexual assault and four degrees of theft. A plea bargain may involve the prosecutor reducing the charge from first degree sexual assault to third degree sexual assault; the first is punishable by 20 years in prison while sexual assault in the third degree is punishable by 5 years.

18. The average salary for a chief prosecutor in 1996 was $64,000. "Prosecutors in State Courts, 1996," Bureau of Justice Statistics, US. Department of Justice, July 1998, p.1.

19. The median size of prosecutors offices in 1996 was 9, 4 of whom were prosecutors, and the median length of service was 6 years. Ibid.

20. The are many variations on election and appointment, such as "merit" plans that provide for a nominating commission to supply a set number of names for each vacancy to the governor, who then selects one for appointment. After a relatively short period of time on the bench, a retention election is held and the public is allowed to decide whether the judge shall be retained on the bench or not.

21. Amendment 6 to the US Constitution, as applied to the states through the 14th Amendment.

22. The Speedy Trial Act of 1974 (18 USC §3161) requires indictment within 30 days of arrest, arraignment within ten days of indictment, and trial within 60 days of arraignment in federal cases. State requirements vary but do not exceed 180 days.

23. "Three strikes" is a baseball analogy ("three strikes and you are out") which in criminal law refers to statutes which require, for example, that a felon be sentenced to life in prison for the third violent felony.

24. There are some exceptions to this, where, for example, a judge may impose a term of probation or grant a deferred acceptance of guilty plea.

25. Judges may hand down light sentences because they are aware of prison overcrowding or, in states where parole boards determine sentence minimums, that this body will play the same role. Prison overcrowding may constitute a violation of the rights of the prisoner, so states run the risk of lawsuits or federal supervision if they allow overcrowding.

26. In small jurisdictions a judge will normally hear every type of case, from criminal to civil to equity, while in larger jurisdictions a judge may be assigned to a criminal court, or a probate court, or another court dealing with specific areas of the law. But even in the latter, it is normal for judges to be rotated from one court to another.

27. The vast majority of US law school graduates take only one course in criminal law and one course in criminal procedure. Chief prosecutors spend a significant amount of time as administrators, thus the need for training in that area.

28. The National Judicial College, located in Reno, Nevada, has trained over 38,000 judges over a 32 year period. Attendance at this institution, however, is voluntary.

29. See, for example, 18 USC §201 - 211, and 18 USC Chapter 31, for criminal provisions, and 5CFR2635.02 for standards of ethical conduct for executive branch employees.

30. Rajeev Goal and Daniel Rich, "On the Economic Incentives for Taking Bribes," *Public Choice*, 61:269-275 (1989).

31. It is unreasonable to expect that corruption can be completely eliminated; at best we can reduce it to a tolerable level.

32. Susan Rose-Ackerman, *Corruption and Government: Causes, Consequences and Reform*. Cambridge: Cambridge University Press, 1999, pp.39 - 88.

33. See 18 USC §207 is a good example of this type of legislation.

34. The Watergate scandal is perhaps the best known example of the role of the media in exposing official corruption, but media exposure of official corruption takes place frequently at the state and local level in the US.

35. See, for example, "Peru's Drug Success Erode as Traffickers Adapt," *The New York Times*, August 19, 1999, via <http://www.nytimes/com/library/world/americas/081999peru-drugs.html>.

36. It was recently revealed that Russian organized crime laundered billions of dollars through the Bank of New York. See "Bank in Laundering Inquiry Courted Russians Zealously," *The New York Times*, August 20, 1999, via <http://www.nytimes.com/library/world/europe/082099russians-launder.html>.

CAMPAIGN FINANCING AND CORRUPTION IN THE US

*Anthony Didrick Castberg**

I. OFFICIAL CORRUPTION IN THE UNITED STATES

Corruption was common in the US in the 19th century. Patronage was widespread, and although the spoils system was created with the intention of diversifying bureaucrats, it became clear that corruption continued to increase. Rapid industrialization and westward expansion not only expanded the role of government, but also of corruption in government. Although there was considerable corruption at the national level and scandals affecting the presidency, such as those involving the Grant administration in the 1870's, most of the corruption in the US at the time was found at the local level. Most famous, perhaps, was New York's Tammany Hall, which involved political party leaders, politicians, and business interests in collusion to control lucrative government contracts. This corrupt activity centered on kickbacks, extortion, election fraud, and bribery. But a growing consensus among reformers and the population as a whole saw this corruption as ultimately detrimental to both politics and the economy. This consensus led to the Pendleton Act, which created the first federal civil service system in the US. As a result of this movement, bribery and other forms of corruption decreased substantially, although it was still to be found at the city, county and state levels, often through political parties. Nevertheless, the reform movement spread to all political jurisdictions and, by the early part of the 20th century, the more blatant forms of corruption had been reduced significantly. The reform movement was frequently aided by outrageous scandals, such as the Teapot Dome scandal during Harding's administration, and by the press, which often played a crusading role in bringing scandals to public attention.

The nation suffered a setback during the prohibition era, 1919 - 1933. Prohibition was the result of the 18th Amendment to the US Constitution, which prohibited the manufacture, import and sale of intoxicating liquors. Although well-intentioned, the Amendment was ill-conceived, as it sought to make illegal what many, if not most, of the citizens not only enjoyed but felt was their right. Although the Amendment tried to eliminate the supply of alcohol, it clearly did not eliminate the demand for alcohol. As a result, a thriving underground enterprise sprung up virtually overnight to supply the demand. This enterprise established the Mafia as a major criminal force in the US, and with it, widespread corruption of law enforcement. Such corruption was not only accepted by many citizens but encouraged, as it made access to the forbidden intoxicating liquors much easier. The end of prohibition in 1933 did not mean the end of organized crime nor the end of corruption in law enforcement, as organized crime merely shifted its activities and corruptive influence to other forbidden but desired commodities and activities, such as gambling, loansharking, prostitution and drugs. The US has never completely shaken loose of the corruptive influences of the era of prohibition. But political corruption and scandals at the national level, at least, decreased; there were no major scandals during the Roosevelt,

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Kennedy or Johnson administrations.

The US has not, of course, eliminated political scandals. Perhaps the most famous political scandal involving corruption in high offices in recent history was the so-called "Watergate" affair involving President Richard Nixon. This scandal started with what, at the time, seemed to be a simple burglary of Democratic Party headquarters in the Watergate building in Washington, DC. The burglars were caught in the act and an investigation soon connected them to Nixon's re-election campaign staff (the burglars had been trying to obtain information on Democratic campaign strategy). President Nixon ordered that money be given to the burglars so that they would not talk about his involvement in the crime. There then followed one cover-up after another. The President used the Internal Revenue Service, the FBI, and other federal agencies against those he thought were leading the efforts to involve him in the conspiracy. He had a very long "enemies" list. Largely due to an aggressive press, all of the details of corruption in the office of the President were brought to public attention. Congressional hearings not only brought to light the many details of the burglary and cover-up, but also of illegal campaign contributions made to Nixon's campaign committee. This ultimately resulted in the House Judiciary Committee voting for impeachment, and the President's resignation soon thereafter - the first time in US history that an American president resigned from office.

As is often the case in major scandals, some good resulted in the form of tougher laws and new protections. The Federal Election Campaign Act of 1971 was strengthened after Watergate, and the Federal Elections Commission was established. The Foreign Corrupt Practices Act was passed in 1977, and the Ethics in Government Act in 1978. The movement led to a significant increase in the number of state and local officials charged under federal law with corrupt practices, a number that reached almost 500 in 1986.

Despite reform, corruption continued. The "Abscam" scandal of 1978-80 involved FBI agents posing as Arab sheiks who offered various government officials, including senators and representatives, money for help in obtaining favorable immigration rulings. Most of this was recorded on videotape. Six representatives and one senator were convicted of bribery. And in 1986-89 two representatives and many other officials were convicted of racketeering, tax evasion, bribery, fraud, grand larceny, and perjury for accepting payoffs from military contractors in what was called the "Wedtech" scandal. In 1987, five Senators obstructed federal regulators in their investigation of a savings and loan company that had been had been looted by its owner, Charles Keating, of $2 billion. Those senators received a total of $1 million in campaign donations from Keating. But the senators, called the "Keating Five", were never charged with any crime or ethical violation because, while they could influence federal regulators, they had no direct control over them. One of those senators, John McCain, is now a Republican candidate for the presidency.

More recently, President Clinton was accused of accepting large campaign contributions from several Chinese businessmen in return for favorable treatment of China on a variety of matters, including the sale of satellite technology. US intelligence agencies allegedly intercepted information in early 1995 indicating interest on the part of the Chinese government in spending money to support certain candidates for office in the coming election, an issue raised by

Republican legislators but not proven until subsequent indictments and trials. The money, however, seems to have bought little other than access to the President.

Early this year, the *New York Times* reported that China had stolen highly classified nuclear weapons information from the Los Alamos laboratory, information that allegedly allowed the Chinese to make rapid advancement in their nuclear weapons program. Although the theft allegedly took place in the mid 1980's, during the administration of Ronald Reagan, it was charged that the theft had not been detected until 1995, that the President had not been informed until April 1996, and that nothing was done to investigate the alleged theft until 1997. Congress was not informed until 1998. Republicans charged that the failure of the Clinton administration to follow up on the theft and to promptly notify Congress was due to campaign contributions funnelled through Chinese businessmen in the US by the Chinese government. To date, none of these allegations have been proven, and it would seem to be a highly partisan issue.

Earlier this month, it was revealed that Secretary of Labor, Alexis Herman, was under investigation for influence peddling and soliciting illegal campaign contributions for the Democratic National Committee when she was a White House aide during Clinton's first term. She was appointed to her current post by Clinton in May 1998. Although the investigation is still under way and she has not been charged with any crime, this is an example of how working for a campaign can result in appointment to a high post. If she did solicit large campaign contributions, it may well have been a factor in her being appointed to her present position. It is well known, for example, that individuals who make very large contributions to a presidential campaign may do so in return for being appointed an ambassador.

The examples cited above are, of course, high level corruption. Just how much corruption is there in the US at all levels? We only have official figures on reported corruption, so the amount of unreported corruption remains unknown, but the data we do have gives us some idea of how cases of corruption compare to other offences. It is interesting to note that the most widespread crime reporting system in the US, the FBI's Uniform Crime Reports (UCR), does not even list corruption or even bribery it either Part I offences, those deemed to be the most serious, or Part II offences, those less serious. Nor does data from state courts list corruption or bribery in its data. When we look at data collected by the Department of Justice's Bureau of Justice Statistics, however, we do find cases of bribery and of other forms of corruption. Under the general category of "other," a category that also includes racketeering and extortion, we find that in fiscal year 1996 there were a total of 405 federal bribery suspects, of whom only 168 were prosecuted in US District Courts. Of the remainder, 212 were not prosecuted and 25 were dealt with by federal magistrates (the equivalent of a misdemeanor case). It is difficult to determine the exact reasons that 212 suspects were not prosecuted. Using slightly different data, for the 232 defendants whose bribery cases were terminated in fiscal year 1996 we find that 90.1% of the defendants were convicted, most of them by a jury, and 16 of the 23 who were not convicted had their cases dismissed, with only 7 going to trial and being found not guilty.

Using data from fiscal year 1998, we find that official corruption cases have been broken down into separate offences. Corruption in federal law enforcement resulted in 52 cases and 74 defendants, and of the 46 terminated during this period, 44

were through a finding of guilty. One should also note that there were significant numbers of state and local corruption cases, the vast majority of which ended in findings of guilty. While these figures are alarming, they must be viewed in perspective. A total of 902 officials were convicted of offences involving abuse of public office in 1996. These figures should be compared to the total of over 53,000 defendants convicted in federal courts alone in FY 1996. Corruption in the US, then, is a problem, but it is not as much of a problem as many other crimes, and as a consequence, does not alarm the public as much as other crimes, especially crimes of violence.

II. ELECTIONS IN A DEMOCRACY

A fundamental tenet of a democratic society is free and open elections, with few restrictions on access to political office. Age, citizenship and residence are the primary limitations on candidacy for political office in a democracy. The United States is a democracy, and prides itself on the diversity of its elected politicians, diversity measured in terms of gender, age, ethnicity, race, religion, and political ideology. A democratic political system may be multiparty, or it may consist of two parties, which is the case of the US. Although over the past two hundred years third parties have elected their candidates to local, state and national office, the US is considered a two party system, dominated by the Democrats and the Republicans. Most agree that neither party is ideological in nature, but it is also true that the Democrats are more on the liberal side and the Republicans on the conservative side of most issues. The Democrats, for example, support social welfare programs and government regulation of business, while the Republicans tend to favor less government and more free enterprise. Over the last 100 years, all presidents and the vast majority of national legislators have belonged to one or the other party. In both parties one can find the wealthy as well as those from modest backgrounds, but over the past 30 years some things have changed.

Running for political office, or for re-election thereto, in the US is now very expensive. The average cost of a winning campaign for the US Senate in 1996 was $4,692,100 and $673,739 for the House, with the most expensive campaigns for each house costing $14.5 million and $5.6 million respectively. The 1996 Clinton and Dole presidential campaigns spent over $230 million, not including almost $70 million in ads paid for by the Democratic and Republican parties. All of the campaigns nationwide in 1996 cost an estimated $2.7 billion. A great deal of this money is spent on television advertisements - the Democratic National Committee alone spent about $44 million on such ads (this does not include the money spent by the Clinton campaign itself). Television advertising can be very expensive - up to $500,000 per minute.

Needless to say, only millionaires can finance their own campaigns for national office. This means that most aspirants for office and incumbents running for re-election must rely on contributors, contributors who usually expect something in return for their contributions. That "something" may be as simple as a politician whose political views are consistent with those of the contributor, it may be access to the politician not enjoyed by lesser contributors, or it may be an explicit *quid pro quo* - paying for favorable consideration on an issue over which the politician has substantial control. In the last century and early part of the 20th century, the practice of selling votes was fairly common. Today it is practically unheard of, but many argue that campaign contributions amount to the same thing.

III. SOURCES OF CAMPAIGN FINANCING

While political opponents may try to influence voters by alleging foreign influence on domestic politics, in fact the vast majority of campaign funds come from domestic sources. The single largest contributors are corporations and Political Action Committees (PACs). In the 1996 campaign, for example, a tobacco company - Phillip Morris - contributed $4,208,505 million, 21% of which went to Democrats and 79% of which went to Republicans. The second largest amount - $4,017,553 million - came from the American Federation of State, County and Municipal Employees, 99% of which went to the Republicans. While large individual donors and PACs accounted for almost 32% of all contributions, 31% came from small donations (under $200). Political parties may legally solicit and receive an unlimited amount of funds. These funds must, under a 1979 amendment to federal election laws, be used to publicize the party or present issues, and may not be used for the benefit of specific candidates. This law was upheld by a 1996 Supreme Court decision that said that political parties could spend unlimited amounts of funds on congressional races as long as they act independently of the candidates. This has resulted in party advertisements that devote a great deal of time to a candidate and only discuss "issues" in passing, a method of meeting the letter but not the spirit of the law. Because this money is supposedly used to promote issues, it need not be reported, unlike other contributions.

Money contributed to political parties and not specified for a particular candidate is called "soft money," and there are virtually no limitations on how much can be given or how it is spent, as long as the spending is on "issues," voter education, party building, etc. Soft money raised by the two major parties more than tripled from 1992 to 1996, where it amounted to over $260 million. There are, nevertheless, restrictions on soft money contributions, and the Democratic National Committee admitted that it accepted $2.8 million illegally or under questionable circumstances for the 1996 campaign; it subsequently returned the money to its donors.

IV. CAMPAIGN SPENDING LAWS

The Federal Election Campaign Act, as amended in 1974, established strict disclosure requirements, set limits for donations, and provided for public financing of presidential campaigns. Campaigns must list all contributors who give over $200 per year, and cash contributions of over $100 were prohibited (as cash contributions are almost impossible to trace). Limits for donations were set as follows:

	To a candidate or committee per primary or general election	To a national party per year	To any other political committee per year	Total contribution per calendar year
Individuals	$1,000	$20,000	$5,000	$25,000
PACs	$5,000	$15,000	$5,000	No limit

These limits also applied to candidates themselves - they could not even spend their own money in excess of the specified limits. All of the reports by candidates are public, and are available on the Federal Elections Commission website, and at least one candidate for the presidency, George W. Bush, has provided detailed contribution information on his own website. Bush so far has raised over $50 million - the largest amount ever raised by a candidate in a primary election.

The public financing provision allowed taxpayers to indicate on their federal tax return whether they wanted $3 of the money they owe the government to be put in the Presidential Election Campaign Fund. The Fund would then match up to $250 of each contribution made to eligible candidates in primary elections. In order to benefit from this, the candidate had to agree to spend no more than $50,000 of their own money. Public funds would not be available to candidates who exceeded the limit. Public funding is not available to candidates for congress, although limits were set for campaigns for those offices. Provisions of the law limiting a candidate's own expenditures, as well as total expenditures, were challenged in a suit filed by a broad coalition of candidates and political organizations in early 1975, and a year later the US Supreme Court handed down its decision in the case of *Buckley v. Valeo*. The Court found that both the overall spending limits and the limits on a candidate's own spending were unconstitutional as a violation of free speech. The Court recognized that a balance had to be struck between free speech and the prevention of corruption, and stated that contributions to a campaign are less protected than expenditures made independent of campaigns. Therefore, contribution limits were upheld while money given to political parties or PACs could not be restricted.

V. ISSUE-SPECIFIC CONTRIBUTIONS

Contributions to politicians are not always made specifically for campaigns but frequently for favorable treatment on issues of interest to the contributor. The money contributed, however, must be placed in the politician's campaign fund and must be so used. The large amount of money contributed by Phillip Morris noted above, for example, was very likely intended to influence votes on tobacco issues, including an impending government suit against tobacco companies for misleading the public about the dangers of smoking. Issue-specific money was also contributed in great quantities over the proposed Telecommunications Competition and Deregulation Act of 1995. As the title of the legislation implies, the act was intended to deregulate the telecommunications industry and thereby increase competition, which would presumably reduce costs and increase options for the consumer. Although the Act passed Congress and was signed by the President, the intended benefits to consumers have yet to appear. The campaign funds of many legislators, especially those on the House and Senate Commerce Committees, benefited greatly, however.

The benefit to legislators of controversial issues that affect large industries should seem obvious: such issues provoke significant increases in campaign contributions. It should be noted as well that most such money is not soft money but rather money from PACs, and therefore limited to a total of $10,000 per campaign ($5,000 for the primary and $5,000 for the general election) per person. Because hard money is accountable and limited, it is preferred for specific issues. But one wonders whether some issues are invented as a means of creating controversy and

therefore increased campaign contributions rather than for the public good. Many of these issues are highly complex and, while they have a significant impact on the public as a whole, are often buried beneath more sensational but ultimately less important legislation. For the most part, only large corporations, interest groups, and legislatures play this game - the "little guy" is left out.

VI. INDIRECT SPENDING: LOBBYING

There are methods by which legislators can be influenced on particular issues in addition to campaign contributions, the most important of which is lobbying. Lobbying is an important but low visibility process, and it can be highly lucrative for the lobbyist himself or herself. There are at least 12,000 registered lobbyists, a number of whom are former legislators or political appointees. While there is nothing illegal or necessarily unethical with individuals and organizations trying to influence legislators, many feel it is wrong for former legislators and staff members to get rich as a result of their former status and the access that it brings. The lobbyist is supposed to provide information to the legislator as well as argue for a particular cause, but the lobbyist can also help bolster a legislator's campaign fund indirectly by bringing together those who want something from Congress with those who can provide it. Thus, the former legislator, now a lobbyist, continues to practice the fine art of seeking campaign money as well as influencing legislation, but now for somebody else.

Federal law prohibits most federal employees and elected officials from taking positions in private industry that they might have been in a position to benefit from through their prior position until at least two years after they have left office. The same law applies to lobbying, but to get a conviction under the law, 18 USC 207, the government must prove, among other things, that it had a direct and substantial interest in the matter and that the former official had direct responsibility for the particular matter within one year of their retirement (except for executive branch officials, where the time period is two years if the matter was pending under that person's official responsibility). There are many laws that govern the activities of current and former government officials. Some of them are listed below:

5 USC 2302	Prohibited personnel practices
5 USC 7353	Gifts to federal employees
18 USC 201	Bribery of public officials and witnesses
18 USC 203	Compensation to members of congress, officers, and others in matters affecting the government
18 USC 207	Restrictions on former officers, employees, and elected officials of the executive and legislative branches
18 USC 208	Acts affecting a personal/financial interest
18 USC 211	Acceptance or solicitation to obtain appointive political office
18 USC 666	Theft or bribery concerning programs receiving federal funds
18 USC 1510	Obstruction of criminal investigations

These are only a few of the many federal laws dealing with crimes of official corruption. In addition to these criminal laws, there are standards of ethical

conduct, such as 5CFR2635.

VII. WHY THE GREAT DESIRE TO GET ELECTED?

It is likely that many people run for office because they genuinely want to serve the public. They may feel that the many problems of their constituency are not being adequately addressed, or they may simply want to be in a position where they have a greater impact on society than just voting. There are those however who seek office because of selfish motives. The latter are probably a minority, but social and political commentators are saying that there seems to be an increase in these types of people running for office. Note the titles of two recent books on the subject: *The Buying of the President*, by Charles Lewis, and *The Corruption of American Politics*, by Elizabeth Drew. Some politicians are deciding either not to run for re-election or for higher office. Christine Todd Whitman, governor of New Jersey, recently changed her mind and decided not to run for the US Senate seat being vacated by Senator Frank R. Lautenberg. She said the demands of fund raising would interfere with her duties as governor. It also seems clear that she would have a very difficult time raising enough money to match the funds available to Democratic candidate Jon Corzine, the former chairman of Goldman Sachs & Company, who has a personal fortune of about $300 million. Corzine has already put $500,000 of that fortune into his campaign spending fund, while Whitman had raised over $2 million. Nevertheless, Corzine has said would spend as much as necessary to be competitive, and it was clear that Whitman could not match her fund raising against his fortune.

This also raises the interesting question of why a person like Corzine would spend so much to win an election. It is highly unlikely that he would consider money spent on a 'campaign' as an investment - he could never recoup the money spent on the campaign, legally or illegally. Why would a person who has such a fortune want more? What he wants, and what many people who run for office want, is not money but power. As chairman of Goldman Sachs, Corzine made important decisions and controlled billions of dollars, but he still had to rely on his elected representatives to make the decisions that affected the economic environment in which he worked. It is often the same motivation that makes attorneys in the US want to be judges - they will very likely make less money as a judge, but they will have far more power and influence.

If we accept, then, that many, if not most, candidates for office or for re-election are motivated by power, not money, what then of those who make large contributions to these politicians? As suggested at the beginning of this paper, it is safe to say that many of the contributions are made with economic motivation. Corporations, PACs and individual contributors who spend large sums of money on those running for political office expect something in return for their investments, and this puts pressure on the winning candidate to reciprocate. As long as that politician wants to be re-elected, s/he must act in the best interests of those contributors. As long as the politician and the contributors do not violate any laws, there has been no corruption as defined by law. But hasn't the political process been corrupted? Haven't the interests of the rich and powerful been put above those of the poor and powerless, the very people who most need the assistance of government? The answer, of course, is yes.

VIII. WHAT CAN BE DONE?

The answer to many of the problems

cited above is campaign finance reform. There are already enough laws and ethical standards to take care of criminal and unethical behavior, but the fundamental problem - the corrupting influence of money in election campaigns - needs additional attention. There is no shortage of reform proposals, but despite public pronouncements by many political leaders, little progress has been made. Part of the problem is partisanship. The Democrats generally support limits on soft money, while Republicans do not, unless there are restrictions on spending by labor unions (which traditionally support Democrats). Republicans argue for raising the limits on individual contributions, in part because large individual contributions are most frequently made to Republican candidates. But the fact is that the status quo favors those in office, those who are the only ones in a position to bring about change. One current bill, which is backed by Democrats and some Republicans, would prohibit political parties from raising or spending soft money, and would make a clear distinction between issue advocacy and advocacy of a particular candidate. The limits on hard money would also apply to soft money, and there would be stricter disclosure requirements and higher penalties for violations. It is unlikely, however, that this bill will pass before Congress adjourns in October. It is, after all, difficult for those who benefit from existing law to change them, even though a majority of voters want such reform. In the end, we come back to the people, the voters. They elected the current politicians who benefit from an essentially corrupt system and only they can throw them out of office. But will they? Only time will tell.

ILLEGAL DRUGS: THE CHALLENGE TO LAW ENFORCEMENT

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I. INTRODUCTION

That illegal drugs are a major problem in the US is not news, nor is the corruptive influence of drugs on law enforcement news. Nevertheless, few people really grasp the true impact of drugs on American society, in part because there is a great ambivalence, and even hypocrisy, about drugs. Drug offences have frequently been called "crimes without victims," and there is an active movement in the US to legalize drugs. It is argued that those who use drugs harm only themselves, that some drugs (primarily marijuana) have medicinal benefits, that legalization would reduce the cost of drugs and therefore the necessity of committing other crimes to support a drug habit, and that a great deal of money is spent on detecting, prosecuting and incarcerating drug offenders, money that could be better used for drug education and for the reduction of violent offences. They point to the widespread use and abuse of alcohol and tobacco, both legal drugs.

The argument against drug use is based primarily on social, moral and medical grounds. Many drugs, the opponents argue, are harmful to the body. As a result, drug users are not productive members of society, are poor parents, require disproportionate social services of the government, and account for much of the crime in society. There must, they say, be someting wrong with people who constantly desire the kind of feeling induced by drugs. They use the alcohol argument as well, saying that while prohibition was a failure, and the likelihood of banning it again is virtually impossible, it nevertheless is responsible for may ills in society, ills that would be compounded with the legalization of other drugs. And, the opponents say, drug use is largely responsible for the spread of AIDS in the US.

Despite the public support for keeping drugs illegal, there is nevertheless ambivalence among the public that freely uses legal drugs (alcohol, tobacco and caffeine) and considers illegal drug use a crime without a victim. Most citizens see no inconsistency between an abstract moral belief that drugs are harmful and should therefore remain illegal, and their own use of legal drugs. So not only is there a great demand for drugs by those who use them, there is little public support for a criminal justice system that places too much emphasis on combating drugs. What the public fears most is violent crime, and while many understand that a great deal of violent crime is associated with drugs, few fear that this crime will affect them, as they are not involved with drugs. The public perception is that violent drug-related crime is primarily directed at those involved in the illegal enterprise, not the average citizen. At most, the average citizen fears he or she will be a victim of a property crime committed by a drug addict to support his or her addiction. So while not entirely 'victimless', drug-related violent crimes are primarily directed at those involved in drug activity. Without widespread and strong public support, it is very difficult for criminal justice professionals to make much headway against well-organized and financed drug organizations.

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Regardless of the arguments of the proponents of drug decriminalization, however, public policy in the US is clearly and firmly against the legalization of drugs, with the possible exception of marijuana for medical use. There is currently a legal debate between the State of California and the US Government over this issue, with California upholding an initiative approved by voters that decriminalizes marijuana for medical use, and the federal government arguing that federal law on drugs prevails over state law. This debate is currently in the courts. California, however, is not typical of the United States as a whole, and in most states marijuana remains illegal for any use, a situation that is not likely to change in the foreseeable future.

The opponents and the proponents of drug legalization, however, rarely point to the corruptive influence of drugs on law enforcement and how this corruption affects society. Nor do they often discuss the international implications of drug abuse in the US. The Asian Wall Street Journal recently (September 27) ran an editorial entitled "The Cokeheads' Country," placing much of the blame for problems in Columbia on the thirst for cocaine in the US : "*If it weren't for the fact that so many Americans working for Fortune 1000 companies think the most important thing in life is sucking cocaine up their noses, the sovereign nation of Columbia might not be on its way to becoming the world's first drug republic.*" The international implications of the US drug problem will be explored in more detail below, but it there is no question that the Journal has raised an important point in its editional.

II. EXTENT OF THE PROBLEM

Louis J. Freeh, Director of the Federal Bureau of Investigation (FBI), addressed the problem of drugs in the US at the 1996 Annual Meeting of the World Economic Forum in Davos, Switzerland, by stating that it was a global crime threat. In the US, he said, it was both a social and economic problem:

(i) Law enforcement agencies in the US spend approximately $25 billion annually on drug control efforts.
(ii) Drugs cost an additional $67 billion each year in terms of crime, medical, and death-related expenses.
(iii) The annual costs of drug abuse to businesses in terms of absenteeism, industrial accidents, insurance premiums, and lack of productivity was estimated at $60-$100 billion.

The GAO (Government Accounting Office) has estimated that the total cost of illegal drugs in the US amounts to $110 billion. Whether it is $60 billion or $110 billion, these amounts are greater than the GNP of many countries in the world. The figures listed below further illustrate the problem:

(i) In FY 1996, US attorneys dealt with 30,227 suspects in drug cases, or 31.7% of all suspect in federal crimes.
(ii) In 1998, there were 1,559,600 state and local arrests for drug crimes, a figure 1% higher than in 1997, 17% higher than in 1994, and 20% higher than in 1989.
(iii) DEA drug arrests in 1998 increased 11% over the previous year, and nearly doubled since 1995. Most of these arrests, 45.5%, were for cocaine offences, while 20.7% were for methamphetamine crimes. The rest were for heroin, dangerous drugs, and marijuana.
(iv) Slightly over 20% of state and local drug arrests were for the sale or manufacture of drugs, while the remaining arrests were for possession.
(v) In 1997, 98% of the 1,451 illegal drug

laboratories seized by federal authorities were used for the manufacture of methamphetamine.

(vi) Also in 1997, the Drug Enforcement Administration's (DEA) program for marijuana eradication destroyed 241,000,000 plants in 69,665 plots, with 17,070 arrests, seizure of 4,713 weapons and $39.5 million in assets.

(vii) In 1998, the DEA seized 2,568.5 kilograms of methamphetamine, 70,440.9 kilograms of cocaine, 624.6 kilograms of heroin, and 364,081.1 kilograms of marijuana.

(viii) In 1996, 15.8% of all jail inmates said they committed their offence to get money to buy drugs. In the same year, 15,289 homicides, or 5.1% of all murders, were drug-related.

(ix) In 1997, 33% of state prisoners and 22% of federal prisoners said they had committed their current crime while under the influence of drugs.

(x) In 1996, 82.4% of all state and local jail inmates and 73% of federal inmates said they had used drugs in the past.

The figures listed above leave no doubt that drugs are a major law enforcement problem in the US. What they do not show is the human misery caused by drug addiction, nor do they show the strain on law enforcement agencies, prosecutor's offices, the courts, and the correctional system caused by efforts to contain the problem. The drugs that cause the most harm, both social and medical, are cocaine, heroin and methamphetamines, all have long been drugs of abuse in the US, but which are now appearing in new forms or purity.

Cocaine is derived from the cocoa plant, which is indigenous to the Andean Mountain areas of South America. In the late part of the 19th and early part of the 20th centuries, cocaine was widely used as a local anesthetic, but development of more effective anesthetics, as well as abuse of the drug, led to its being made illegal. While previously used primarily in its powder form (cocaine hydrochloride) by inhaling, it is currently most often used in its crystalline form, usually called "crack". Crack cocaine is smoked using a pipe, and results in an almost immediate intense, euphoric feeling that soon passes. The effect is very much like that of methamphetamine. Because of the short duration of the feeling, users crave additional doses frequently.

Heroin, derived from the opium poppy, was also used as an anesthetic, and later criminalized. It has traditionally been used by subcutaneous injection, but recent availability of very pure heroin, as well as the fear of HIV/AIDS transmission via used needles, has led to smoking and snorting (direct inhalation of the powder). While most heroin today comes from Southeast Asia, an increasing amount of the Mexican "black tar" variety is being smuggled into the US. Heroin, too, produces a feeling of euphoria, and while it is not as intense, it lasts longer than that of cocaine. It is a central nervous system depressant, and therefore overdose can be fatal.

Methamphetamine, derived from amphetamine, a drug used as a nasal decongestant, is a stimulant that produces a "high" that lasts for up to 8 hours. It has been used to treat attention deficit disorder and obesity, but has been supplanted by more effective drugs, and currently has few legitimate uses. In its pill form it is know as "speed" or "meth", while in its crystalline form it is called "ice" or "crank". In this latter form it is particularly intense and addictive and is ingested by smoking. It has quickly become a drug of abuse in epidemic proportions in some parts of the country.

Marijuana is the mostly widely abused drug in the US today, but does not have the severe effects, both personally and socially, as those discussed above. It produces psychoactive effects which peak 10 to 30 minutes after smoking, and which may last hours. In low doses it gives the user a relaxed, dreamy state of well being, while in higher doses it heightens the senses of sight, smell, taste and hearing. It has, according to some proponents, medical use in relieving nausea for those undergoing chemotherapy and in increasing the appetite of AIDS patients. It also has some negative effects in high doses and/or long-term use.

There are, of course, a number of other drugs of abuse, and new or "designer," drugs are being created ever year. Those listed above are the most widely used and, with the exception of marijuana, create the greatest damage to the individual and to society as a whole.

III. DRUG RELATED CORRUPTION IN LAW ENFORCEMENT

Drug crimes are investigated by law enforcement agencies at the local, state and federal level. This amounts to over 700,000 sworn personnel at the state and local level, and over 13,000 federal law enforcement officials whose duties involve the investigation of drug offences (FBI and DEA, amongst others). The 700,000 plus sworn law enforcement officers at the state and local level are employed by approximately 19,000 different agencies. In addition, there are 2,343 state prosecutors' offices, employing over 71,000 personnel and 93 US attorney's offices in the US. The large number of different agencies and jurisdictions involved in the investigation and prosecution of drug crimes creates logistical and coordination problems, but this system of law enforcement is well-established and not likely to change in the US. It also creates many opportunities for corruption.

Corruption of criminal justice personnel, by those involved in illegal drugs, primarily takes the form of bribery. While the bribe may be in the form of drugs themselves, it is most often in the form of cash. With the vast amounts of cash available to drug dealers and organizations, the money used to bribe criminal justice personnel constitutes petty cash. Yet that money may be highly attractive to those whose annual legitimate income is relatively small, attractive enough that they will risk losing their jobs, family, freedom, and perhaps their lives, for the enrichment it provides. What is given in return for bribe may take a number of forms. Among them are:

(i) Information on law enforcement intelligence.
(ii) Overlooking drug possession, sale or manufacture.
(iii) Protection of drug dealers.
(iv) Elimination through arrest of rival dealers.
(v) Elimination through murder of rival dealers.
(vi) Overlooking or facilitating smuggling.

In addition, criminal justice personnel may be blackmailed in order to obtain the above services or considerations.

The targets of corruption include all of those working in the criminal justice system: local police and sheriffs; state narcotics officers; federal Customs, Immigration, and Coast Guard personnel; FBI, DEA, BATF (Bureau of Alcohol, Tobacco, and Firearms) personnel; local, state and federal corrections personnel; local, state and federal regulatory officials; and prosecutors and judges at all levels. While there is no agency that has the responsibility of accumulating data on the

drug-related corruption of public officials, the FBI does provide an annual report on corruption cases opened and officers convicted each year, and the GAO provides studies for Congress and the public on the issue. A 1998 GAO report not only points out the lack of any database from which to determine the extent of drug-related corruption among law enforcement, but also states that drug-related corruption cases may not always be identifiable as such, since they may be listed as perjury, (for lying as a witness during a trial), or theft (for stealing drugs from seized evidence).

In FY 1997, for example, there were a total of 190 cases of law enforcement corruption opened by the FBI (often in participation with state and/or local agencies), 48% of which were drug-related. In the same fiscal year, 150 law enforcement officers were convicted of corruption-related offences, 53% of which involved drugs. To put these figures in perspective however, those law enforcement officers convicted of drug-related corruption constitute .02% of all law enforcement personnel.

While official corruption cases are inherently difficult to investigate, those involving drugs pose particular problems. As Deputy US Attorney General, Eric H. Holder, Jr., stated at an international conference in February, 1999:

(i) Prosecutors are often reluctant to investigate and prosecute police officers or other prosecutors with whom they regularly associate.
(ii) Police agencies sometimes cannot be trusted to investigate themselves.
(iii) Judicial corruption investigations can cause judges to distort their decision making process in unrelated cases to curry favor with their investigators or otherwise influence the outcome of the investigation.
(iv) Aggressive investigative techniques like undercover operations and electronic surveillance are often needed to make a provable case, but these techniques can destroy the morale of honest judges, prosecutors or police officers.
(v) A code of silence or a culture of non-cooperation frequently keeps police officers from coming forward with information or otherwise cooperating with investigations involving corruption by fellow officers.
(vi) Decisions not to investigate or prosecute allegations of judicial or law enforcement corruption are often difficult to justify publicly and can be perceived as efforts to cover up enbarrassing misconduct.

Despite the difficulties cited above, criminal justice personnel are investigated, prosecuted and convicted. Here are some recent examples:

(i) An Orange Country, California, district attorney was arrested in June for being part of a major drug distribution and money laundering ring.
(ii) Thirteen corrections officers in Miami, Florida, were charged, along with 30 others, with running a drug-dealing operation in the Miami-Dade County jails.
(iii) A county sheriff in Texas was arrested for stealing almost $12,000 in seized drug money and trying to replace it by selling marijuana.
(iv) A veteran Chicago police officer was among 10 people charged with running a drug ring that transported millions of dollars of cocaine and heroin between Chicago and Miami.
(v) Three corrections officers in California were charged with smuggling marijuana,

methamphetamine, cocaine and heroin into state prisons.

(vi) A Pennsylvania State trooper, addicted to cocaine, was charged with stealing 2.5 kilograms of cocaine from the State Trooper evidence locker.

(vii) Two INS (Immigration and Naturalization Service) inspectors and one former inspector were charged with taking bribes amounting to hundreds of thousands of dollars to allow Mexican drug dealers to smuggle cocaine across the border.

(viii) Six local sheriffs in Texas were charged with helping to smuggle 800 kilograms of marijuana across the border.

(ix) A former INS inspector in Arizona admitted to accepting a $75,000 bribe for allowing 585 kilos of cocaine to cross the border when he was on duty in 1996. Another officer is charged with attempting to import, possess, and distribute cocaine in return for accepting bribes totaling $32,500.

The border between the US and Mexico poses a particular problem. It stretches from Brownsville, Texas, to Imperial Beach, California, a total of 1,962 miles (3,157km). It is manned by approximately 1,300 INS and 2,000 Customs inspectors at the numerous points of entry, and patrolled by over 6,300 INS Border Patrol agents at points in between. Even with all of these inspectors and agents, assisted by high-tech surveillance devices, it is virtually impossible to prevent the smuggling of drugs from taking place; and, it would seem, from preventing corruption of these personnel.

A 1999 GAO report details the cases of 28 INS and Customs personnel convicted for corrupt acts related to drugs between 1992 and 1999. Among the offences committed were the allowing of drug-filled trucks to drive through ports of entry, coordinating the movement of drugs across the border, transporting drugs themselves across the border, selling drugs, and providing confidential information to drug dealers. Of the 28 convicted, 19 were INS employees and 9 were Customs employees, and they were stationed in California, Arizona and Texas.

IV. WHY DOES THIS CORRUPTION TAKE PLACE?

The simple answer to this question is money. One might well ask, using the examples cited above, whether the risk taken by these officials was worth $32,500, or even hundreds of thousands of dollars. To the vast majority of criminal justice officials the answer is clearly “no”. But all it takes is one corrupt officer to allow drug smuggling and distribution to take place, and given the huge profits made by these criminals, money spent on corrupt officials is an excellent investment. One can point to low salaries, poor morale, inadequate training, amongst other factors leading to corruption, but it is often a complex series of factors in each event that leads to an actual crime.

Law enforcement salaries in most police and sheriffs offices is quite low-often less than $35,000 per year for experienced personnel, while prosecutors rarely earn over $75,000 per year and judges $100,000. Bribes equal to or several times these salaries are a small part of the operating expenses of major drug operations. This money can be very attractive, especially to those who are in debt or already living beyond their means. It is also difficult for law enforcement personnel when they compare their lifestyle to that of those they arrest-honesty and integrity don’t buy the luxuries that those in the drug business have in quantity. But there are many other reasons as well.

A May 1998 study by the GAO identified a number of factors that are correlated with drug-related law enforcement corruption; and distinguishes this type of corruption from other forms of police corruption. Drug-related corruption, for example, often involves protecting criminals or ignoring their activities, as noted above, as well as active involvement in the commission of a number of crimes, including drug theft, robbery, selling of drugs and perjury. It also has in common with other forms of corruption the police "code of silence" and cynicism about the criminal justice system.

The report lists a number of factors that are associated with drug-related corruption:

(i) Opportunities.
(ii) Recruitment standards.
(iii) Training.
(iv) Police culture.
(v) Supervision.
(vi) Code of integrity.
(vii) Internal affairs.
(viii) Police brutality.
(ix) Family or neighborhood pressures.

And, I would add, the decentralized nature of law enforcement in the US.

A. Opportunities

The nature of law enforcement necessarily involves many opportunities to engage in illigal acts, ranging from accepting $5 not to write a traffic citation, through taking small amounts of merchandise from burglarized stores, to protection of organized crime. With respect to drugs, there are opportunities to keep some of the drugs seized, or to keep some of the cash seized, during arrest. A recent scandal in the Los Angeles Police Department involved, among other things, the theft of a substantial quantity of cocaine from a police evidence locker. The use of undercover officers in narcotics operations is especially troublesome, as it not only exposes the officers to seamy, but often exciting, drug culture. It may, under some circumstances, require that the officer actually use drugs as part of the undercover operation. That, in turn, may lead to addiction.

B. Recruitment Standards

The large number of law enforcement agencies in the US is due to historical and traditional decentralization of that function. That in turn means that each local agency enjoys a great deal of independence from both the state and federal government. While there are state standards for police training in most states, and minimum requirements for recruitment in some, there is no national standard for either. Nor is there any widely accepted accreditation process for law enforcement agencies. So recruitment standards vary widely. As a result, departments may hire those totally unsuitable for police work. Few law enforcement agencies at the state or local level require either a community or four-year college degree, although some are starting to require "some college education". Some agencies give preference to veterans, but few, if any, require prior military service for hiring. Psychological testing varies greatly, from none to extensive background investigations. Federal agencies, such as the FBI and the DEA, have higher standards, requiring a minimum of a bachelor's degree as well as passing an extensive background check, psychological testing, and a polygraph ("lie detector") examination.

C. Training

As noted above, training standards vary from state to state and from department to department. Some departments, especially the larger ones, do their own training, training which may be quite comprehensive and last for one year or

more. Smaller departments may pay for training at a regional academy, frequently run by a university or community college. Other may essentially use on-the-job training, putting virtually all of the emphasis on learning through experience. Regardless of which method of training is used, police departments or regional academies tend to place more emphasis on techniques of arrest, firearms training, crime scene investigation, routine patrol, etc, than on moral and ethical issues.

D. Police Culture

The GAO report listed the following characteristics of a police culture that supports corruption :

(1) A code of silence with grave consequences for those who violate it; these cosequences may include the failure to "back up" an officer in dangerous situations if that officer is perceived of as having violated the code of silence, even if that silence covers up serious crimes.
(2) Loyalty to other officers above all else-your life may depend on it.
(3) Cynicism about the criminal justice system and public support for law enforcement - a common characteristic of veteran police officers, especially those in large, urban, high-crime areas.
(4) Indoctrination on the job as to what is acceptable behavior - "forget what you learned in the academy - this is how it is really done". In general, police officers feel that only other officers can understand their job and that they can only trust other officers; all other citizens are by definition "suspects".

E. Supervision

Although police departments virtually all have military-like command and rank structures, they are very unlike the military in several important aspects. Most importantly, perhaps, is that police officers tend to either work alone or with a partner, rather than in squads or platoons as in the military. This means that they often work without direct supervision. Supervisors respond only when needed, and rarely have the opportunity to directly observe their subordinates carrying out their normal functions. They most often rate their subordinates on the basis of written reports, number of arrests made, number of citizen complaints, and other such numerical criteria. The higher in rank one rises, the less that person is aware of or primarily concerned with the day-to-day aspects of policing. Instead they must deal with budgets, purchasing and political functions.

F. Code of Integrity

There are a number of codes of conduct or codes of integrity in law enforcement. What is lacking, however, are effective methods and efforts to teach and enforce them. Most professional law enforcement agencies teach ethics in their academies, but they rarely have in-service training of ethics and integrity, nor do they use integrity as a criteria for promotion. Integrity training is especially important for officers assigned to units responsible for drug enforcement.

G. Internal Affairs

Most law enforcement agencies have internal mechanisms for dealing with violations of procedures, as well as violations of the law. These internal affairs units, as they are called, are tasked with investigating citizen complaints about officers, as well as taking proactive means to ensure adherence to procedures and the law. This duty is, however, generally distasteful, and officers assigned to internal affairs units are frequently referred to as "headhunters". They cannot adhere to the code of silence, nor can they

cover up for officers guilty of violations. But in practice in many departments, internal affairs units are less than effective. Many of the police departments of the larger cities in the US, such as Los Angeles, Chicago and New York, have failed over the past ten years to effectively deal with corruption and brutality, among other offences. Due to the nature of their work, officers assigned to drug enforcement often tend to be immune from internal affairs investigations.

H. Police Brutality

Police brutality is one of the most frequent complaints investigated by internal affairirs units, and one of the most widely publicized by the media. The Rodney King incident in Los Angeles took years, and a violent riot, before it was finally resolved. Similarly, the recent brutalizing of an African immigrant by New York City police officers made headlines worldwide. Several studies have found that officers involved in drug-related corruption also have histories of complaints made against them for the use of excessive force.

I. Family or Neighborhood Pressures

Although many law enforcement agencies have policies that effectively place their officers on duty 24 hours per day, by requiring them to take action in any serious crime, even when off-duty, the practical reality is that police officers are citizens like everybody else. They have families and they live in neighborhoods. But sometimes families and neighborhoods create conflict with their duties to enforce the law. In several of the cases cited above, law enforcement personnel were enticed into corruption by family members. In other cases, neighborhood norms may put the officer in conflict with the norms of law enforcement. This is especially a problem in those cities which require their officers to live in that city.

J. Decentralized Law Enforcement

The very nature of law enforcement in the US lends itself to inefficiency and lack of oversight. State and local law enforcement agencies in the US are essentially self-governing and are rarely subject to the oversight of a higher authority. There is tension between local/ state agencies and federal agencies that is long-standing, and while the FBI, for example, has statutory authority to investigate corruption in state and local law enforcement agencies, it is frequently difficult to carry out that authority due to political pressures and lack of cooperation among local or state officials. State agencies, such as the Office of the Attorney General, rarely investigate local law enforcement agencies and rarely prosecute local law enforcement officials who are suspected of being corrupt. Drug enforcement units within police departments tend to be isolated and insulated from the rest of the department, in large part for the purpose of confidentiality. Therefore, corruption in these units it rarely detected.

V. INTERNATIONAL IMPLICATIONS

As noted above, the sources of the most abused and dangerous illegal drugs in the US are primarily foreign. Columbia is the source of most of the cocaine used in the US, while heroin comes from Southeast Asia and Mexico, the latter also being the source of much of the methamphetamine consumed in the US. Mexico, in addition to being a source of many of the drugs in the US, is also a major transit area as well - just last week 1,290 people were arrested in Jamaica, the Dominican Republic and Haiti, for drug trafficking. In the same week, 30 drug traffickers, including a number of major figures in Columbia's drug cartels, were arrested. The Colombian

operation is said to have been shipping 30 tons of cocaine into the US each month, or about $60 billion a year worth of cocaine. The Colombian cartel used sophisticated communications equipment with encryption devices, but authorities were able to intercept the messages and break the encryption. Whether the Colombians will be extradited to the US, however, is not clear, even though they were arrested based on indictments handed down in Miami. Columbia restored extradition with the US in late 1997, which means that even if the drug traffickers are extradited they cannot be tired in the US for crimes committed prior to December 17, 1997. It should be noted that the penalties for drugs in the US are much more severe than those in Colombia.

As *The Asian Wall Street Journal* editorial cited above indicates, however, the real problem lies in the US. The US is giving Colombia $289 million in anti-narcotics aid this year, but Columbia claims that this figure is not enough and has recently asked for $1.5 billion over the next three years. Much of this money is for eradication of cocoa plants and payments to farmers for alternatives to this form of agriculture, as well as for equipment ranging from high-tech surveillance devices to helicopters. It is also safe to say that some of that money will be used to fight left-wing guerilla groups that support the drug traffickers.

The situation in Mexico is no better. Mexico is rife with drug-related corruption, corruption that has reached to the presidency of that nation. It is estimated that about 60% of the cocaine in the US comes across the US -Mexico border, with much of the rest coming through the Caribbean. As noted above, Mexico is also a major source of methamphetamine, heroin and marijuana. This has resulted in very large drug cartels in Mexico and the resultant corruption of police, prosecutors and judges.

Columbia and Mexico are poor countries, and the amount of money available through drug manufacture and trafficking is enormous. Neither nation has industries or government jobs that can offer salaries that pay a fraction of what one can earn from illegal drugs. Who can blame poor farmers for growing cocoa or marijuana, or peasants for making methamphetamine, when other jobs are virtually non-existent? Similarly, who can blame poorly paid criminal justice personnel from taking bribes, when obeying the law and maintaing one's integrity does not put food on the table? The real dilemma is that just as citizens of these countries are seduced by drug money, high officials are seduced by US aid or by drug money, or both. All because of the enormous appetite for illegal drugs in the US.

This drug appetite has created an international disaster - politically, socially, and morally. The US should be working with its Latin and South American neighbors to achieve economic and political stability for the welfare of all its citizens, but instead all three nations find themselves working to stamp out drug manufacture and trafficking, neither of which results in much stability. It is thought by many that US efforts against Colombian drug traffickers have helped the rise of the leftist guerilla movement in that country, and of large organized crime groups in Mexico. While both countries have historically suffered from corrupt public officials, money associated with the drug trade has increased corruption significantly.

The huge appetite for drugs in the US, therefore, has created significant international problems for all of the Americas. Issues of sovereignty are raised

by the presence of US drug agents operating on foreign soil and flying in foreign skies. Economic development of these countries suffer because of the energy and money that goes toward fighting drugs. There is no question that fighting drug traffickers is an international problem that requires international efforts, nor is there any question that this effort is necessary - the US cannot adequately guard its coastlines and borders against smugglers, so it must try to reduce or stop the flow of drugs from the countries of origin. But the price is high and there is no light at the end of the tunnel.

VI. SOLUTIONS

Solutions to the problems discussed above can be divided into two categories: law enforcement and the rest of society. The first category is perhaps the easiest to solve, but only in comparison to the second. Despite the decentralized nature of law enforcement in the US, it is possible to significantly reduce corruption in those agencies, whether drug-related or not. So the question is not whether it is possible, but rather when there is enough public pressure and official commitment to see that it happens. Let us, then, examine the problems listed above and seek solutions to each of them.

A. Opportunities

The nature of police work will always involve opportunities to engage in corrupt activities. But that is true of other professions and occupations as well. Bank tellers work with large sums of money daily, physicians have access to many drugs, and office workers have access to office materials. So there is always the temptation to embezzle, use drugs and steal. Opportunities can be reduced through effective supervision, and temptations reduced through effective recruitment and training.

B. Recruitment Standards

The President's Commission on Law Enforcement and the Administration of Justice in 1967 issued a massive report which, amongst many other issues, addressed the recruitment issue. It suggested that all law enforcement agencies in the US start phasing in increased educational requirements for recruitment, eventually requiring a minimum of a bachelor's degree for hiring. This has not happened. The debate still rages over whether a college education makes a person a better police officer. At the same time, however, it is widely recognized that the federal agencies, especially the FBI, have far less corruption and are better trained than the vast majority of state and local departments. In large part this is due to higher recruitment standards, which not only include a college degree, but a comprehensive selection process as discussed above.

C. Training

It used to be thought that the emphasis on training prospective law enforcement officers should be in the areas of the use of force - how to subdue an opponent and how to shoot accurately - as well as other operational requirements. Thinking has gradually shifted, however, so that more emphasis is placed on interpersonal communication, psychology, sociology and other "academic" subjects. What is lacking, however, is extensive and ongoing integrity training and the use of integrity measures for promotion. It is essential that this training takes place, and that it be supported by appropriate operational policies and by all supervisors. In addition, law enforcement officers should be required to make full and complete disclosure of all income, assets and debts. Departments should consider integrity testing, although it is recognized that this is controversial and may well be opposed by law enforcement unions.

D. Police Culuture

This is one of the most significant problems facing those those who are trying to reduce or eliminate corruption in law enforcement. It is even more of a problem among narcotics officers, as narcotics units are cultures within a culture. Narcotics officers tend to associate only amongst each other, and are generally under much less supervision than patrol officers or detectives. While some separation from the rank and file may be necessary for reasons of confidentiality, too much separation is not healthy. Nor is long-term assignment to undercover narcotics work. It is true that major drug investigations may take years, and undercover officers may have to maintain that status for years, but as soon as arrests have been made and the officer's identity known, the officer should be transferred to another division or unit. Rotation of personnel, then, is important in general in law enforcement, and especially important in drug units, as a means of reducing corruption.

E. Supervision

As noted above, police supervisors (generally, sergeants and above) actually engage in very little direct supervision. The vast majority of supervision is done on paper, and subordinates are evaluated by paper (reports, arrests, traffic tickets, etc). Corruption in US law enforcement is, for the most part, at the lower levels of police departments. The higher up in the chain of command one gets, the less likely that person will be corrupted for the simple reason that those administrators are not in a position to make decisions that will benefit drug dealers. In very small departments, of course, this is not the case, but most of the corruption in the US is found in larger departments. Therefore, supervision of those in the lower echelons is vital to effective law enforcement and the elimination of corruption. Many of the functions of higher ranking police supervisors can be handled by civilian personnel. Ranking police administrators belong where they can effectively supervise those under them. Police supervisiors must be held strictly accountable for the actions of those they supervise.

F. Code of Integrity

As noted above, there are numerous codes of law enforcement integrity, but they are meaningless unless they are effectively inculcated into the agency itself. Integrity training must be a continuous process, taking place both in the classroom and the field. It should be one of the criteria for evaluation and promotion, and administrative practices must make it clear to all officers that the agency does not tolerate breaches of integrity. Whether a law enforcement agency has an internal affairs unit responsible for maintaining integrity, or depends on an external unit, is not as important as the effectiveness of the unit itself. There has been a great deal of controversy over civilian review boards in the US. These boards have been established to serve as a watchdog agency over law enforcement, which would reduce or eliminate police brutality and corruption. But they have not been very effective, primarily because they rarely get much cooperation from the agency they are supposed to be monitoring. This is another example of the police culture, which says that "only a police officer can understand the actions of another police officer". So internal affairs units are more likely to be effective, but only with the total support of supervisory personnel.

G. Police Brutality

This problem has been addressed above, to some extent, but the problem is a serious one. Police are faced with many dangerous and volatile situations where their lives and those of innocent civilians may be at risk. The majority of uniformed police patrol officers and detectives in the US

routinely wear body armour because the threat of being shot is very real. Given this perceived constant threat that can come from anybody - male or female, young or old - police are justifiably apprehensive, especially when involved in a situation that could result in violence. Just where to draw the line with respect to the use of force may be clear in academy training and general orders, but on the streets in the fast-moving, confusing situations that officers in many cities face every day, it is not that clear. Police officers are usually taught to use an escalation of force which is necessary to control the situation - use pepper spray to control a violent, unarmed person; use a baton to control a violent person who is not affected by the spray; use a firearm only when necessary to protect your own life or that of an innocent civilian, etc.

In theory this is a good policy, but in practice it is not always so easy to adhere to. It is quite difficult, for example, to handcuff a suspect who resists. Even two officers may not be able to cuff a resisting suspect. If more than one officer is involved, it may well seem to a civilian bystander that police are acting in a brutal manner. The suspect himself may sustain injuries in the process, which he will later claim were caused by police brutality. There is no easy answer to this problem, but it is clear that with good supervision police brutality will be minimized. The Rodney King incident in Los Angeles is an excellent example of this - Sgt. Stacey Koon did not exercise good leadership and as a result, Rodney King was treated in a brutal manner by officers under Koon's "supervision". So we come back to the supervision issue, which is of primary importance in law enforcement.

H. Family or Neighborhood Pressures

The solution to this problem is quite staightforward: when one pins on the badge, one's primary loyalities shift to the citizens he or she serves. A police officer may well find that his or her pre-police friends and social groups are no longer appropriate. An old friend may drink too much and then drive home, or somebody may take out a marijuana cigarette in a social setting. What is the off-duty police officer supposed to do under these circumstances? This, unfortunately, gives rise to the police culture, but as noted above, there are ways that this problem can be minimized. It must be clearly understood when one applies to become a police officer that certain sacrifices must be made, and that may include some alienation from family and friends in the higher interest of protecting society as a whole, protection that cannot occur if a police officer gives his or her primary loyalty to family and friends.

I. Decentralized Law Enforcement in the US

This is the one problem that does not seem to have a solution. The historical and political roots of this form of law enforcement are so firmly embedded that change is virtually impossible. Therefore the inefficiencies caused by it must be made up for through better communication and coordination.

VII. CONCLUSION

It is realized that even though solutions are suggested, there are no easy answers to any of the problems enumerated above, and implementaion is never easy because there are always economic and political considerations. Nor will the same problems and solutions be applicable to law enforcement agencies in all nations. The principles involved, however - integrity, honesty, ethics, morality, and lawfulness - apply to all cultures, even though they may not present in all cultures. These solutions

cannot work without the support of the society as a whole. From the highest elected officials to the lowliest voter, there must be support for a corruption free society, and with it, corruption-free law enforcement. A good place to start is to have no tolerance for drug use, for as long as the great thirst for drugs remains, there will be people willing to pay large sums of money to obtain those drugs, and that will in turn create a ruthless and well-financed group of people who supply the drugs to those who demand them. Bribing law enforcement officers or anybody else in the criminal justice system becomes part of the cost doing business, and creates problems that are international in scope. Until every society rejects this vicious cycle, until drug use becomes unacceptable, there will be police corruption. And as long there is police corruption, we will all suffer.

CORRUPTION IN JAPAN AND THE US

*Anthony Didrick Castberg**

I. INTRODUCTION

Comparing corruption in countries is always difficult, and this is no less true when the two countries are Japan and the United States. While both countries are advanced industrial democracies, the similarities generally end there. Japan's legal system is based on French and German models, and is therefore a civil law system, while the legal system of the US is based on the English system, making it a common law system. Japan has a multi-party parliamentary political system, while the US has a two-party, republican federalist system. The list can continue almost indefinitely, but let us remember that not only are the systems of government quite different, so too are the cultures. Thus, one would expect the types of corruption, if not the amount, to vary as well.

This paper will not attempt to determine the relative amounts of official corruption in each country, but rather the nature of such corruption and the measures used to counter it. Measuring corruption is particularly difficult in this case because "corruption" is not a crime, but a general classification for a variety of criminal acts, including bribery, abuse of authority, breach of trust, and misappropriation of public funds. The definitions of these criminal acts differ between Japan and the US, and more importantly, all of Japan is subject to one penal code, and therefore a single definition, while the US has 50 different penal codes (one per state) as well as a national (federal) code, resulting in numerous definitions. Finally, while Japan keeps detailed statistics on corrupt acts, the US has no centralized record keeping for corrupt acts. This paper will, therefore, discuss differences in types, causes, and efforts to reduce, rather than amounts.

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II. CORRUPTION IN JAPAN

Corruption in Japan generally takes the form of bribery of high officials in the various ministries or prefectural governors, or those of lesser rank. This bribery can take the form of direct payments of cash for favorable consideration, of entertainment ("wining and dining") of officials by those currying their favor, of gift memberships in expensive golf clubs, or it may take the form of unlisted stocks whose value will rise once they are offered to the public as a whole. In recent years there have been cases of corruption involving the Ministries of Labor, Education, Finance, International Trade and Industry, and Health and Social Welfare, as well as politicians in a number of prefectures in Japan.

Corruption in the US tends to take place at lower levels than in Japan. There are very few recent corruption cases involving high officials, although several cabinet officials during the Clinton administration were investigated but not charged. Corruption among law enforcement officers, at both the local/state and federal levels, occurs with some regularity, just as it does in Japan. In neither nation is such corruption extensive. From time to time a state public official is convicted of committing a corrupt act, but it is rare for anybody at the secretarial level (equivalent to ministerial level in Japan) to be

convicted of a corrupt act. Henry Cisneros, former Secretary of Housing and Urban Development, pleaded guilty earlier this year to a misdemeanor charge of lying to the F.B.I about payments he made to a former lover. The payment was not from public funds and the case had nothing to do with his official duties. The investigation took 4 years, cost $10 million, and was seen by many as motivated by partisan political concerns. Former Secretary of Agriculture, Mike Espy, was charged with bribery and acceptance of favors, but was found not guilty.

Corruption in the US is most prevalent in political campaign financing, where laws are violated with regard to individual and corporate campaign contributions, but where the candidate rarely personally benefits financially. What is sought is election or re-election rather than cash, although election or re-election may have clear financial implications. As noted in an earlier paper, those who contribute to political campaigns, legally or illegally, expect something in return, so one could argue that politicians who accept such contributions are in effect accepting bribes. It would, however, be extremely difficult to connect such acceptance to subsequent specific acts of favoritism by the politician. So the corruption that is seen in such situations is a generalized corruption of the political process, rather than specific corrupt acts by specific public officials. Problems of the corruptive influence of campaign contributions also are prevalent in Japan. As the *Asahi Evening News* noted in a recent (September 12) editorial, "*The heavy dependence of parties and politicians on corporate donations has been a breeding ground for corruption*."

What explains the differences in the nature of corruption in the two countries? As we have seen, campaign financing corruption is common in both nations, but the relative lack of corruption of high officials in the US, and relative prevalence in Japan, requires some discussion. High-ranking officials, secretaries of cabinet agencies in the US and ministers of agencies in Japan, are appointed by the chief executive in each country. In Japan this is the Prime Minister, and in the US it is the President. In Japan, a Prime Minister may remain in that post for as long as his party, or a party coalition, is in power. Over the past ten or 15 years, the longevity of Japanese prime ministers has not been great, with some administrations lasting less than one year. In contrast, presidents in the US enjoy a minimum of four years in office, and frequently eight. High-ranking appointed officials generally remain in their positions for at least the first term of the president who appointed them, and it is not unusual for them to stay longer if the president is re-elected. In Japan, however, short administrations mean short terms in office for political appointees. With little job security, the temptation of bribes must be strong, especially when the bribe includes promises of future employment in the sector overseen by the minister. In the US, as in Japan, political appointees lose their positions when the administration changes, but many of these high-ranking officials obtain jobs in private industry, universities, or run for elective office. Because they know when their term will end, they can plan their futures. When one never knows when one's term will end, it is difficult to plan a future and there may be, therefore, the temptation to obtain as much money as possible while in office, as well as set one's self up for a lucrative position in private industry as soon as possible, perhaps through favours given to private industry.

III. MEASURES AGAINST CORRUPTION

Both Japan and the US have numerous laws against corrupt acts. In Japan, these laws may be found in the Penal Code, the National Public Service Law, the Local Public Service Law, and in the Unfair Competition Prevention Law. In the US, the penal codes of all fifty states contain provisions against such corrupt acts as bribery, abuse of power, and embezzlement, and the federal codes contain numerous provisions against corrupt acts by both federal and state/local officials. A significant portion of the federal laws against corrupt acts in the US is of recent origin, the result of the "Watergate" scandals in the Nixon administration. In addition to state and federal penal codes, US law contains codes of ethical conduct, administrative regulations, and presidential orders. Under many of these laws, regulations, codes, and orders, administrative, civil, and criminal sanctions may be imposed. The US also has the Foreign Corrupt Practices Act, which makes the paying of bribes to foreign officials (private or public) a crime; it is the only nation with such a law. There is, then, no shortage of laws against corrupt acts in Japan or the US.

It is doubtful that either nation needs additional legislation to deal with corruption of public servants, although Japan might consider a law similar to the Foreign Corrupt Practices Act. More severe sanctions in Japan for corrupt acts may serve as a deterrent, but the widespread publicity given to past and current scandals, and the resulting sanctions imposed on former high-ranking politicians, would seem to serve that purpose. If one examines the sanctions given to these former officials carefully, however, one finds that they are not that severe. Imprisonment is often suspended, as judges feel that public exposure may be enough punishment. So rather than increased penalties in the Penal Code and other relevant legislation, perhaps judges should treat such corruption more seriously by imprisoning corrupt officials.

In the US, by contrast, the penalties for corrupt officials are usually quite severe, especially if the case was tried as a federal crime. Federal US judges have little discretion in sentencing, so those who are convicted normally serve a prison term. There is not as much consistency in state cases, as state sanctions vary, as does judicial behavior, but it is still safe to say that the vast majority of public officials convicted in state courts of felonies involving corruption will serve some time in prison.

IV. PROSECUTION AND ADJUDICATION

One finds major differences between prosecution and adjudication in Japan and the US. This is due to differences in the nature of those offices, differences that are reflected in the manner in which cases are prosecuted and adjudicated. In Japan, both prosecutors and judges are career public officials. Both have been trained in the elite Legal Training and Research Institute (Shihoo Kenshousho), the only law school in Japan, to which only about 3% of its applicants are admitted. In the US, however, the only requirement to become a judge or a prosecutor is to have graduated from an accredited law school, of which there are hundreds with significant differences in quality, and to have passed the bar exam of the state in which the person is to serve. Many states require that those who aspire to a judgeship be a member of the bar for a minimum period-usually five years- but no special training is required. State judges may be either appointed or elected, while federal judges

are appointed by the president with the consent of the Senate. State judges have terms of office ranging from 4 to 10 or 12 years, while federal judges serve "during good behavior," meaning for life.

Judges in the US, therefore, must be concerned about politics. If they want to be re-elected or re-appointed, they must make certain that their decisions will not work against them when the time comes for re-election or re-appointment. Even where terms of office are lengthy-10years, for example- decisions can be held against a judge or a prosecutor by those who are politically powerful. Federal judges do not have such concerns, as they can be removed from office only by impeachment. But political considerations play a major role in their initial appointment, so the result may be the same. Many of President Clinton's judicial appointments have not been approved by the Senate because of ideological differences between conservative Republican members of the Senate Judiciary Committee and the President. In order to make sure an appointee is confirmed then, a president must select candidates whose political ideology will pass muster in the Senate. Thus, the federal judiciary is shaped by partisan politics.

Chief or head prosecutors in the US are either appointed or elected at the state level, while US attorneys at the federal level are appointed by the President. Lower ranking prosecutors may also be appointed by the chief prosecutor, or may be hired through a civil service system. Only a small percentage of prosecutors in the US make prosecution a career, however, and turnover is frequent. Good prosecutors can almost always make more money in private practice, and their status in the legal community is generally lower than those in private practice, especially private practice in large firms.

Those prosecutors who choose to make a career in public office tend to be either highly dedicated to law enforcement or incapable of getting a better position elsewhere. This is quite different than the status of prosecutors in Japan, whose status ranks with that of judge, and is overall quite high. More importantly, however, is the fact that prosecutors in the US are politicized, while in Japan they are not. That is not to say that there are no politics in prosecutor's offices in Japan, but that the office itself is not political and prosecutors do not have to run for re-election or worry about re-appointment. Prosecutors in Japan are also more cohesive than those in the US - they tend to have the same values, use the same methods and approaches, and have a collegiality that is not found in most offices in the US.

What this means is that there may be clear political considerations in the decision-making of many prosecutors and judges in the US, as their careers may depend upon making the correct decisions, whereas such is not the case in Japan. This is not to say that most prosecutorial decisions in the US are political decisions, as most criminal cases are routine, but rather that in major corruption cases involving prominent suspects, political considerations are more likely to play a role than in Japan.

V. CONCLUSION

Volumes could be written on the differences in official corruption between Japan and the US. This paper has only scratched the surface, but I hope that the essential differences between the corrupt acts themselves and the manner in which they are dealt with by the respective criminal justice systems is apparent. It is not likely that the corruption experienced in Japan will become common in the US,

although the reverse may happen. Nor is it likely that the successful structural aspects of the Japanese criminal justice system will be adopted by US prosecutors. But there is no reason why the US cannot insist that its prosecutors and judges be better qualified and better trained, nor that the role of politics in prosecutorial and judicial decision-making be reduced significantly. I hope that by comparing the two systems both will benefit, and as a result, official corruption will be minimized and the citizens of both countries will have more confidence in and respect for their political leaders.

PREVENTION AND REPRESSION OF CORRUPTION WITHIN A LAW ENFORCEMENT AGENCY

*Michael A. DeFeo**

I. INTRODUCTION

My remarks today will begin with a description of the FBI's system of internal investigation, discipline and ethics instruction. Please understand that this method of presentation is not intended to present the FBI system as a model to be imitated. Even if it were my intention to persuade an audience to adopt one or more elements of the FBI's internal investigative, disciplinary or ethics instruction approach, the most unpersuasive and counterproductive argument possible would be an arrogant assertion that our system is a model to be copied. In my opinion, the organizational, legal and social realities between countries are so different that a proposal to copy another country's system would be not only insulting but also technically unfeasible. We do believe that our system functions well for us, but only because it is custom designed to serve our agency population and organizational culture, as any system should be. The reason why my remarks first focus on the FBI system is that it is always safest to begin a discussion with a subject you know well, and then to expand the discussion from that point of departure. Describing how the FBI conducts internal investigations, imposes administrative discipline and provides ethics instruction to its employees will provide a convenient frame of reference for discussing how other law enforcement agencies address common problems and how they solve them.

Because we are a multinational group, it would be helpful to begin our discussion with a comprehensive explanation of the FBI's jurisdiction, to provide a context for a description of its integrity mechanisms. Unfortunately, a comprehensive and logical explanation of that jurisdiction is not feasible, because the allocation of law enforcement responsibilities between the state and federal governments in the United States has developed as a result of historical accidents, rather than in any coherent fashion. Accordingly, the FBI is responsible for an odd mix of violent crimes and offenses against national sovereignty, for espionage investigations and health care fraud offenses. Its drug trafficking jurisdiction is shared with other agencies, and it investigates brutality and corruption by local police agencies.

In an effort to sort some sense out of a very confused jurisdictional situation, the FBI's strategic plan establishes three priorities. Primary importance is dedicated to terrorist, espionage or organized criminal activities which threaten the national security, such as computer intrusions into sensitive systems. Secondary importance is given to criminal enterprises that impact significantly on public safety or government integrity, such as street gangs and public corruption. The least emphasis is assigned to the crimes traditionally associated with the FBI in the popular imagination, which are crimes against individuals and property, such as kidnaping persons for ransom and bank robbery.

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The FBI currently has about 11,700 Special Agents with full law enforcement powers and 16,800 non-law enforcement personnel who perform clerical, technical, scientific, legal or linguistic duties. Reports reflecting disciplinary actions against our employees for Fiscal Year 1997 and 1998 have previously been distributed. To summarize their content, we investigate about 500-600 employees each year for allegations of crime and serious misconduct, screened from among thousands of insubstantial or minor complaints, which are left to our field or other headquarters divisions to address. About half of those serious misconduct inquiries are at least partially substantiated, meaning that we investigate about 2% of our employees per year and discipline about 1%. Among the matters investigated, the incidence of criminal cases is low. 60% of our employees are non-agent support employees, with varying degrees of skill and education, and a number of those will be dismissed each year for commission of state offenses, such as theft, assault and fraud. However, the number of such cases is probably less than 10 per year.

For agents, criminal offenses are sometimes spectacular, but rare. One agent murdered an informant/girlfriend in the late 1980s. Others have been convicted for stealing drug evidence, travel voucher fraud, bribery and using informants to commit cargo thefts. Counting both offenses prosecuted by state authorities and crimes relating to corruption in office, which are investigated internally and prosecuted as federal offenses, only two to three agents per year are prosecuted and dismissed. In the last three years we have had highly publicized federal convictions of three agents for crimes related to their official positions: an agent who spied for Russia for money; a supervisor in Miami who stole $400,000 in seized currency and operational funds to support his gambling habit; and a young agent in New Orleans who tried to extort a drug dealer to support his spending habits.

While not numerous, these embarrassing prosecutions and the several hundred administrative punishments imposed yearly reflect that FBI management does not suppress misconduct for public relations motives. A criticism alleged against former FBI Director Hoover, during his tenure from the 1920s to the 1970s, was that an FBI agent caught committing a crime would be allowed to resign rather than be prosecuted, to avoid embarrassing publicity which would damage the image of the organization. That is certainly no longer the practice, if there ever was any truth to the allegation. As a practical matter, we recognize that the proportion of reported to unreported misdeeds is an unknowable mystery. What is important to us is that, to the extent misconduct does go unreported, the reason is because it is concealed by the guilty parties and not because of negligence, tolerance or concealment by the institution.

The title of our course is "The Effective Administration of Criminal Justice for the Prevention of Corrupt Activities by Public Officials." Corrupt and criminal activities are at the low end of the range of probabilities for FBI employees because of a number of integrity-reinforcing factors and processes. Some of those factors and processes are criminal in nature and some administrative, but they will be discussed together in this presentation because we regard them as inseparably intertwined means of preventing corrupt activities.

II. INTEGRITY REINFORCING AND CONTROL FACTORS RELIED UPON BY THE FBI

Among integrity-reinforcing features, the first which comes to mind is personnel

selection. Despite the many other opportunities available in a boom economy, the FBI still receives 30 applicants for every position, and enjoys a wealth of choice. Every applicant selected, from entry level clerical staff and maintenance workers to senior executives, must undergo a full background investigation justifying the granting of a security clearance. That investigation includes criminal record and credit checks, verification of family, education and employment history, as well as interviews of classmates, former co-workers, relatives, neighbors, ex-wives and former romantic interests about the candidate's honesty, reliability, truthfulness, work ethic, alcohol consumption, drug use, and any vulnerabilities. One condition of employment is successful completion of a pre-employment polygraph, or lie detector, examination on issues such as drug use and contacts with foreign intelligence services.

The age of new Agent Trainees now averages between 29 and 30, depending on the training class, so every one is a known quantity with a proven record of accomplishments as a law enforcement or military officer, as a professional in law, teaching or accounting, or in the fields of business, science or technology. Admittedly, even the most rigorous background investigation cannot guarantee good character, but it can ensure that a candidate has achieved a successful adult career without demonstrating bad character, which is as good a predictor of future conduct as can realistically be achieved.

Once an agent or support employee is hired into the FBI, it is very much in their financial and psychological self interest to avoid misconduct. A senior agent can earn more than USD $75,000 per year in a metropolitan area with a high cost of living, with salaries of $100,000 for a mid-level manager. Agents are eligible for retirement at half pay at age 50 after 20 years of service, and can reach a maximum retirement benefit near 80% with an exceptionally long career. Few stay longer than 25 years because they enjoy outstanding prospects for a second career or part-time employment in the business, financial services or private security fields or in local law enforcement. Support employees are also well compensated, and value the status conferred by their employment so much that many have careers of 35 and even 40 years. Despite cynicism in our society about most institutions, employment by the FBI is still one of the most respected occupations in the United States and confers significant social status on employees and their families.

Our employees almost universally do value and appreciate their positions, and fear the possible loss of both position and respect. That fear is reinforced by the realization that our disciplinary system deals severely with any conduct which may bring discredit on the institution, and is admittedly draconian for integrity offenses. We operate under what is called the Bright Line policy - that lying under oath, cheating, stealing and similar integrity offenses, whether committed on or off duty, are inconsistent with the values of the FBI and can be expected to result in dismissal. If an off-duty employee is caught stealing a small amount of merchandise in a store, what we call shoplifting, and the evidence, such as a confession or a videotape, proves that the employee committed attempted theft, that employee will be dismissed, even if no prosecution results. If an agent commits an offense which normally would be punished by a suspension from duty without pay for five or 10 days, but then lies about the facts during the disciplinary inquiry, we will normally dismiss that agent for having lied under oath, absent

some exceptional mitigating circumstances. One drunken driving offence, whether involving a government or personally owned vehicle, results in a suspension of thirty days without pay, and a second offence results in dismissal. Everyone knows the rules and demands that they be enforced even handedly. Like the Central Intelligence Agency and other intelligence agencies in our government, we are exempt from the civil service laws which can make it very difficult to successfully discipline most of our government employees. With the exception of a small percentage of employees who have combat military veteran status, our employees have no recourse to the courts against a disciplinary action, including dismissal.

Employees are required to report wrongdoing and are disciplined for failure to do so, particularly if they have supervisory responsibilities. If the wrongdoing constitutes a possible crime, we immediately inform a prosecution office and warn all possible subjects that they need not talk to our investigators because anything they say may be used as criminal evidence against them. Once the prosecutors have decided that no criminal prosecution is possible and the inquiry focuses on whether administrative discipline should be imposed, we compel employees to respond to questioning under oath and will dismiss them for failure to do so. We also regularly use polygraph examinations in aid of both criminal and administrative inquires.

The July, 1999 Report for the Fiscal Year 1998 by the FBI's Office of Professional Responsibility, reveals that 301 employees were disciplined, of whom 32 were dismissed. Of those dismissed, 11 were Special Agents, or law enforcement officers, and 21 were Support Employees, that is non-law enforcement employees. 26 additional employees were terminated for disciplinary reasons during their period of probationary employment or resigned or retired after receiving notice of proposed discipline. 32 dismissals and 26 other involuntary departures from FBI service total 58 persons, which is approximately 10% of the number of persons investigated yearly.

Perhaps surprisingly, there is very little employee protest against the system and policies which produce these results. One reason why our employees accept such rigor without complaint is that they take pride in their reputation and competence in holding citizens criminally responsible for their actions and are not particularly sympathetic to wrongdoing, even by their co-workers. Collectively, if not always individually, they consider it a point of honor to hold themselves and their colleagues responsible for any deviation from established standards of integrity and performance. They may sometimes disagree with the sanctions we impose for performance errors, for exercises of bad judgment or violations of administrative rules, but they are not in the least tolerant of intentional wrongdoing or dishonesty. When we discuss disciplinary statistics with our employees' advisory and professional groups and explain that a high percentage of dismissals involve integrity offenses, their typical reaction is agreement that we need to remove from the organizations those persons who will not uphold its standards and character. Obviously, cleansing the ranks of dishonest persons as soon as they demonstrate lack of character is far preferable to allowing them to continue as employees until they commit some criminal abuse of their office.

Referring again to the July 1999 report for Fiscal Year 1998, it reveals that inquiries were initiated on 517 employees, which is slightly less than 2% of the present

total workforce of 28,500 employees. Inquiries were closed on 615 employees, of whom 301, or nearly 50%, received some form of discipline. Those 301 employees represent approximately 1% of the total employee population, meaning that the FBI investigates approximately 2% of its employees each year for crimes or serious misconduct and imposes discipline on approximately 1%. Among the 2% of the population who are investigated, the statistics demonstrate that the most common offenses are administrative rather than criminal violations. The most common offense is unprofessional conduct, which covers a multitude of sins not otherwise specified, such as becoming involved in a traffic altercation and drawing a weapon, or a domestic assault not resulting in an arrest. The next most frequent offense category involved false or inaccurate statements or documents, with 42 persons disciplined and four dismissed.

Another unfortunately common offense was driving while intoxicated. 27 out of the 31 persons investigated for driving while intoxicated were disciplined, 25 of whom were suspended for more than 15 days without pay and two of whom were dismissed. I should explain here, that while we use this report for public information purposes, its primary goal is to educate our employees and thereby deter misconduct. Statistics like those involving driving while intoxicated are powerful arguments to persuade our employees to control their alcohol consumption, because drinking to excess is quite obviously a very high risk proposition which will be treated with unforgiving discipline. Of course, while excessive alcohol consumption may lower inhibitions and lead to misconduct, it is not in itself corruption, so you may ask-why is it being discussed in a lecture about how to prevent law enforcement corruption?

The answer is that the entire FBI environment is focused on encouraging conformity with clearly recognized standards of integrity and professionalism, enforced by detailed administrative procedures and safeguards, so that deviant behavior is immediately recognized and corrected or punished, preferably before it escalates to criminal conduct. We feel that if we can succeed in motivating our employees to observe the administrative rules, both by appealing to their self-interest and to their idealism, then criminal or corrupt behavior will be so unusual that it will quickly be recognized and eradicated. Rather than concentrating our resources on corruption once it occurs, the traditional approach in the FBI has been to identify and deter administrative misconduct, such as falsification of reports or covering up minor violations by co-workers, before they lead to or can be used to facilitate corruption. Former Director Hoover may have been a difficult personality, but he was unquestionably an administrative genius. During his nearly five decades heading the FBI he created a seamless, even obsessive, system of manual provisions and performance and quality controls. Particular attention is paid to controlling the riskiest operations - weapons handling, dealing with informants, seizing drugs, custody of evidence and handling of money.

Immense resources are invested in the Inspection Division. The inspection system acts as a Headquarters control on local field office's supervisors and managers, auditing and checking every important operational and administrative aspect of a division's operation at least every three years, or more frequently when warranted. Particular attention is paid to areas of possible misconduct, once again using administrative controls as an early warning system and defense against corruption and criminal conduct.

Informant payments are verified. Financial and evidence audits are performed. Outside contacts are made with judges, prosecutors and local law enforcement executives to uncover any information which may have come to their attention about misconduct or deficiencies by our employees in the performance of their duties. Both agents and support personnel are interviewed and any indication of sexual harassment, mishandling of evidence, falsification of records or concealment of wrongdoing is reported to our Office of Professional Responsibility. While this comprehensive system of controls and double and triple checks has undoubted costs in administrative resources, and arguable costs in frustrated creativity, it produces an immense integrity dividend, as I will explain.

A commission which investigated corruption in the New York City Police Department years ago categorized corrupt officers as either grass-eaters or meat-eaters. The grass-eater designation was used to refer to situational offenders, police officers who knew right from wrong but were weak-willed and engaged in corruption when exposed to temptation or pressured by corrupt associates. The meat-eater was the predator with no moral scruples or conscience, who saw a law enforcement position as a means to exploit opportunities for profit, sex or other ego gratification, and who often compromised entire groups.

A rigid system of internal transparency and close supervision serves as a defense against misconduct by both types of offenders. The grass-eaters who might yield to temptation when left to their own devices, may, precisely because of their more malleable character, perform creditably in a structured ethical environment with clearly enunciated rules, conscientious supervisory attention, consistent disciplinary enforcement and peer pressure from honest colleagues of strong character. The predatory meat-eater, on the other hand, is both identified and made vulnerable by a comprehensive, well-supervised administrative system. Carnivores need the freedom to roam. By nature they are unlikely to have the patience and self-control necessary to avoid conflict with rigorous supervisory enforcement of a multitude of administrative regulations. Ultimately these meat eaters are likely to leave the organization, sometimes voluntarily and if necessary by dismissal, because they cannot conform to an environment specifically structured to deny them all those illicit pleasures which the predatory animal seeks.

III. INTERNAL INVESTIGATION AND DISCIPLINE

Turning now to a discussion of how our Office of Professional Responsibility performs its investigative and disciplinary functions, our practice is to respond to any specific and credible allegation of criminal or administrative wrongdoing. Sources include citizen, judicial or legislative complaints, anonymous allegations, referrals from the Inspection Division, reporting by management or individual employees, accusations by hostile ex-spouses or lovers, or derogatory information turned up during the mandatory five-year security re-investigation to which all of our employees are subject.

If an allegation suggests that criminal conduct is ongoing and merits a covert inquiry, we utilize the operational resources of the entire Bureau, bringing in surveillance squads and technical assistance from distant offices to apply whatever resources and tactics are

appropriate to resolve the allegation, including electronic surveillance, ruses or decoys. To furnish an example, we received an allegation several years ago through a defense attorney in New Orleans, Louisiana that his client, a suspected drug dealer, was being extorted by the investigating agent. We approach such allegations with great care, because defendants and their lawyers sometimes fabricate them to provoke an internal investigation which can be manipulated to damage the credibility of the investigator at trial and cast suspicion on the prosecution. So that we cannot be easily manipulated, or accused of rejecting potentially meritorious allegations based upon subjective judgements about their credibility, we utilize a standard procedure in such situations. That procedure is to first ask the person making the allegation to voluntarily submit to a polygraph, or lie detector examination, to screen out unfounded complaints. In the New Orleans case, even though this agent had a good record and reputation and was not believed to be engaged in any impropriety by the management of that division, we followed this standard procedure and requested the drug dealer to submit to a polygraph examination.

To our surprise, the drug dealer's assertions that he had received extortionate demands for money from our agent showed no indications of deception. We then made arrangements to monitor telephone and personal contacts between the witness and our agent. We brought in a surveillance aircraft and a special surveillance squad from other cities, both to limit knowledge of the investigation in the local office and because the agent might recognize fellow agents conducting surveillance of his movements. A scenario was orchestrated at our direction in which the drug dealer requested certain confidential information from FBI files, the agent was recorded agreeing to provide the information for money, and after overwhelming evidence was secured of his corrupt efforts to secure the information from our records and to trade it for money, he was arrested, convicted and has been imprisoned.

The reality in the FBI is that such meat-eater cases are rare. The vast majority of the misconduct we investigate is the product of human frailty rather than aggressive venality. Most inquiries are reactive and administrative rather than convert and criminal. In overt inquiries we inform our employees promptly when they come under investigation so that they can secure the assistance of counsel, if desired. Interviews are conducted under oath, and polygraph examinations are used to eliminate suspects and to resolve credibility issues, particularly because such examinations frequently result in pre-and post-polygraph admissions of misconduct.

Our staff of approximately 70 in the Office of Professional Responsibility delegates all cases of minor misconduct and 75% of our inquiries into serious administrative misconduct to field divisions or to other headquarters divisions for investigation. We feel that it would be a waste of taxpayers' money to send a team from Washington to Chicago or Los Angeles to investigate a drunken driving arrest of a non-supervisory employee or the theft of $100 from someone's purse. We reserve our headquarters investigative resources for cases in which the credibility or sensitivity of the inquiry requires that it be conducted with independent resources, such as an allegation against a member of the management of an office or involving criminal activity.

Because we delegate cases to other divisions, and levy on field resources from throughout the country when we conduct

a criminal inquiry, one must make certain projections and calculations to estimate the total resources dedicated to the FBI's internal integrity program. Adding together Headquarters personnel dedicated exclusively to the disciplinary function, the number of Headquarters' and field resources which we levy upon to support our efforts, and the resources used by the field and other Headquarters divisions to handle delegated investigations would yield a total of about 140 - 150 work years, or about half of one percent of our total personnel resources.

We consider ourselves unusually fortunate and believe that for the moment our system seems to be working well and cost-effectively, insofar as we can determine. The current scarcity of dangerous internal criminality permits us to concentrate resources on deterrence without having to resort to tactics which would erode employee support for our integrity enforcement efforts. We conduct random and reasonable suspicion drug tests as a condition of continued FBI employment, but we do not use random integrity testing without some specific investigative predicate. By integrity testing I mean such techniques as planting information through an informant that a particular apartment contains large amounts of illegal drugs and money, and installing a concealed video camera to determine if agents steal drugs or money. We do not recruit convert agents-in-place among New Agent Trainees or infiltrate them into the field divisions, both because of the considerable morale costs of such tactics and their immense logistical difficulties. When agencies are tempted to set up such programs, one must consider the problems of documenting and reporting intelligence and information, and of disclosure risk. The longer such an operation runs, and the more operatives it utilizes, the greater the risk of compromise. The costs of controlling that risk quickly escalate once action is taken based on the information being generated or the personnel who initially organized and operated the program rotate out of internal affairs duties into other operational or managerial assignments.

Nevertheless, our choice not to use such techniques up until now is not a moral conclusion that such tactics might not be necessary if one had to confront pervasive corruption. While we are always concerned about the constant risk and sometimes serious incidents which occur with drug and undercover investigations, and with informants and money, the FBI has simply not yet experienced or perceived integrity problems serious enough to persuade us that random integrity testing tactics would be cost-effective. We hope that vigilant prevention will make recourse to extraordinary tactics unnecessary, but if the incidence of corruption escalated, we would be compelled to consider more dramatic remedies.

IV. COMPARATIVE DISCUSSION

At this point it may be helpful to compare our system with how other American law enforcement agencies deal with comparable issues. With respect to personnel recruitment and selection, the FBI is blessed with an unusually adequate personnel budget which permits the hiring of persons with professional degrees. By way of contrast, many police departments in the United States and elsewhere recruit employees who have barely passed their teenage years and have minimal educational qualifications. Such hiring policies by a police organization are not necessarily inappropriate, because hiring authorities have to balance the financial resources provided by political authorities with the available labor pool, the nature of the duties to be performed, and many other

factors. Nevertheless, the public and the mass media should recognize that the less selective a police organization can afford to be in choosing its candidates, the more integrity problems the community should expect. Law enforcement agencies will never be able to outbid drug organizations for the loyalty of an officer, but to maintain their integrity they must be able to pay salaries which allow them to build up a cadre of persons with maturity and demonstrated good character, who can set a moral and professional example for the organization.

A current concern to us in the FBI is the experience of police departments which have encountered serious integrity problems as a result of too much urgency in hiring. This typically happens when a budgetary increase or resolution of a litigation dispute, which are unfortunately common in our society, presents the opportunity or the need to hire a large number of officers within a short period of time, which several years later leads to an increase in integrity problems among those hired in haste. Because our Congress has authorized the hiring of additional FBI agents during the last several years to combat domestic and international terrorism and computer crime, we are taking pains to identify and avoid the factors which cause an increase in corruption and misconduct to result from a rapid increase in hiring. The most obvious factor is that many departments lower standards in order to secure enough acceptable candidates quickly. We hope that our increased hiring has been gradual and selective enough to avoid that risk. However, we are also concerned that there may be a more subtle risk, a form of organizational indigestion which makes it difficult for an institution to assimilate, train and properly indoctrinate new recruits with its values if there are too many recruits in comparison to the experienced cadre. There are sociological studies which speculate about what percentage of immigrants a country can assimilate without social disruption and friction arising from frequent clashes of diverse or inconsistent value systems and customs. We are similarly concerned about the assimilation of large numbers of new recruits, many of whom come in with years of experience in other law enforcement agencies or the military, where they have already formed certain values and habits.

Similarly, we are concerned in the FBI whether we can do an adequate job communicating and ensuring the adoption of our existing value system when more than 20% of our agent population have less than three years experience, and 35% have less than five years experience. When three or four new recruits are assigned to an office with a complement of 100 agents per year, it is relatively easy to find veteran agents with eight or 10 years experience to serve as mentors, what we call a field training agent. That training agent has the official responsibility to offer practical instruction to the new recruit and to oversee their professional development. Normally, that training agent and the recruit's supervisor will be important influences in communicating organizational culture and values. Finding three or four experienced agents who also are good moral examples to serve as mentors is not difficult. However, when the number of new agents to be trained each year increases to six, seven or 10, there are obviously fewer veteran agents available who are not fully occupied with other duties, and correspondingly even fewer veterans who can serve as outstanding examples of both professional competence and good character.

One response to this concern is our ethics training program, which in the past was administered by our Training Division, but

early this year was placed under the management of our Office of Professional Responsibility. The purpose for that change was to better integrate our practical disciplinary experience into what we teach our recruits. FBI New Agent Trainees undergo 16 weeks of law enforcement training, and those 16 weeks include 16 hours of ethics instruction. We recognize that one cannot teach an adult to be honest. What we do communicate during our 16 hours of instruction are the ethical standards which are important to a federal law enforcement officer and what our duties are under our Constitution and our legal system. We insist that our agents understand why society has authorized them to lie in an undercover assignment but not as a witness in court. We also try to inform our employees about the practical problems they will face in reality, so that they will not make mistakes or be compromised through failure to foresee the consequences of their actions.

We remind our agents that any personal or professional compromise with an informant, such as accepting gifts or engaging in a sexual relationship, places the agent at the mercy of that informant or of others who may learn of the relationship. Some confidential sources are sincerely motivated citizens, but those with the most knowledge of underworld activities are usually seeking personal advantage by betraying their criminal associates. It should come as no surprise that a person who would betray their criminal associates for personal advantage would do the same to the officer who is their contact in law enforcement. Consequently we urge our agents to focus on the practical risk, as well as the moral consequences, of allowing their integrity to be compromised in any way by a personal relationship with a confidential source.

Similarly, we urge them to think ahead and to discuss the thousand ethical dilemmas which may arise in the course of their career. It is not enough to avoid personal wrongdoing. If colleagues falsify the hour at which they begin or leave work, should a new agent make a report to a superior? Perhaps not, because we should not concern ourselves with *de minimis* violations, because the primary responsibility for enforcing time and attendance rules lies with a supervisor, and because one agent may not know if someone who leaves work early is being given compensatory time off for a night surveillance or extra-long work days, or has experienced a family emergency. On the other hand, if colleagues falsify the chain of custody for a piece of evidence or testify falsely in court, what should the new agent do? If fellow agents or a police officer were to strike a handcuffed prisoner, and the victim filed no official complaint, what should an agent who witnessed the violence do?

We want our people to think through these problems so they will not make a wrong decision based on panic or a failure to recognize what duties are paramount. We attempt to educate them about what ethical values are most important. We would consider it normal that an agent did not report another agent leaving work early, absent some personal knowledge of serious intentional abuse. Because our agents work such long hours, particularly in emergencies, even proof of an isolated intentional abuse would normally be considered primarily a performance issue to be addressed by the agent's supervisor, and we in the Office of Professional Responsibility would not be greatly interested unless a pattern of abuse existed. We insist, however, that our agents recognize their individual and independent responsibility to protect our citizens and the integrity of our criminal

justice system. That responsibility means that they must intervene to stop any clearly unnecessary use of force, must immediately report conduct which they believe may constitute a falsification of evidence or brutality by their colleagues, and that they will be punished for failing to do so.

Returning to a discussion of differences between FBI practices and those of other large American law enforcement agencies, a significant distinction exists with respect to the staffing and conduct of internal investigations. While the FBI's Office of Professional Responsibility devises the strategy for a corruption inquiry, selects the resources to implement that strategy, oversees its tactical execution and normally conducts the crucial interviews, we do not hesitate to levy upon operational assets from our investigative divisions. That approach differs from most American police departments and other federal agencies, which create wholly self-sufficient internal investigative units. Such units are staffed with sufficient personnel and resources, including technical equipment and expertise, to conduct investigations without the knowledge or participation of personnel from the operational divisions of the organization. The United States Drug Enforcement Administration and Customs Agency Service have internal affairs field offices distributed geographically throughout the country, and do not rely on investigative assistance from operational offices to the same extent as we do in the FBI.

The FBI has never felt the need to create a standalone operational capability to conduct disciplinary inquiries without the assistance of field resources for two reasons. The first is that cases of serious, meat-eater type corruption are still comparatively rare. It would not be cost-effective to staff, equip and pay the travel costs of a Headquarters surveillance squad or technical team to work four or five corruption cases a year, when that number of cases can be staffed far more efficiently by commandeering field resources from another office. The second related reason is that we have no history of investigations being jeopardized by security breaches from within, resulting from the use of resources borrowed from field divisions. Utilizing the operational resources of the entire system is also consistent with our organizational philosophy, which regards a vigilant response to any suggestion of corruption as an overriding responsibility of every field and Headquarters division. Even though our office exercises decisional authority in an internal investigation, the operational managers in our field divisions normally want to be involved to demonstrate that they individually, and the divisions which they head, are intolerant of any form of corruption.

Moreover, involving the management of an FBI field division when we must conduct an investigation of one of that division's employees parallels the way the FBI approaches its responsibility to investigate corruption in state and local police agencies. The FBI functions as an oversight mechanism for other police agencies because, by federal statutes, we are assigned the legal competence to investigate brutality and other abuses of civil rights. Moreover, almost any form of police corruption would violate federal racketeering, extortion, fraud, bribery or other laws. In combating police corruption, our field divisions regularly encounter situations wherein corruption involves a number of police officers, and may reach up the chain of command within an organization. In such circumstances, one must assume that anyone in that agency could be a potential conduit of information back to the subjects of the inquiry, not all of whom would be known in the early investigative stages. Despite that need for

secrecy and caution, our field executives normally make great efforts to find a trustworthy representative of that organization at the executive level, or if necessary at the political oversight level, who can safely be notified of the existence of the investigation, and who can eventually be given public credit for cooperating in the investigation.

You may ask, why is that symbolic contact considered important? There are a number of reasons to enlist someone at the executive or political level of a target agency. If a responsible executive can be trusted, the investigation thereby gains information and access to the internal mechanics of the target group, which may be crucial in creating investigative opportunities, protecting evidence and witnesses, and focusing the inquiry along productive lines. The courteous gesture of sharing credit with a representative of the organization whose members are being investigated also helps to avoid or to heal the resentment which otherwise may come from prosecution of well liked local police officers and impede future cooperation with that department or agency. Perhaps most important, however, is the fact that sharing credit with an honest representative of the local police agency expresses our institutional belief that public confidence is essential to the performance of a law enforcement agency's mission.

Even if a local police organization is being investigated for systemic corruption by an FBI field divisions, organizationally we recognize that at the end of the prosecution, our agents will move onto other cases, and that the local police department will still be responsible for public security within its jurisdiction. When the FBI is confronted with evidence of corruption in a local police agency, it would be foolish to expect spontaneous reformation. Outside intervention is necessary, and aggressive tactics may be required, including decoys, integrity testing, surreptitious electronic surveillance, forcing colleagues to spy on and incriminate each other, and all the techniques used to secure evidence against ordinary criminals. Ultimately, however, that police agency needs to regain the confidence of the citizens in its community in order to gain their cooperation and assistance. Yet citizens cannot realistically be expected to have confidence in a police force if they are led to believe that it is totally corrupt and that only the FBI or some other outside agency can be trusted to effectively confront its corruption. That is why we try, whenever feasible, to preserve an image of cooperation with some element or representative of a local police agency being investigated, in order to communicate the message that there are trustworthy elements within every organization in whom citizens can place their confidence. Maintaining some degree of public confidence in a police agency is the first step toward its rehabilitation in public opinion, which ultimately will be necessary for that agency to stand on its own in protecting the community.

This approach of attempting to preserve some degree of public trust in police agencies whose officers are under investigation by the FBI is unquestionably influenced by the reality that the FBI only intervenes occasionally against police corruption in a given community. Our oversight role is essentially episodic, a part-time endeavor with regard to any particular community or police agency, because we are a general purpose law enforcement body with many other responsibilities and priorities. We also recognize, however, the emergence of a trend in other contexts toward single-purpose control agencies with the full-time mission to monitor, displace or even totally replace the internal integrity mechanisms

of a particular police organization. Often modeled on the Hong Kong Independent Commission Against Corruption, these agencies may also have powers of public education and program auditing for the police and other government agencies. In Australia, the Police Integrity Commission of New South Wales and the Criminal Justice Commission in Queensland, together with Ombudsman offices and other bodies, have been given substantial jurisdiction over police corruption and misconduct. Such bodies are typically created after a governmental investigative commission has revealed entrenched corruption of such a magnitude that the public loses trust in the integrity of the offending police agency. In such circumstances, drastic measures are necessary to neutralize the citizens' suspicion sufficiently so that public order can be maintained and some minimal respect for governmental authority restored.

The measures chosen to reassure public opinion in Hong Kong and Australia were to subject the police to extremely close oversight by a permanent independent and parallel authority with sufficient competence and investigative resources to oversee or take over any significant police investigations of internal criminality or misconduct. My impression in studying those institutions is that they also try to work in partnership with the police agency employing the suspected officer. There are many practical reasons which may call for cooperation, but it would be interesting to know if those Independent Commissions also consider a need to maintain public confidence in the agency they oversee as a reason to work in partnership with that agency's management or internal affairs component.

As indicated previously, we consider ourselves fortunate to have a relatively low current incidence of corruption and criminality in the FBI, but recognize that an influx of new agents could upset the ethical equilibrium of the organization and cause more serious problems in the future. If that were to occur, we would have to consider techniques which we now do not employ, but which have been successful when used by other police organizations. For example, we use integrity testing only on the basis of reasonable suspicion. The London Metropolitan Police Service has used such tests to uncover corruption among experienced detectives and retired officers, and is now considering their use on a routine basis. Such an approach requires new and innovative thinking and expectations. The goal of targeted integrity testing is to come very close to a 100% success rate, since only persons seriously implicated in corruption by confidential information or circumstantial evidence will be tested, and numerous tests which revealed no corruption would be both expensive and would cast doubt on the intelligence or evaluation techniques of the integrity unit.

To the contrary, the institutional goal of routine testing is to devise a cost-efficient manner of random, universal testing with the ultimate goal of achieving a high rate of non-incriminating results as a result of ethics training and the deterrent effect of publicizing the routine testing technique. To my surprise, I understand the Metropolitan Police Service labor organization has received this proposal favorably, which would be a farsighted response. If a police organization could demonstrate to a policymaker and to the public that nine out of 10, or 95 out of a hundred officers will refuse the opportunity to steal or to be bribed, I think that much public cynicism and suspicion about the police would be cured.

The concept of integrity testing can be also expanded to other contexts. The New York City Police Department has suffered terribly in the last year from adverse publicity about brutality and the use of excessive force. In response, it has experimented with an imaginative approach of brutality testing. As the technique has been described to me, an officer whose record demonstrates repeated use of excessive force is assigned to respond to a violent domestic dispute in an apartment. On arrival the officer is confronted by a subject who is verbally abusive but neither uses nor threatens violence, and who in reality is an undercover Internal Affairs Division officer attempting to learn if the officer will overreact to verbal abuse by using unnecessary violence. The scene is recorded and carefully monitored in a way so as to minimize the risk of serious injury to the undercover officer, with other officers ready to intervene immediately if the suspect officer begins to use unnecessary force. Fortunately, the nature of our work in the FBI does not require us to confront routine allegations of physical brutality, but difficult and dangerous techniques are sometimes necessary to confront serious abuses.

V. CONCLUSION

Earlier in this paper reference was made to the inability of any police organization to compete financially with a drug dealer in bidding for the loyalty of an officer or agent. We are public servants and we recognize that the taxpayers will never pay their guardians as much for our honest services as criminals would pay to corrupt us. The officers or agents of some law enforcement organizations are comparatively well compensated, but most are not so fortunate. However, financial calculations alone do not determine the ability to resist temptation. We have found to our sorrow that even well-paid FBI agents have betrayed their country and their institution for money. At the same time, police officers who are paid much less generously resist opportunities for corruption, undergo hardships daily, and forego many pleasures and advantages for themselves and their families, because they believe that serving and protecting their fellow citizens is valuable, important work. A decent living wage is essential to honest law enforcement, but it is not enough to achieve integrity.

The old proverb, that man does not live by bread alone, expresses the concept that material considerations cannot explain all human decisions. That concept is extremely relevant to police work. Rational persons cannot be paid enough money to make a purely financial choice to risk their life by confronting armed robbers. There is no monetary calculation which explains why an honest law enforcement officer is immune to bribe offers worth many times a year's salary. The only reasons which can justify such dedication and honesty are non-material ideals. Such ideals can result in unselfish, altruistic sacrifices, and can inspire whole institutions. Different societies at different times have recognized codes of conduct which rose above individual self-interest, ennobled the humans who observed them, and benefitted all of society. Those codes of conduct may have been called chivalry in Western Europe, Bushido in Japan, or honor and duty in military organizations, but their common element is that they recognize and harness the idealism of the human spirit. My observation of police organizations is that the most successful are those which capture that idealism, both to stimulate performance and to avoid misconduct and corruption. No system of internal affairs and discipline can realistically hope to repress misconduct among persons with the power, discretion and investigative

training and practical experience of police officers, absent some system of shared values and the internal motivation to observe those values. Accordingly, the concept which I would like to emphasize in closing today's presentation is the importance of pride, self-respect, community status, and a sense of honor and duty in preventing corruption. Very frankly, my impression is that many other societies traditionally recognize and appreciate this concept much more than we materialistic Americans do. Consequently, I hope that during our discussion time we can explore examples of how other countries foster an *esprit de corps*, a sense of pride and even elitism, to bring out values and performance in their law enforcement officers far beyond that which can be accounted for by mere material rewards.

PREVENTION AND REPRESSION OF CORRUPTION IN NON-LAW ENFORCEMENT AGENCIES

*Michael A. DeFeo**

I. INTRODUCTION

My previous paper dealt with how law enforcement agencies, including the agency which I represent, the FBI, attempt to prevent and repress internal corruption. The focus in this paper will be on how our law enforcement agencies can deal with corruption in the non-law enforcement agencies of government. Phrasing the focus in that way involves an initial definitional decision, which is that we will not discuss corruption which takes place exclusively within the private sector. Some countries do penalize the corruption of a purchasing agent of a business corporation or of a bank loan officer with the same substantive statutory provisions applied to penalize the corruption of a government purchasing agent or a cabinet minister with the power to issue government grants. It can be argued that in many ways the economic and social harms of private and public corruption are similar. In my opinion, however, the preventive and repressive mechanisms available to deal with public corruption are much different from those needed to combat private corruption, so the arbitrary decision has been made to limit this discussion to public corruption.

To avoid violating copyright laws, should they be applicable, I also wish to make it clear that the basis for this paper is a publication which I prepared for the United Nations Centre for Social Development and Humanitarian Affairs and its Crime Prevention and Criminal Justice Branch, which was published as Numbers 41 and 42 in the UN International Review of Criminal Policy entitled Practical Measures Against Corruption.

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II. LEGISLATION

The UN publication began with the observation that a prerequisite of any campaign to effectively combat corruption is an adequate body of penal law prohibiting those forms of official misconduct most harmful to honest government and to the citizenry. A number of commonly penalized corruption offenses were described in some detail because that publication was written for a general audience. Since this audience is composed of experienced criminal justice practitioners, we need not spend a great deal of time discussing what penal statutes are desirable to combat corruption, other than to mention a few common problems. Obviously, a theft statute, or some comparable legislation, must be broad enough to include intellectual property, computer crime and information, and other government assets worth being stolen or misappropriated.

Common law systems which have not modernized the traditional offenses of bribery and extortion generate troublesome questions about who introduced the corrupt suggestion, which determines whether a payment is a bribe or an extortion. All of these offenses become problematic when the public official acts for improper motives, but not for a *quid pro quo* or any material advantage.

The problem of a public official favoring family, friends, clan or political party members rather than taking action or distributing benefits impartially, to the extent that it is addressed in penal legislation, is usually regulated by statutes defining abuses of position or conflicts of interest. Because of the powerful political and social interests involved, what is prohibited as an abuse of position or a conflict of interest tends to be narrowly defined by legislatures and courts. In many countries it is assumed that elected officials, and politically appointed executive officials, will favor their own constituents and supporters, rather than be scrupulously impartial. Penal prohibitions sometimes only prohibit action on behalf of a family member or when the official has some direct financial interest in the matter, and do not reach other forms of favoritism and cronyism, which are left to be dealt with by the political process.

In my experience, it is rare to find a total failure to penalize anti-corruption offenses, but it is common to encounter a lack of operability because anti-corruption statutes are antiquated or practically unenforceable. For example, a theft statute today which applies only to tangible objects without penalizing unauthorized taking of information is not worthless, but it is certainly inadequate unless supplemented by a specific law protecting intangible information. A common deficiency, sometimes intentional, is a grand sounding law with no means to collect the evidence necessary for enforcement.

Bribery is a covert, consensual activity which will not be spontaneously revealed and as to which there is normally no complainant and no means to identify witnesses. If a legislature penalizes the crime itself, or increases the penalty for bribery in response to some highly publicized scandal, the community is likely to be favorably impressed. The public, however, and particularly the news media, should also examine whether those same legislators have rejected all feasible means of collecting the evidence necessary to prove corruption offenses. Penal anti-corruption statutes can easily be emasculated by failing to authorize electronic surveillance for the crime of bribery, or to provide an immunity procedure to compel one party to the bribe transaction to provide evidence against the recipient, or to fund an anti-corruption unit to investigate such crimes.

Indeed, the most commonly overlooked element of penal legislation is how it can be enforced in practice. For example, the most cost-effective way of enforcing a penal statute against consensual criminal activity, like bribery, may be to utilize undercover agents and so-called “sting” operations to make such crimes visible and punishable. To make an undercover approach feasible, it is necessary to anticipate technical defenses, to plan ahead and to penalize an offer or agreement to perform an official act, even if that act could never be performed in reality because it is only part of an undercover scenario.

One type of anti-corruption statute which comes into fashion periodically is a financial disclosure law, requiring elected or appointed officials to declare various assets, income and business transactions. Those statutes can function effectively if a monitoring government agency, political opponents, or the news media devote sufficient energy to expose discrepancies between what is reported on the form and what the minister or official really possesses or controls. However, at least in our American government, so many career government officials, some at very low levels, are required to execute disclosure statements that the forms are normally filed with only a cursory review. There may be a designated ethics officer, frequently

located within the General Counsel or Legal Advisor's office in each agency, who checks to see that all the blanks are filled in and that the information looks regular on its face, but there is rarely an effective control on the accuracy of the information being disclosed. Without an effective control entity which actively checks the disclosures against the reporting employee's life style, expenditures and holdings, disclosure can be what doctors call a "placebo," a sugar pill, a harmless but totally ineffective remedy administered to patients for test purposes or to keep them happy, but without any curative effect.

Typically, legislatures enact disclosure requirements, or executives impose them on subordinates, because filling out a form is a low cost initiative which sounds as though some dramatic monitoring mechanism is being established which will prevent and/or reveal corruption. A useful litmus test which can help reveal the sincerity and significance of any disclosure program is to ask what budgetary resources are being provided to control the accuracy of disclosure forms. If those resources consist of file clerks, storage cabinets and perhaps one or two professionals to verify the procedural regularity of the forms, with no investigative resources to test the truthfulness of the disclosures, then do not expect any integrity dividend unless the news media, or political or bureaucratic opponents, target the disclosures of particular officials.

III. ORGANIZATIONAL STRUCTURES

A fundamental question with regard to corruption control relates to the structures necessary to effectively implement anti-corruption measures. Is a specialized anti-corruption unit necessary or can that function be handled within existing structures? With regard to police, prosecutors and magistrates there are both advantages and disadvantages to separate units. Among the disadvantages are rivalries and barriers to communication between a new authority and existing structures, greater administrative costs and personnel rigidities, and a diminution in the prestige and morale of the general jurisdiction organization by the loss of anti-corruption authority and resources. A separate anti-corruption unit is likely to create greater administrative costs and personnel rigidities. It is also likely to provoke or continue controversy over what organizational factors should determine whether specialized units should be set up with respect to drug trafficking, gang violence, art theft, environmental crimes or any other crisis of the moment, and if so what relationship that unit should have to existing structures. Finally, the question of a separate specialty unit frequently raises serious issues relating to reporting relationships and organizational loyalties, all of which can be very disruptive to morale and the *esprit de corps* of an institution.

The advantage of a separate unit are specialization, greater security and control and control of information, and direct accountability. Accountability may well be the greatest of these virtues, as it permits policy makers to measure what success is being achieved with given resources and places anti-corruption responsibility on identifiable persons. This highly visible responsibility and ability to identify and measure results is particularly important because of corruption's nature as a covert criminal activity which may never be detected without aggressive law enforcement efforts. At least in American government, there is a distinct tendency for corrupt situations to continue until someone is made accountable for combating the phenomenon. Whether that

accountability is best achieved by creating separate or even independent police, prosecutorial or magistrates' units, or by fixing the responsibility within existing entities, should normally be determined by local bureaucratic conditions and traditions. Given the organizational inertia which must be overcome to create a separate unit, the natural bureaucratic compromise would be to create a specialized capability subject to existing program management, such as anti-corruption units within the overall criminal investigative division, or perhaps within its fraud section.

An overriding factor, however, is often crucial in determining whether a separate anti-corruption unit will be created, and that is political or public pressure resulting from a highly publicized scandal. Announcing the creation of a new anti-corruption unit is a splendid diversion for a political figure beset by continual bad publicity about a scandal. Viewed from a more positive perspective, such scandals present a rare opportunity for an alert law enforcement executive to secure resources, jurisdiction or political consent for the creation of an anti-corruption capability, at a time when the political powers are unusually motivated to be seen as leading law enforcement efforts to combat corruption.

Normally, management by crisis is a very ineffective technique, but the creation of anti-corruption units in reaction to scandals may be one of the rare exceptions to that rule. One reason is that political motivation to dedicate any resources to combating corruption is frequently lacking until a scandal erupts. Another reason is that while resources may be dedicated to a separate specialized anti-corruption unit primarily for public relations purposes, the existence of that unit achieves the essential value of accountability, although it may implicate other organizational frictions and costs. Creation of a specialized anti-corruption unit overcomes the core problem of diffused responsibility which results when a multi-functional bureau or office is institutionally responsible for combating corruption, together with multiple other competing demands, but that responsibility is not fixed in any one individual with defined resources. When no individual is assigned dedicated resources with which to work corruption cases, a lack of cases may be justified organizationally because no *indicia* of corruption were reported or because higher priority cases of fraud, subversion or other threats were being pursued. Because of its covert, consensual, mutually profitable nature, a corrupt situation or practice may continue for decades without coming to the attention of law enforcement. Only when an aggressive investigator is assigned a quantity of dedicated resources and a defined mission and held personally accountable to produce useful intelligence or evidence on corruption, will an agency be likely to have any kind of reliable appraisal of the extent to which corruption exists.

Another interesting organizational question, which perhaps might have been covered in my first presentation, is the exclusivity of anti-corruption jurisdiction. When a quantity of resources is dedicated exclusively to a corruption matters, it is tempting, as a matter of managerial and logical clarity, to give the entity which has been created to operate those assets a monopoly over development of all relevant corruption investigations. This would mean that a police or investigative agency assigned the competence for drug control would have exclusive jurisdiction to investigate drug trafficking, or that an Inspector General within a ministry distributing agricultural subsidies would be given exclusive jurisdiction to investigate fraudulent subsidy claims and

associated bribery or prohibited transactions. The exclusive assignment of a function has the virtue of being easily understood, and if other agencies or elements are permitted to pursue allegations or instances of corruption there probably will be failures to share necessary information, investigative overlap and other *indicia* of inefficiency. However, the demonstrated susceptibility of human nature to the corrupting influence of power and to the temptations and wrongful opportunities which come with authority argues against the orderly logic of exclusive competence. The Latin maxim of *quis custodiat ipsos custodes* reminds us to always ask who will watch the watchmen. A little redundancy and even competition can be a healthy antidote to corruption, because no one person or entity has the power to protect or license illegal activities. It may be inefficient to allow both headquarters and local police units, or both national and state prosecutorial authorities, or both the police and an Inspector General's Office, to investigate allegations of the same type of corruption. Indeed, an obligation to refer or report all corruption investigations to a primary or central anti-corruption authority may be appropriate, with some flexibility as to the timing of the reporting obligation. Nevertheless, just like multiple engines on a passenger aircraft, redundancy in a high risk situation is generally a worthwhile investment. The legislative and managerial challenge in this area is to allow just enough redundancy, and even rivalry, to deter corruption or to expose it if the primary anti-corruption authority fails to do so, without disproportionately reducing the flow of intelligence and of prosecution opportunities to the primary authority.

IV. PROCEDURAL IMPLEMENTATION OF AN ANTI-CORRUPTION PROGRAM

When an investigating authority, be it a police unit, a prosecutor or an investigating magistrate, is initially faced with an anti-corruption task, certain fundamental management questions may need to be resolved. If the investigator's jurisdiction is previously defined, and the matter arises within that jurisdiction in a routine manner, such as a police report to a prosecutor or investigating magistrate, then little discretion or room for maneuver is left in defining or managing the task. In non-routine cases, however, policy level authorities often feel the need to make new or special arrangements. Sometimes this is not because the existing structures are necessarily deemed inadequate on the merits, but simply because a clamorous scandal tends to dictate a politically decisive, aggressive-appearing response. Creating a new unit or assigning a new leader to an investigating authority may be of absolutely no substantive advantage in terms of improving performance of the unit, but it can have an undeniable short-term publicity and public relations value, which may be the policy-maker's immediate interest. In other situations, the existing investigative authority may need to be replaced or supplemented because of inefficiency, lack of trustworthiness, or simply because a new form or method of corruption is forcing a new response. To use the example mentioned before, if the Inspector General of a ministry distributing agricultural subsidies has failed to prevent or identify illicit bribe payments associated with 25% or 30% of the funds expended, and that degree of corruption is revealed by a parliamentary inquiry, then executives of the national judicial police should begin planning for the eventuality that they or some new entity may be called upon to

assume organizational or individual responsibility for investigating that type of fraud.

A law enforcement executive called upon to assume a new or extraordinary responsibility to deal with a corrupt situation or an anti-corruption program will often find the situation very fluid. Occasionally a timetable will have already been announced for a report or the conclusion of the inquiry, perhaps by a policymaker with little grasp of investigative realities, while other policymakers will realize that investigations often dictate their own timetable. However, even a policymaker who has announced an unrealistic completion date for the inquiry will be happy to transfer not only the investigative responsibility, but also the responsibility for placating news media and public interest, to the newly designated anti-corruption authority or executive. Policymakers may well be unaware of and relatively uninterested in how a corruption inquiry will be conducted or what will need to be done, and may be willing to agree to any reasonable sounding terms or conditions, so long as the terms do not threaten to provoke an adverse media or political reaction.

Consequently, a new or specially appointed anti-corruption authority or executive may have the unaccustomed luxury of negotiating or self-defining the scope, resources and configuration of the task or entity. The executive who thinks and plans ahead, and promptly analyzes the anticipated needs of the inquiry to be conducted, may have unprecedented leverage to secure desirable resources and powers. In the midst of a public clamor that effective actions be taken against recently exposed corruption, many bureaucratic concessions may willingly be made simply so that the policy maker bedeviled by media and legislative inquiries and criticism can announce some decisive action. Once a tentative selection of a new or specially appointed anti-corruption authority has progressed to discussions with the candidate about execution of the task, a policymaker experiences a temporary loss of bargaining power *vis-a-vis* the candidate, even if that candidate is an organizational subordinate. Most policymakers would be loath to refuse the resources or powers which were considered necessary to a successful investigation, for fear that blame for eventual failure of the inquiry would be laid at their door. Also to be feared would be the embarrassment and suspicion which would result from a disclosure that the candidate declined the appointment or responsibility because denied adequate resources to do an effective and professional job.

On the other hand, once the media and legislative fixation on a scandal has passed, once a new crisis has claimed the public's attention, there is very little reason to re-evaluate or enlarge the resources or power previously assigned to the anti-corruption unit or investigator, and even a resignation or request for transfer by the unit's leader is unlikely to be as feared as it would have been initially. Therefore, questions of the scope, power and configuration of the anti-corruption unit which require external action and assistance should be resolved at the moment of the authority's creation or unit leader's designation. If special decrees must be issued to create the authority, the leader-designate should insist on the ability to review them to ensure that all necessary provisions are included. Special attention should be paid to potential overlap and conflict with other agencies. Those types of problems are rarely satisfactorily resolved by two independent competing entities without intervention of a superior power at the

ministerial or political level. To resolve bureaucratic problems it is advantageous to seize the momentum of the moment when political interest and sympathetic attention are engaged and motivated by the need to contain a scandal.

A request to investigate an act of alleged bribery in one small aspect of a massive and highly suspicious contract, may deal only with the tip of the iceberg, with a huge mass of other corrupt practices and payment lurking just beneath the surface. The investigator must then make some educated guesses, and take some risky gambles, about the desired scope of the authority's desired mission. Should that mission be narrowly defined to the initial corrupt act of bribery or embezzlement of government program resources, which may be proved without encountering serious political resistance because only low level persons are involved and the existing publicity has made them expendable? Or, recognizing the probable breath and depth of corruption in the program, should a broad mandate be sought? The first, more conservative approach may permit the investigating authority to build a record of success by proving the suspected bribery and identifying the *indicia* of more widespread corruption, leading to an expanded mandate.

However, one must recognize that policymakers may not grant that expanded mandate, requiring consideration of the second, riskier course of insisting on a broad mandate initially. If it is chosen, and the inquiry develops evidence that the initial allegation was indeed representative of systemic corruption at the highest levels, initially supportive policymakers may become less enthusiastic supporters of the inquiry. This lack of enthusiasm may not necessarily be an indicator or result of corruption. Rather it may simply reflect that an anti-corruption authority or executive may be created or appointed as much to abate a public relations problem for a political administration or a policymaker as for the law enforcement goal of prosecution and incarceration. The unpleasant political consequences of a successful corruption investigation, which renews negative publicity, will not necessarily be welcomed by policymakers.

Bluntly stated, the foregoing discussion is intended to convey that an anti-corruption authority or executive should arm itself at its strongest moment, which will almost always be its moment of creation or selection, or at whatever subsequent moment when public attention to its work is at its highest. If requests for foreign evidence, tax or personnel records, or other official documents present thorny legal issues or could be subject to obstructive delays, the moment of greatest bargaining strength should be exploited to gain guarantees of expeditious cooperation. If high-ranking officials are potential witnesses but can be expected to evade testifying or producing records, an order at a sufficiently high level of government should be sought requiring that all public employees will cooperate in the inquiry.

Of course, many other realities of organizational and supervisory relations and of legal limitations will dictate what powers and resources an anti-corruption authority can secure at the time of appointment. Diplomacy may well dictate that more can be gained by polite requests and patience than by the making of demands and the setting of conditions. However, it would normally be highly desirable to create a written record which would demonstrate that the powers in charge of responding to corruption were put on notice as to what resources and powers were necessary to its exposure and prosecution. Subsequent inquests and attempts to impose accountability, or

political blame, are common consequences of corruption scandals. A written record will protect the personal and professional reputation of the anti-corruption executive, who asked for but was denied adequate tools to do a professional and successful job, and will not enhance the reputation of the policymaker who rejected or ignored those requests.

V. PROFESSIONAL REPUTATION

Law enforcement professionals who have dedicated a lifetime to upholding the values of honesty and integrity naturally value their professional reputation and need to be concerned about protecting their individual reputation and that of the anti-corruption investigation unit to which they belong. The problem of protecting those reputations looms particularly largely in those situations wherein it is highly probable that a corruption inquiry will be inconclusive or unsuccessful, giving rise to media or politically inspired accusations of incompetence or of a cover-up.

Some types of cases, such as efforts to trace suspected international bribery activity, may face almost certain failure, particularly after memories have or can be claimed to have faded, records have disappeared and defenses have been fabricated. An anti-corruption authority must realistically evaluate the probable inability to uncover the true facts due to the consensual nature of bribery, the passage of time, the often subtle ways in which corruption may occur, and the sophistication and resources available to shield the criminals. In such situations any appearance of impropriety on the part of the anti-corruption investigator is proverbially as damaging to public confidence as is impropriety itself.

One's professional duty may require that an inquiry be conducted which will be sensational, even though a realistic prognosis is that a successful outcome is most unlikely. When a high profile inquiry is unproductive, those who are prone to believe in grand conspiracies and those who can profit in a political or journalistic way by alleging a cover-up can be expected to do so. Consequently, the executive directing a high risk corruption inquiry should think defensively, documenting requests for resources and instructions received from political superiors. The inquiry may need to be conducted even more exhaustively than may be cost-effective to preclude or provide a response to allegations of laxity or compromise. In certain communities accusations against investigating authorities of misconduct, abuse of position, and even insubordination and dishonesty are a routine aspect of anti-corruption inquiries. If such a counterattack is foreseeable, it may be wise to seek an understanding with political superiors in advance as to what procedure will be followed in the case such allegations are made, and who will have the competence to investigate the investigators.

VI. TARGET SELECTION STRATEGIES FOR AN ANTI-CORRUPTION UNIT

To effectively counteract corruption, information from a variety of sources should be developed, including citizens, the media, other criminal justice agencies, and perhaps most efficiently, honest members of management or of the work force within an agency whose programs or executives are being corrupted. Yet an anti-corruption agency can be overwhelmed by the sheer number of complaints and the mass of data being received from governmental auditors, dissatisfied citizens, anonymous allegations, news media exposes, and from its own inquiries. Accordingly some coherent principle or plan is called for to

organize an anti-corruption agency's application of its limited resources. Obviously, any management strategy must take into account political and legal realities. If a cabinet minister has appointed an anti-corruption authority to respond to a scandal over bribe payments in the granting of large military contracts, that minister is not likely to support a diversion of anti-corruption resources to investigate agricultural subsidy corruption. If a country's legal system embodies the principle of mandatory prosecution, then an anti-corruption unit must mandatorily open at least a formal inquiry for every allegation which legally qualifies, as notification of a crime. However, even in systems of mandatory rather than discretionary prosecution, choices must be made as to which matters can be sent to the archives without action because of a lack of an identifiable suspect, and which cases merit investment of investigative resources. Various investigative targeting strategies may be considered, including reactive strategies, intelligence-based targeting, and a decoy and integrity testing approach. In American police science the last-mentioned integrity testing approach would be called proactive, to contrast it with reactive.

Beginning with reactive strategies, probably the least effective long-run approach is a practice of responding to the stimulus of a complaint or a news media story based upon the resources available at the moment, without any objective selection criteria or master plan. This approach may lead to frequent reassignment of investigative resources. Such a response allows investigative resources to be applied in an uncontrolled fashion depending on what seems like the most vulnerable or newsworthy target of the moment. This approach, which can be labeled a "default" strategy, risks the absorption of substantial resources in cases which are simple to solve or interesting and exciting to investigate, but which have little programmatic impact. Apprehension and conviction of laborers stealing inventory from a government storage depot may deter some similar thefts among those who learn of the prosecution, but probably not as much as would sound inventory control and security procedures. Meanwhile, the consumption of numerous workdays and expensive overtime pay necessary to secure evidence of such thefts through physical surveillance may preclude pursuit of more tedious documentary inquiries into alleged kickbacks on the purchasing of all government supplies. If the level of inventory leakage due to employee theft is 5%, whereas the typical kickback on the materials being purchased is 10%, the distortion of priorities is evident.

VII. TRIAGE

A more defensible and efficient reactive strategy evaluates externally presented referrals and complaints in order to perform some form of triage, which is a judgment of whether to apply resources to a case depending on its potential value according to conscious criteria articulated in advance and consistently applied. For obvious reasons, inquiries and complaints from the legislative branch or arising from mass media sensationalism may be accorded immediate attention rather than inquiries which are still covert and not in the public domain. Some inquiries can be declined immediately or with minimal action if the offender cannot be identified without disproportionate expenditure of resources. Other inquiries may demand immediate action before crucial evidence is lost, or while the offense is ongoing, such as the investigation of the corrupt FBI agent in New Orleans which I described in my first paper. Wrongdoing falling on the borderline between criminal and

administrative misconduct, such as petty theft and cheating, can be made subject to internal guidelines, if applicable legal principles permit, to permit the employee's prompt discharge from government service and a bar from re-employment, thereby saving criminal investigative and prosecutorial resources for more important cases.

Both of the above targeting strategies, a default strategy or some form of response based upon classifying the urgency, severity and probability of solution, are reactive to outside stimuli. Such reactive strategies may not achieve maximum efficiency, but they have the negative virtue of being non-controversial. When it is apparent that an anti-corruption agency is simply responding to a public controversy or to an official referral, it is much better equipped to defend itself from accusations of partisanship, bias or seeking publicity by targeting public figures. The disadvantages of reactive strategies derive from the consensual and covert nature of corruption. Reactive strategies are likely to reach only the most blatant and unsophisticated forms of corruption, thereby perpetuating the *status quo*, placating public opinion without really threatening high-level corruption. Reactive strategies invite the cynical conclusion that the system is designed to protect the corrupt but powerful elite by sacrificing clumsy, petty thieves to convey the appearance that corruption is being controlled. These anti-democratic consequences of reactive strategies and their obvious inability to ever reach well hidden corrupt practices suggest the need to develop alternative target selection strategies.

VIII. INTELLIGENCE BASED TARGETING

One such alternative strategy may allocate some fixed percentage of resources to be applied in a reactive fashion against targets of opportunity. However, its principal focus is upon the application of a significant percentage of investigative resources to the collection, analysis and generation of criminal intelligence identifying targets with substantial programmatic impact. The majority of resources are then applied to the development of cases targeted as a result of this intelligence gathering and evaluation process, with careful attention being paid to the verification of intelligence sources and methods, and the development of new intelligence as a result of the agency's own investigations. Using intelligence methods to identify cases to be investigated may involve sophisticated, computer matching of multiple databases or simply identifying any public officials at social functions hosted by a local crime or drug boss. Review of passports, immigration control and air travel records, may reveal public officials who should be held to explain the source of funds for their expensive foreign travel. Sources in public accountancy firms may provide their evaluation of the integrity and motivation for the award of certain construction contracts or issuance of city bond issues. Intelligence based targeting may also focus on the integrity risk of a program, rather than on the conduct of an individual, concentrating on vulnerability to abuse, effectiveness of internal and external controls, audit results, degree of discretion granted to program officials, number of complaints, amount of competition in the market regulated, comparative costs, and similar criteria.

IX. DECOYS AND INTEGRITY TESTING

While intelligence-based targeting can never be free from allegations of improper motivation because its selection criteria are

discretionary, at least the means of investigation tend to be fairly routine. Far more controversial is a targeting strategy which employs decoys and integrity testing tactics. The criticisms of these devices are substantial. They arguably express an intolerably cynical view of how the police should operate, which damages public respect for law enforcement. Some societies may categorize such tactics as the impermissible use of an agent provocateur manufacturing imitation crime when none really exists. It can be argued that the weakness of human nature permits law enforcement to target, trap and destroy almost any political, personal or ideological opponent which it chooses.

Notwithstanding these objections, integrity testing devices are employed because law enforcement executives know that hidden corruption can continue indefinitely unless exposed, and that no other technique is as cost-effective in penetrating bribery and other secret abuses of office. Allow me here to introduce a case study about a corruption inquiry which was a very controversial event in the United States of America when it occurred and which still provokes widely different reactions among audiences. This case study involves what was called the ABSCAM investigation in the United States in the 1ate 1970s. This inquiry began with an FBI undercover operation utilizing a cooperating witness with a long criminal record. The cover story was that a business representing Arab royalty sought opportunities to invest some of the fabulous wealth accumulated during the then-recent oil shortage and embargo by the Organization of Petroleum Exporting Countries. The FBI's internal code name for the case, which eventually became know to the public, was ABSCAM, a combination of the notional business front for the investments, called ABDUL Enterprises, and the word “scam” meaning trick.

It was planned that the operation would use the cooperating criminal's underworld associations to purchase stolen artworks and securities, and ultimately to base prosecutions on evidence gathered during the operation. These goals were soon achieved, and in the process, the cooperating witness and later an undercover FBI agent, were introduced to the mayor of a New Jersey city, who offered to arrange the payment of a $100,000 bribe to the Vice-Chairman of the New Jersey State Gambling Commission to influence the issuance of a gambling casino license. As the corrupt mayor and his associates spent time socializing with the undercover FBI agent, they talked about other matters consistent with the undercover scenario involving wealthy Middle Eastern investors. One topic was the desire of the mythical Arab sheik to guarantee that he would be allowed to immigrate to the United States if a revolution occurred in his country. Since immigration is within the competence of our national or federal government, the corrupt mayor offered to introduce the undercover team to friends who were members of the United States Congress and who would accept bribes to ensure that a law was passed to allow the Sheik to reside in the United States.

The corrupt mayor suggested a $100,000 payment to guarantee that one Congressman would introduce legislation to admit the Sheik to the United States, on the grounds that such private bills were usually passed without controversy. The undercover agent refused to pay more than $50,000, arguing that the help of several Congressmen might prove necessary. In one day a Member of our House of Representatives was videotaped personally accepting $50,000 and filling his pockets with the currency after agreeing to introduce the legislation, and a US Senator was recorded promising to help with the legislation in the Senate in exchange for a

20% concealed interest in mining corporations for which he promised to help secure government contracts. As the investigations progressed other Members of Congress took bribes in a brown paper bag, in briefcases, in person and through intermediaries, all in exchange for promising to support legislation to allow the Sheik to immigrate into our country.

When the investigation became public in 1980 the publicity was enormous. Prosecutions and convictions of a United States Senator and six Members of the House of Representatives, and numerous local officials, lawyers and businessmen followed. At the same time, both houses of our Congress conducted hearings to critique the propriety of the investigation. It may be stimulating to discuss some of the issues debated during those Congressional hearings.

A. Were Innocent Persons Entrapped?

There is no juridical difference between the way an American judge and jury decide the guilt of a trafficker who sells drugs to an undercover agent for money and a Congressman who sells a promise to support legislation for money. In both cases the common law legal tradition permits a possible defense of entrapment. The jurors are instructed by the judge that they should absolve the accused if they believe that he had no predisposition, intent or willingness to commit the crime and was entrapped into doing so by government persuasion. Despite strenuous efforts to find any possible vulnerability in the ABSCAM operation, neither the Senate nor the House of Representatives committees claimed that the accused officials were innocents lured into the perpetration of crimes which they had no predisposition to commit. Such a claim would have lacked public credibility because the crucial encounters were all recorded, and almost all were videotaped. The videotapes showed the greed of the accused congressmen, stuffing envelopes in their pockets and grabbing at bags or briefcases full of money, and boasting that in deciding how to vote they listen to money, not words.

B. Is Integrity Testing a Law Enforcement Technique Which Should be Used Against Elected Representatives?

The dangers of allowing the executive branch of government to tempt legislators are obvious. The moral independence of individual legislators and the institutional independence of the legislative branch are at risk when their integrity is tested, as we are all imperfect human beings subject to temptation. Fortunately, the Congressional hearings on the ABSCAM operation established a complete absence of political targeting, and in fact all of the defendants were from the party in power at the time.

Moreover, those same hearings revealed that ABSCAM was not a moral crusade against corruption in Congress. None of the persons responsible for the operation would have disputed the principle that it is the electorate, the voters, and not criminal justice authorities who are primarily responsible for the moral caliber of our elected representatives. The original intent of the operation was to recover stolen property. When a demonstrably corrupt local mayor offered to arrange bribes to Members of our Congress, the offer was accepted because none of the investigative or prosecutorial executives involved could suggest any persuasive reason why we should use the operation to buy illegally possessed artwork and securities but not to buy illegally promised votes. We Americans are an intensely pragmatic people. Public opinion was greatly impressed by the very high percentage of elected officials who came into contact with

ABSCAM who were willing to promise their votes for money. During the Congressional hearings an argument took place over whether 80% or only 63% of the elected representatives accepted illegal payments. The calculation depended on how one counted persons who died before prosecution or were convicted for other offenses. The argument ended when one of our prosecutors reminded the Senatorial committee that either percentage suggested that the operation was amply justified. With the issue phrased in that context, and with public opinion solidly in favor of the numerous prosecutions and convictions, our Congress shifted its focus from whether undercover tactics could be used in investigations of elected representatives to examine what appropriate controls should be in place.

C. What are the Appropriate Controls for Undercover Operations Testing the Integrity of Elected Representatives?

Our House of Representatives proposed a change in federal law to require that all future undercover operations should require judicial authorization, but no such legislation was ever enacted, primarily because our citizens felt that Senators and Representatives should accept the risk of walking into a meeting and being offered a bribe for a vote, since they could and should refuse the offer, and could even go so far as to report it to the proper authorities.

Frankly, our investigative and prosecutorial authorities were much more conservative than the public in their view of what kind of testing was allowable. The Director of the FBI and the prosecutors at the politically appointed policy level of the Department of Justice applied controls to avoid random integrity testing, and to offer bribes only to a selected group of persons to whom there was founded suspicion of a corrupt predisposition to accept an illegal payment. The standard for authorizing a meeting with an elected official was that an intermediary with proven criminal credentials had represented that the intent of the public official in attending the meeting was to seek a bribe. Once a meeting took place, no bribe could be offered until recorded preliminary discussions confirmed the elected representative's awareness that an illegal transaction was to be discussed. These precautions had the desired effect of persuading public opinion and responsible Members of Congress that the defense of entrapment and the internal law enforcement for undercover operations adequately safeguarded legislative independence.

D. Did the ABSCAM Experience Establish a New Regime in Which Investigative Authorities Now Use Integrity Testing at Will Against Elected Officials?

Despite the numerous convictions resulting from ABSCAM, all upheld on appeal, and the reluctance of our Congress to risk voter displeasure by limiting undercover operations or integrity testing techniques, no operation of similar scope has taken place since 1980. When I last researched the issue several years ago, only one additional conviction of a Congressman and one of a federal judge had resulted from decoy or undercover tactics, although it is now used routinely against elected and appointed officials in state and local governments.

If the ABSCAM operation were such a statistical success, if its convictions were affirmed against all legal challenges, and if Congress did not pass legislation limiting law enforcement powers as a result, one may ask why it has not been repeated. My opinion, which is strictly personal and does not reflect any official position or analysis, is that various factors are at work. One

could be called the scorpion factor. For law enforcement authorities, initiating another ABSCAM project would be like a scorpion entering a bottle with a stronger and more poisonous scorpion. If the weaker strikes the stronger, the weaker will suffer serious injury or worse, with no means of escape. The Congressional reaction after ABSCAM teaches that if law enforcement authorities were to again test the integrity of our Congress, multiple convictions might result but restrictive legislation would be almost inevitable.

Other factors also discourage the repetition of an ABSCAM operation. One is recognition of the sensational manner in which the news/entertainment media treat criminal investigations. One of the painful aspects of the ABSCAM investigation was that it was terminated after an innocent Senator was introduced to the undercover agent by an intermediary who misrepresented that the Senator wished to trade his vote for money. No bribe was ever even discussed, because the undercover agent realized that the Senator thought he was there to receive a legitimate campaign contribution. This probably occurred because the criminal intermediaries had exhausted their contacts with corrupt office holders whom they knew were eager for bribes and arranged a speculative meeting in the hope of receiving a percentage if the Senator were offered a bribe and decided to accept it. Whatever the reason for the event, the result was painful and terribly unfair. Because of the mass media coverage when the investigation became overt, the Senator suffered damage to his reputation. Law enforcement executives with a sense of public responsibility cannot pretend to be blind to such realities. The consequence is that the number and scope of undercover operations must be severely restricted to eliminate any involvement with innocent persons whose reputations might be unfairly ruined by such contact.

There may also be a fear that integrity testing is simply too effective a technique. We know the ABSCAM percentage of 63% to 80% is not statistically representative of the Members of Congress willing to promise their votes for money, because strenuous efforts were made to deal only with a preselected, corrupt population. However, our society may not want its law enforcement agencies to determine exactly what percentage of our elected representatives would be willing to take illegal payments under the constant pressure of political fundraising and campaigning. It may be that in ABSCAM we looked into the abyss and were frightened by what we saw, and that our society will not willingly approach the edge of that abyss soon again.

PARTICIPANTS' PAPERS

INVESTIGATION OF CORRUPTION IN JAPAN

*Tamotsu Hasegawa**

I. CORRUPT PRACTICES BY GOVERNMENT OFFICIALS IN JAPAN

Japan's prosecutor's offices handle and process bribery offences committed by government officials. According to statistics for 1997, there were about 170 government officials under arrest, of whom 150 were accused of taking bribes. According to a breakdown by public office of the accused, the largest number recorded was: 80 for local government officials, followed by 50 assembly members of local government. The remainder consisted of 10 police officials and 10 officials in the National Tax Administration.

In Japan, as mentioned above, the number of cases in which public servants are exposed as being involved in bribery are few, but such crimes are carefully planned and are secretive in nature. So the proportion of cases that remain hidden are rather more than with other criminal cases, and the actual number exposed through the courts is rather small. Thus in Japan, finding out illegal actions by public servants, such as bribery, is quite an important issue for investigating authorities.

There are typical examples in which bribery is committed by government officials in Japan. Administrative bureaucrats exercise their administrative rights at their own discretion, in a broad sense. Information on decision-making processes is inadequately disclosed by administrative organizations. Under such circumstances, bribes are offered to secure special business favors from government officials in connection with the granting of government licenses or the awarding of government contracts for public works.

These kinds of bribery cases receive public attention. In one such case, the Vice-Minister of Health and Welfare took a bribe from a business owner in return for the granting of a construction subsidy for an aged persons welfare facility. In another case, an executive director of a securities company provided a high-ranking official of the Ministry of Finance with luxurious business entertainment, which constitutes the offence of taking a bribe for favors given in relation to government approval of a financial product.

In Japan, nomination is made for selection of contractors under a competitive bidding system. Contracts to carry out public works are awarded by local governments to the successful bidder(s) among the nominated contractors. Prospective contractors have offered bribes to government officials in return for favoritism during the selection of nominated bidders. Government officials have taken these bribes from prospective bidders to disclose the lowest bid price in the bidding procedure. These corrupt officials were accused of bribery.

In addition to bribery offences committed by administrative bureaucrats, there are many recorded occasions of members of the Diet being involved.[1] Diet members have strong business connections with particular industries. They have been

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[1] The Diet is the Japanese parliament.

known to approach an administrative organ to formulate an industrial policy that is advantageous to one particular industry. In this process, the particular industry offers inducements to the Diet members to influence political decisions in its favor.

Here are some examples of members of the Diet being involved in bribery. In recent years, the Fair Trade Commission attempted to accuse certain construction companies of consulting among themselves to orchestrate predetermined exaggerated bids for public works before the bids were opened. The chairman of the Fair Trade Commission was subjected to political pressure from a member of the Diet, who was consequently accused of receiving a bribe from the construction companies to prevent the proposed accusation. Similarly, in a tax evasion case, a member of the Diet was accused of receiving political donations from many construction companies, with the sole aim of collecting the money for his personal use.

In Japan, those in government service should never accept, for themself or their family, favors or benefits under circumstances which might be construed as influencing the performance of his or her governmental duties. In general, government employees, including officeholders, adhere to the Code of Ethics for Government Service. Bribery is not necessarily rampant as a social custom. On the other hand, Japan's social structure and the environment surrounding government employees contains many factors that could be seen as a hotbed for corruption. In Japan, investigating authorities are under great pressure to expose corrupt practices by government employees, especially by office holders in the national government - high-ranking government officials and members of the Diet.

II. BRIBERY INVESTIGATIONS OF GOVERNMENT OFFICIALS

A. Public Prosecutor's Involvement in Bribery Cases that are Exposed by Police Officers

In Japan, the police force is the primary investigating authority in criminal cases. In principle, public prosecutors conduct supplementary investigations of criminal cases referred to them by police officers, before determining whether or not to institute prosecution. A public prosecutor's office is an independent investigating authority, as are police stations. As a general rule, these two investigating authorities work in close cooperation with each other.

In bribery cases, police officers conduct the criminal investigation if they themselves expose the leads. To perform effectively during the investigation of a bribery case, police officers require a solid understanding of investigative techniques and legal interpretation. As the courts make ever more complicated rulings that expand the rights of the defendants, the legal requirements for the admissibility of confessions may appear different in certain jurisdictions. Public prosecutors are often involved at the initial stage of criminal investigation, thus exercising control and supervision over the police work. This is to rectify improperly handled investigations and ill-advised conduct on the part of law enforcement officers, especially incomplete interpretation of the law and evaluation of physical evidence.

Good cooperative relations are maintained between public prosecutor's offices and police stations. Public prosecutors and police officers often hold meetings to discuss a particular case in detail before an identified suspect is transferred from the police station to the public prosecutor's office. Even after the

case is referred to the prosecutor's office, the police maintain a close liaison with the prosecutor's office for competent collection of physical evidence.

B. Independent Investigation by Public Prosecutors

In Japan, a public prosecutor is authorized to conduct a criminal investigation into any type of crime as he/she sees fit. In addition to cases referred to them by the police, public prosecutors identify particular cases and conduct their own criminal investigations.

Statistics for 1997 show the number of people questioned by police officers compared with suspects interrogated by public prosecutors. The police officers questioned about 150 suspects, rather more than the 20 suspects interrogated by public prosecutors. The number of criminal accusations is small on the part of public prosecutors, but the majority of bribery offences committed by government officials or members of the Diet were exposed in the course of independent investigation by public prosecutors.

Public prosecutors are expected to conduct preliminary investigations of bribery offences committed by office holders in the national government - high-ranking government officials and politicians. In practice, public prosecutors perform their investigative duties during investigation of bribery cases. This is partly because the public prosecutor is a skilled practitioner of such diverse skills as legal interpretation and investigative techniques for white-collar crimes, and partly because the public prosecutor's office is independent.

The Public Prosecutor's Office Law provides that no person in the office of public prosecutor can be removed nor disadvantageously treated, even by the Minister of Justice, without reasonable cause. Moreover, the Law stipulates that, for the purpose of protecting the exercising of prosecution rights, especially for the purpose of eliminating any political pressure and interference of the investigative procedures of a public prosecutor, the Minister of Justice may only command the Prosecutor-General of the Supreme Public Prosecutor's Office with respect to investigations or prosecutions of individual cases. This means that the Ministry of Justice cannot interfere directly with criminal investigations or the solving of crimes conducted by any public prosecutor. In this way, the independence of the public prosecutor is secured. Public prosecutors remain neutral in exercising their prosecution rights against political groups.

III. ORGANIZATION OF PUBLIC PROSECUTORS OFFICES

As described earlier, public prosecutors are authorized to conduct criminal investigations at their own discretion, a factor that is characteristic of the Japanese public prosecutors system. Criminal investigation relies heavily on the investigative duties of public prosecutors, including the institution of public prosecution and the maintenance of public trials.

In Japan, the public prosecutor's office has a special investigative department that takes charge of investigations into bribery and economic crimes committed by government officials. These special investigative departments are established at the District Public Prosecutor's Offices in Tokyo, Osaka and Nagoya. In addition, special criminal departments have been established at 10 district public prosecutors offices throughout Japan.

At the Tokyo District Public Prosecutors Office, the Special Investigation Department has a total of 125 legal officials, comprising of 40 public prosecutors and 85 public prosecutor's assistant officers. These 40 public prosecutors are made up of one director, three deputy-directors and 36 subordinates. All 36 public prosecutors are professionals with four to 18 years of experience since assuming office. They are grouped into three special investigative teams headed by the three deputy-directors.

The following sections address the current situation of independent investigations conducted by the Special Investigation Department and the problems of investigative procedures.

IV. DETECTION OF A BRIBE IN PROGRESS

The Special Investigation Department employs three investigative techniques to find leads for suspicious activities while a bribe is in progress. Firstly, public prosecutors examine news coverage, such as in newspapers and magazines. Another source of information is the question and answer proceedings during the Diet or local government assembly sessions. Public prosecutors look for any suspicious activity conducted by government officials or politicians. Extensive interviews and background investigations are initiated to identify suspects. In particular, examination of the contents of speeches made by Diet or local government assembly members is one important investigative technique to solicit leads in a bribery-in-progress case. Public prosecutors always monitor trends in the Diet and local government assemblies. If a matter of business interest is discussed at a meeting held by a particular corporation or organization, the minutes are made available for examination by public prosecutors.

Secondly, a public prosecutor's office accepts complaints or accusations from a complainant or accuser for crimes of corruption. The Special Investigation Department has a public prosecutor who takes charge of accepting written complaints or accusation and letters from informants. Suspicious situations worthy of investigation are detected from information contained in written complaints or accusations and anonymous letters. In recent years, an employee of a corporation accused an executive director of a wrongful act. An executive officer of a politician's support association revealed the corrupt practices of the politician. These insider accusations are a major source of information for detecting leads into ongoing bribery cases.

Thirdly, public prosecutors look for signs of suspicious activity during investigations into the crime in question, thus adding weight to the suspicion that some other crimes have been committed. In a tax evasion case, seized account books are examined to identify the flow of funds, thus revealing whether bribes were offered to government officials who could then be accused of bribery. When an identified suspect or witness is questioned with respect to cases of embezzlement or breach of trust by executive directors of a corporation, statements are obtained unexpectedly to detect corrupt practices, thus leading to the prosecution of bribery-in-progress.

V. INVESTIGATIVE TECHNIQUES USED BY THE SPECIAL INVESTIGATION DEPARTMENT

During the course of investigation of a bribery case, the Special Investigation Deparatment conducts a thorough search

for evidence to collect as many physical items of evidence as possible. Seized evidence is examined to prove an alleged offence of corruption. A search for evidence usually begins in the area to be raided, while the suspect is under arrest. In a serious crime, all people present are mobilized while the raid is conducted and physical evidence searched for. The number of people mobilized during the conducting of specific tasks often exceeds 100. All evidence recovered is seized during the raid, including account books, business diaries, and any other items related to the alleged offence. Seized evidence is often packed in hundreds of corrugated cardboard boxes during a raid on the offices of a big company. The seized evidence is then examined by public prosecutors in detail. They are then used as evidence that a crime was committed.

Secondly, during an investigation into bribery, it is important to clarify the source of funds offered as bribes and how they were used. To locate the source of funds for bribes requires a thorough analysis of account books. To this end, the Special Investigation Department dispatches public prosecutor's assistant officers to the National Tax College and a Regional Taxation Bureau to develop skills in making an analysis of account books. Some public prosecutor's assistant officers receive instruction in bookkeeping at vocational schools. These public prosecutor's assistant officers, who have acquired a working knowledge of bookkeeping, are assigned to special tasks - the analysis of bank deposit slips, vouchers used for business transactions, and ledgers, thus playing an increasingly important role in conducting financial investigations.

Thirdly, public prosecutors conduct intense questioning of suspects or witnesses to obtain their statements to determine the truth about a fact in question. Bribery is a carefully planned and concealed crime, making it difficult to prove because physical evidence is not easy to gather. So a statement made by an identified suspect or witness is extremely vital to ensure that successful evidence is presented in court. Moreover, the fact that the money received was a bribe is quite difficult to prove without a confession. Public prosecutors do their best to make preparations by collecting objective evidence before beginning any interrogation. This procedure assists the public prosecutors in obtaining a statement from an identified suspect or witness. A statement obtained from an identified suspect or witness is checked against any available background information on the suspect or witness, thus establishing the credibility of the statement. Finally, the public prosecutor's record of oral statements is prepared and presented as evidence in court.

As described earlier, the Special Investigation Department follows basic investigative techniques and procedures for detecting leads during the course of independent investigation into bribery cases. No special authority is delegated to the Special Investigation Department. No special investigative techniques are used for criminal investigations. In a bribery case, criminal investigations conducted by the Special Investigation Department reflect the breadth of practical experience, working knowledge, and investigative methodologies on the part of each public prosecutor.

VI. CHALLENGES TO BRIBERY INVESTIGATIONS

Public prosecutors in today's society face many challenges. Serious crimes such as bribery often results in lengthy, exhaustive, and highly complex criminal

investigations. This requires a heavy allocation of manpower. As described earlier, the Special Investigation Department of the Tokyo District Prosecutor's Office - the largest prosecution team - has only 40 public prosecutors assigned to criminal investigations. As an effective way of managing a complex investigation into serious crimes such as bribery and large-scale economic cases, the manpower shortage is replenished by the dispatch of additional public prosecutors from other departments or other District Prosecutors Offices throughout Japan. In a world of frequent and dramatic changes in information technology, social attitudes and legal opinion, criminal offences are likely to become more and more complex in the future. Conducting complex investigations in an efficient and proper manner requires improvement of investigative methodologies, as well as an increase in the number of public prosecutors in office.

In addition, criminal investigation into bribery poses a major problem - how to secure the appearance of an identified suspect or witness. As Japanese citizens become increasingly aware of their legal rights, the suspect has full opportunity to contact their defence counsel prior to questioning. If identified suspects or witnesses are summoned by the investigating authorities, they often refuse to appear. Such suspects or witnesses refuse to talk during questioning. To cope with these new trends requires consideration to be given to the introduction of new investigative techniques, such as an immunity system. In contrast, Japanese citizens have strong inhibitions about adopting new investigative techniques, such as exemption from legal proceedings and entrapment.

This situation would cause another problem in Japan. The investigation's progress is often hindered by the suicide of individuals being questioned or important witnesses, a contributing factor that has significant effect on criminal investigations. In Japan, a person being questioned often commits suicide to avoid any inconvenience being caused to their organization or immediate supervisor if he/she belongs to an organization. In recent years, news media tends to disclose the nature of an alleged offence and the investigation's progress. The suicide of a person being questioned is often attributable to the disclosure of investigative information through news media.

In a bribery case, a confession obtained from an identified suspect or witness constitutes extremely important evidence. Another problem is how to establish in court the voluntary nature and credibility of a confession. In a bribery case, a confession obtained from an identified suspect at the criminal investigation stage is often revoked by the accused, who denies the voluntary nature and credibility of the confession in court. When the criminally accused challenges the voluntary nature and credibility of the confession made during investigation, their arguments is that he/she was intimidated into confessing because he/she was locked in the interrogation room during intensive questioning.

If the voluntary nature and credibility of confessions is tested at trial, any public prosecutors who conducted an investigation of the case in question will be called to testify in court to establish the facts about the circumstances under which the interrogation was conducted. The admissibility of a voluntary confession obtained during interrogation is established in court by a public prosecutor

who testifies that the contents of the voluntary confession match the objective evidence and statements made by all the parties involved. If there is a possibility that the voluntary nature and credibility of a confession is tested in court, consideration should be given to the use of video or tape recorders for transparency of the investigative process.

To prevent the investigating authorities from placing over-reliance on a confession, and to facilitate prosecution of a bribery crime, the burden of proof should be changed or presumption regulations should be provided for. These effective procedures should be taken into consideration.

VII. PREPARING FOR COURT

In a bribery case, the defence counsel and defendants have a legitimate right to test the admissibility of physical evidence presented in court by public prosecutors. When prosecuted bribery or economic cases often involve complex fact finding and require a comprehensive list of all physical evidence, the public investigator's record of oral statements and witnesses interrogations. These procedures require enormous effort to establish in court that the alleged crime was committed. The Tokyo District Public Prosecutor's Office has a Public Trial Department and a Special Public Trial Department - an additional department assigned to bribery or economic cases. These departments present truthful, objective information that is effective in establishing the guilt of criminals.

THE EFFECTIVE ADMINISTRATION OF CRIMINAL JUSTICE FOR THE PREVENTION OF CORRUPT ACTIVITIES BY PUBLIC OFFICIALS: THE NIGERIAN POSITION

*Onuoha Emmanuel Ifeanyi**

I. THE PHENOMENON OF CORRUPTION

In a world where man's wants are insatiable and the resources limited, it is not uncommon for individuals and interest groups to compete for the control of these resources as a means of satisfying their needs. This exercise becomes corrupt if the competitiors employ foul means to achieve their objective.

In Nigeria, we are genuinely worried about corruption which, though a universal phenomenon, seems to have become so endemic in our body politic that most discourse about Nigeria, at home and in international fora, centers on the high ascendancy of corruption in our public life.

According to the Communique on the 1988 National Conference on Corruption and other Economic Crimes in Nigeria, corrupt activities are not the exclusive preserve of a particular section of the society, but rather an ill-doing that cuts across all social barriers and strata. It is not only the politicians and the executives that are corrupt in our society, but the bureaucrats, public servants, bankers, insurance brokers, officials involved with the administration of justice in the country, law enforcement agencies, the press, religious leaders and other members of the public.

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Olusegun Obasanjo aptly captured the scenario in a speech he made on the day of his inauguration as President of the Federal Republic on Nigeria on 29 May, 1999; an excerpt of which is reproduced hereunder:

> *"Corruption, the greatest single bane of our society today, will be tackled head-on... No society can achieve anything near its full potential if it allows corruption to become the full-blown cancer it has become in Nigeria".*

II. REASONS FOR CORRUPTION

In various literature, corruption in Nigeria has been alluded to as an improper development strategy resulting in politico-economic and administrative inefficiency which, in turn, leads to inadequacy or scarcity of goods and services. Thus, the acquisition of such goods and services becomes a special privilege, rather than a normal entitlement.

Adedokun Adeyemi, in a paper entitled "Corruption in Nigeria: The Criminological Perspective", linked corruption to the upbringing and socialization process. He opined that in a society whose traditions permit polygamy, children of polygamous homes do not enjoy adequate paternal contact resulting in emotional insecurity and stability. The combined effect of scarcity of goods and services tends to produce in such children exaggerated fear for the morrow. The result is that they develop a strong propensity to acquire

wealth to satisfy their exaggerated fears.

Further reasons adduced for the growth of this national canker-worm include mass illiteracy, general poverty and frustration, conflict of values, weakness of social and governmental enforcement mechanisms, tribal sentiments and nepotism. So also are the acquisitive propensity of a society where people are judged and accepted by what they have and not that they are, the use of political office as the primary means of acquiring wealth, lack of patriotism and general disregard for the laws of the land.

Obviously, corruption on the part of political office-holders, bureaucrats, public servants, the press and the general public has tended to stigmatize the image of government, weaken its credibility and reduce the effectiveness of the development programs and policies and also, to a great extent, weaken the economy of the nation.

III. EXISTING MEASURES AND MECHANISMS FOR CONTROL OF CORRUPTION

The existing measures for the control of official corruption in Nigeria include:

(i) The criminal/penal codes, the police and other enforcement agencies, and the courts are the formal conventional instruments for controlling corruption.

(ii) Another set of existing measures and mechanisms for controlling corruption may be categorized as "target-directed efforts". These include the defunct Corrupt Practices Investigation Bureau, the Public Complaints Commission, and the Code of Conduct Bureau.

(iii) In the past also, judicial/administrative tribunals of inquiry were set up for instances of discovered or revealed large-scale corruption, especially those involving high-ranking government officials.

(iv) At other times educational institutions, religious bodies and traditional rulers, and human rights groups have joined the combat against corruption.

IV. CRIMINAL LAW PROVISIONS AGAINST CORRUPTION

A. Official Corruption

Section 98 of the Criminal Code of Nigeria provides:

"Any person who:

(a) being employed in the public service, and being charged with the performance of any duty by virtue of such employment, not being a duty touching on the administration of justice, corruptly asks, receives, or obtains, any property or benefit of any kind for himself or for any other person on account of anything done or omitted to be done, by him in the discharge of his office; or

(b) corruptly gives, confers, procures or promises, or offers to give or confer, or to procure or attempt to procure, to, upon or for, any person employed in the public service, or to upon, or for any other person, any property or benefit, of any kind on account of any such act or ommission on the part of the person so employed is guilty of a felony, and is liable to imprisonment for seven years".

B. Extortion by Public Officers

Section 99 of the Criminal Code provides:

"Any person who, being employed in the public service, takes or accepts from any person, for the performance of his duty as such officer, any reward beyond his proper pay and emoluments, or any promise of such reward, is guilty of a felony, and is liable to imprisonment for three years."

C. Judicial Corruption

Section 114 of the Criminal Code provides:

"Any person who:

(a) being a judicial officer, corruptly asks, receives or obtains, or agrees or attempts to receive or obtain any property or benefit of any kind for himself or any other person on account of any thing already done or omitted to be done, by him in his judicial capacity; or

(b) corruptly gives, confers, procures or promises, or offers to give or confer, or to procure or attempt to procure, to, upon or for any judicial officer, or to, upon or for any other person, any property or benefit of any kind on account of such judicial officer, is guilty of a felony and is liable to imprisonment for fourteen years.

The offender cannot be arrested without a warrant. The term "judicial officer" in this section includes a member of a native tribunal, an arbitrator or umpire, and any person appointed to act as commissioner under the Commissions of Inquiry Ordinance, or before whom (under the provisions of any Ordinance) proceedings are taken in which evidence may be taken on oath; but in the case of an offence committed by or with respect to any such judicial officer, the longest term of imprisonment is seven years. A prosecution for any of the offences firstly defined in this section cannot be begun except by the direction of a law officer".

Sections 151 - 121 of the Penal Code applicable in the northern states of Nigeria made similar provisions on corruption.

Part of rule 8 of the ten specific rules or prohibitions provided for past and present public officers and their agents by the Code of Conduct Bureau provides *inter alia*:

"No person shall offer a public officer any property, gift or benefit of any kind as an inducement or bribe for the granting of any favour or for the discharge in his favour of the public officer's duties".

The Constitution charges the Code of Conduct Bureau with the responsibility of referring cases of breach of the Code of Conduct to the Code of Conduct Tribunal, which is to be appointed in accordance with the recommendation of the Federal Judicial Commission.

The Public Complaints Commission is an administrative body charged with the responsibility of investigating abuse of administrative power, and it is recognized as existing in law under section 274(5) of the 1979 Constitution. Its main functions, specified in section 4(2), provides that a commissioner shall investigate either on their own initiative or following complaints lodged before him/her by any other person, any administrative action taken by federal and state ministries, local governments, statutory corporations or companies incorporated pursuant to the Companies Decree 1968, or other public institutions including the office or servants of these bodies.

TABLE 1
Extract from Summary of Crime and Offence Figures 1987-1998

Year	Total Number of Cases Known to Police	Number of Cases of Official Corruption	Percentage of Official Corruption to Total Number of Cases (%)
1987	280,879	424	0.15
1988	320,411	329	0.1
1989	309,771	268	0.09
1990	285,859	297	0.10
1991	253,741	314	0.12
1992	271,614	136	0.05
1993	295,878	139	0.05
1994	247,038	224	0.09
1995	241,916	390	0.16
1996	240,354	579	0.24

Source: The Nigeria Police Abstracts of Crimes and Offences Statistics

V. DATA REGARDING THE DISCOVERY OF CORRUPT ACTIVITIES BY POLICE RECORDS

Available crime statistics over a ten-year period (1987-1996) show that the incidence of official corruption is insignificant in relation to the national crime level (see Table 1). This is at variance with the public opinion on the subject, as manifest in newspaper reports and the daily experience of the ordinary citizen in society. Some of the reasons adduced for the low rate of reported cases includes the lack of confidence in the administration of criminal justice, the fear of prosecution (since a victim is equal to an offender in terms of rights, as required by law) and lack of a clear understanding of what constitutes official corruption.

VI. PROBLEMS MITIGATING ACTION AGAINST CORRUPTION

A. At the Investigation Level

The following factors constitute unnecessary obstacles to efficient investigation of cases of corrupt activities in Nigeria:

(i) The Official Secrets Act often stands between the investigator and the information necessary for the prosecution of a case of official corruption.

(ii) The agencies charged with the investigation of corrupt activities often lack the required manpower and financial resources necessary to effectively monitor the phenomenon or perform their job.

(iii) Sometimes members of the security agencies do not have the requiste training and equipment to perform effectively.

(iv) Low morale among some enforcement agencies arising from poor salary structure, harsh working conditions, inadequate facilities and lack of adequate residential

accommodation.

(v) Corruption is an offence of low reportability. Factors responsible for this range from the fear of prosecution arising from the fact that both the offender and victim are criminally liable, to lack of confidence in the system of administration of criminal justice.

(vi) The law on the subject of corruption is far from clear. Because neither "corruption" nor "corruptly" is defined in the Criminal Code, their interpretation has been left to the wisdom of judicial officers. Also, the emphasis of the provision is exclusively on public or judicial officials and only for "bribery" and "extortion". Furthermore, there are no provisions making corporate bodies criminally liable.

B. Problems at the Trial Level

(i) During the recent military regimes, independence of the judiciary suffered setbacks such as arbitrary removal of judges from office, the promulgation of decrees with provisions ousting the jurisdiction of the courts on the subject.

(ii) Due to inadequacy in the number of judges/magistrates, the courts are often congested thereby causing delays in the disposal of cases.

(iii) In the past, there was lack of will on the part of government to review laws relating to corruption to make them comprehensive and effective.

(iv) There is a provision in our criminal law that empowers the Attorney-General to discontinue any case at any point before judgement is delivered, in the "public interest". There is no doubt that the said law is subject to misuse, especially by a corrupt regime.

(v) Most courts still use manual recording systems which are strenuous and time-consuming. There is a general lack of know-how in the area of information systems management.

VII. STRATEGY TO PREVENT THE CORRUPT ACTIVITIES OF PUBLIC OFFICIALS

The following strategy is recommended for the control of official corruption:

(i) Corruption should be attacked simultaneously in both the public and private sectors of society.

(ii) It is important to delineate the ambit of the offence. As much as possible, the definition should not be amorphous.

(iii) There is the need to establish a National Corruption Control Commission as the various agencies currently handling issues regarding official corruption have too much to do, with too little resources.

Already, the President of Nigeria has presented a bill to the National Assembly which, if passed into law, will address the issues raised in the recommendations above.

VIII. INTERNATIONAL COOPERATION IN CORRUPTION CASES

There are problems associated with the provisions relating to corruption under the domestic jurisdiction when it assumes an international character, because hitherto the Constitution of Nigeria does not permit

trial of an accused *in absentia*. In the circumstances, the investigators can only rely on rules of international criminal procedure if there is any existing legislation or treaty in that sphere.

The procedures of extradition, judicial assistance, recognition of foreign panel judgements in domestic courts, and the transfer of offenders and execution of sentences of foreign courts within domestic jurisdiction, are long and painstaking to follow, even where a treaty is in existence. Efforts of the government to secure co-operation with other foreign countries have led to the promulgation of Mutual Assistance in Criminal Matters Within the Commonwealth (Enactment and Enforcement) Decree No.13 of 1988. Under the Decree it will be possible to co-operate with Commonwealth states in areas dealing with the location of witnesses, tracing, seizure and forfeiture of the proceeds of crime.

Also in 1984, Nigeria entered into a Criminal Investigation Co-operation Agreement with the Requblic of Benin, Ghana and Togo. There is also an Extradition Treaty between the Republic of Benin, Ghana and Togo with Nigeria.

The exploitation of the provisions of these co-operation agreements, and the expansion of such relations to accommodate relevant countries, will assist in the retrieval of the proceeds of corruption, thus controlling the menace.

THE EFFECTIVE ADMINISTRATION OF CRIMINAL JUSTICE FOR THE PREVENTION OF CORRUPT ACTIVITIES BY PUBLIC OFFICIALS

*Sadar Muhammad Raza**

I. INTRODUCTION

Corruption in different forms and shapes has existed in this World since time immemorial. It exists in the form of human deceit, wrong, treachery, unfaithfulness, intrigue and cunningness that has changed the destinies of human races, dynasties and kingdoms.

When Pakistan came into existence in the year 1947, the evils of corruption and bribery were of course there, but in a mild form. As the Nation was fighting for independence, there was a missionary spirit in every citizen, particularly the public servants. Before 1947, the CID used to have an eye on government officials, their social contacts, general reputation and efficiency. With the increase of population and with the increase of the evils, the Special Anti-corruption Police force was created, which expanded with the expansion in the government and public life. With the passage of time, as is natural with a nation achieving independence, there started a struggle for richness, and therefrom emerged selfishness. The desire to attain riches and power gave strength to pulls, fights, cliques and intrigues for promotion and for holding posts of benefit among the officials. Such a race for power and wealth was obviously at the cost of honesty and morality.

In the early stages there was lot of precaution, secrecy and shyness in the giving and taking of bribes, but gradually the officials became bold and the transactions became open, with the result that corrupt elements in government, public, trade and industry went on becoming powerful, rich and resourceful, controlling and dominating every outlet, opportunity and activity of life.

II. DEFINITION OF CORRUPTION

Bribery or corruption among public officials has multifarious manifestations and styles, like paying money to get undue advantage, creating friendship, causing undue influence and indulging in praise and undue respect to get undue advantage; having underhand connections, understandings or dealings; to overcharge, hoard, smuggle or adulterate; to exploit, swindle, misappropriate or earn fraudulently; to evade any tax or government due; to take any personal advantage or benefit from power, position or post; to give undue advantage, benefit or facility for any consideration monitory or otherwise; to neglect any duty, waste time, money and public property; to prejudice, mutilate, misguide and spoil; to intentionally give wrong and unjustified decisions, opinions, verdicts and comments; to get favour or remuneration prejudicing the right of fellow citizens; and hundreds of similar actions and omissions, are corruption.

III. INTERNATIONAL REMEDIES

With the passage of time and with society becoming complex at the international level, and with the world becoming smaller and smaller day by day,

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the octopus of corruption in every country has gone beyond previous frontiers. The proceeds of corruption, the payment of bribes, kick-backs and commissions obtained through corrupt practices are often transferred abroad in safe deposits, away from the public view. Swiss bank accounts are used for the transfer of ill-gotten wealth by corrupt officials, as well as by drug traffickers, arms smugglers and money launders. Kickbacks and commissions are offered by the multi-nationals and management officials of the developed countries to their counterparts in developing countries, for the allotment of contracts or procurement of goods.

The first resolution on corruption in government was adopted in 1990 at the 8th United Nations Congress on the Prevention of Crime and Treatment of Offenders. The resolution concedes that the problems of corruption in public administration are universal, which may have deleterious effects on nations with vulnerable economies. The resolution known as the resolution of fraudulent enrichment was passed in 1992 by the United Nations Human Rights Commission and considered such corruption to be a human rights problem. The Council of Europe introduced a framework for mutual legal assistance which provides for mutual assistance to each other in identifying persons and seizing evidence, so as to combat corruption. This procedure, having been adopted by the Commonwealth countries in 1986, attempted to facilitate the quick disposal of cases and punishment of offenders. In terms of combating corruption, provisions have been incorporated concerning the freezing, seizing and forfeiture of proceeds of the crime corruption. Similar procedures were devised in the United Nations Convention against Illicit Trafficking in Narcotics, Drugs and Psychotropic Substances 1988. As business, trade and commerce are becoming increasingly global, the effects of bribery can no longer be restricted to the confines of a particular country. In 1994, the Organization of Economic Co-operation and Development (OECD) recommended six different areas of reform for its member countries. These included the criminalization of bribery; terminating the system of tax deductibility for foreign bribes; changing the banking laws to make banks the instrument of fighting corruption, rather than being an instrument of corruption. Such recommendations asked the Member States to take specific steps to deter, prevent and combat the bribery of foreign public officials in connection with international public transactions, and further to report to each other on the efforts and meaningful steps which they have taken in reviewing/reforming their laws and procedures, to realize the objectives of the recommendations.

IV. NATIONAL REMEDIES

The Constitution of Pakistan contains specific provisions for disqualification of public representatives who indulge in corrupt practices. Article 62 provides that a person intending to become a public representative should be of good character, must abstain from major sins and be righteous, honest and trustworthy (Ameen). Article 63 provides that a person found guilty of corrupt or illegal practice would be disqualified from or from being elected as a member of the legislature. Honesty, selflessness, resistance to influence against their official conduct or decisions, are the necessary ingredients of the oaths prescribed for the president, governor, prime minister, chief ministers, federal/provincial ministers and members of parliament/provincial assemblies. Eradication of social evils and the promotion of social justice are sanctioned by Article 37 of the Constitution, while

Article 38 guarantees the promotion of the social and economic wellbeing of the people. This is so because corrupt and illegal actions affect the citizen's right to life and the enjoyment of the quality life enshrined in Article 9 of the Constitution. Our Supreme Court in *Shehla Zia vs. Water and Power Development Authority* (PLD 1994 SC 693) and *Employees P.I.C. vs. Ministry of Housing and Works* (1994 SCMR 1548) held the view that the right to life does not simply mean vegetative or animal existence, but the enjoyment of all amenities and facilities essential for quality of life and a dignified existence.

Corrupt practices are also violative of Articles 23 and 24 of the Constitution, as any loss of national resources amounts to depriving people of their right to enjoy property rights. It is thus obvious that the Constitution of Pakistan does not countenance any corrupt deed or practice by public representatives, state officials or a member of the public. Laws exist which criminalize corrupt practices and prescribe stringent punishment for infringement.

V. LEGISLATIVE MEASURES AGAINST CORRUPTION

A. Pakistan Penal Code 1860

Section 161-171 of the Pakistan Penal Code (PPC) contains a specific chapter related to offences committed by or in relation to public servants. Offering or taking gratification or anything valuable without consideration are declared as penal offences, punishable with imprisonment as well as fine. Sections 171A-171-J of the PPC provide for offences relating to elections. Thus, the grant or acceptance of a bribe, with a view to induce the exercise of electoral right, undue influence or personation at elections, and illegal payment in connection with an election, are declared as actionable wrongs, punishable by imprisonment as well as fine.

B. The Prevention of Corruption Act 1947

This Act provides for the prevention of bribery and corruption by a public servant. A public servant who accepts or obtains, or agrees to accept or attempts to obtain, any gratification, or anything valuable without consideration or for inadequate consideration, or dishonestly or fraudulently misappropriates or converts for their own use any public property entrusted to their care, or by corrupt or illegal means or by otherwise abusing their position, obtains any valuable thing or pecuniary advantage, or if s/he or any of their dependents, are in possession of assets/property for which s/he cannot give reasonable account, or possesses property dis-proportionate to known sources of income, shall be guilty of criminal misconduct, punishable with imprisonment as well as fine. Though stringent, the law provides for an adverse presumption against the public servant if it is proved that the public servant accepted or obtained any gratification or valuable thing, or the same was given or offered to them. A similar adverse presumption is drawn against them if his/her property/assets are found to be disproportionate to their known sources of income, the presumption being that s/he had acquired such property/assets illegally or through corrupt means. In case there is any *prima facie* evidence against such a public servant, the burden shifts on them to prove that s/he is not guilty, i.e did not acquire the property/assets by illegal and corrupt means. The punishment prescribed for the offending public servant is imprisonment for and upto seven years, as well as fine.

C. Public and Representative Office (Disqualification) Act 1949 (Proda)

This Act provided for the debarring of public and representative office holders found guilty of misconduct. Misconduct includes bribery, corruption, robbery,

favouritism, nepotism, wilful maladministration, wilful mis-application or diversion of public money or any other abuse of official power, position or any abetment thereof. The Act applies to the prime minister, chief ministers, federal/provincial ministers, parliamentary secretary and members of the federal/provincial legislature. References for this purpose are filed by the Governor General or Governor in the Federal Court or a two-member tribunal established for the purpose. The jurisdiction of other courts is ousted. Persons found guilty of misconduct are debarred from holding public office or availing representative capacity for a period upto ten years.

D. Effective Bodies (Disqualification) Order, 1959 (EBDO)

This law applies to persons holding any office, post or position including membership of any elective body (federal/provincial assembly or local government institutions), or in connection with the affairs of the federation/province.

In this law, misconduct includes all the offences mentioned in PRODA, in addition to indulgence in subversive activities, the preaching of any doctrine or the doing of any act which contributes to political instability; abuse of power; any attempt, act or abetment of such misconduct. The reference is to be filed by the President or the governor, and the case is to be decided by a tribunal consisting of three members appointed by the President or the governor, as the case may be. The punishment prescribed is disqualification from holding membership of an elective body for a period of seven years. Persons who are dismissed, removed or retired from service on a charge other than inefficiency, or are detained under the preventive detention law called the Secrecy of Pakistan Act 1952, or convicted for any offence and sentenced to imprisonment for more than two years, were also to be declared disqualified. The accused person may volunteer to retire from public life, in which case s/he stands disqualified but is not proceeded against. In case the person is found guilty, the tribunal, besides declaring him/her as disqualified, may also oblige him/her to make good any loss which s/he may have caused by their misconduct. Again, the jurisdiction of the ordinary court is ousted.

E. Holders of Representative Office (Prevention of (Misconduct) Act 1976)

This Act provides for the prevention of misconduct amongst the holders of representative offices, like federal/provincial ministers, ministers of state, parliamentary secretaries and members of parliament or provincial assembly. The Prime Minister and chief ministers are excluded from the domain of this law. Misconduct is defined as accepting or obtaining any illegal gratification, anything valuable without consideration or for an inadequate consideration; dishonestly and fraudulently misappropriating public property by corrupt, dishonest or illegal means; obtaining any valuable thing or pecuniary advantage and possessing pecuniary resources or property disproportionate to known sources of income. An adverse presumption is to be drawn against such holders of representative office. Offences are triable exclusively by a bench of the High Court, comprising of two judges. References are to be filed with the approval of the Prime Minister. The guilty stand disqualified from being or from being chosen to be a member of parliament/provincial assembly until the holding of the next general election.

F. Parliament and Provincial Assemblies (Disqualification for Membership) Act 1976

This Act provides for the disqualification

of a person holding the office of federal/ provincial minister, members of parliament/provincial assembly, parliamentary secretary, attorney general and advocate general. Misconduct includes all those Acts already defined in the former laws. Cases are decided by a division bench of the High Court, comprised of not less than two judges. References are filed for this purpose by the Prime Minister or Chief Minister, with the prior approval of this Prime Minister. Persons who volunteer to retire from public life are not tried, but stand disqualified. Persons found guilty of the offence stand disqualified from being or from being chosen to be a member of parliament/provincial assembly, until the holding of the next general election.

G. Holders of Representative Offices (Punishment for Miscomduct) Order, 1977 (PPO 16 of 1977)

This law was promulgated during Martial Law in 1977, providing severe punishment. It applies to the president, governor, prime minister, chief ministers, federal/provincial ministers, ministers of state, advisors, parliamentary secretary, members of parliament/provincial assembly, attorney general and advocate general. It defines misconduct as before. Offences are triable by Special Courts consisting of a judge of the High Court, with the right of appeal to the Supreme Court. The punishment prescribed is disqualification for/up to seven years from being elected as a member of parliament/ provincial assembly. Persons convicted for any of the offences listed in the schedule, e.g offences under the Income Laws, Foreign Exchange Regulation, Official Secrets Act, Customs Act, Pakistan Arms Ordinance etc are also disqualified for a period of seven years from being elected as a member of parliament/provincial assembly.

H. Parliament and Provincial Assemblies (Disqualification for Membership) Order 1977 (PPO 17 of 1977)

This law is applicable to the persons and misconduct as defined in the laws mentioned previously. Offences are triable by Special Courts consisting of a judge of the High Court, with the right of appeal to the Supreme Court. The reference is filed by the president or the governor, and the punishment prescribed is disqualification for/up to seven years from being elected as a member of parliament/provincial assembly. The jurisdiction of the other courts is barred.

I. Martial Law Regulation No. 21 (MLR 21)

Promulgated in September 1977, it applies to persons who remained members of the national assembly, senate or a provincial assembly during the period from December 1970 to July 1977. Such members were required to submit detailed statements of their properties and assets to the Martial Law Administration. After making an investigation as to the correctness of the statements, it was determined whether such property or assets were acquired by lawful or unlawful means. Furnishing false or incorrect information was made punishable with imprisonment for/up to seven years, as well as with fines, and the possible forfeiture of the whole or a part of the property and assets. An option was given to members to voluntarily surrender lawfully acquired property/assets, in which case no further action was to be taken. Any failure to surrender such property/assets was punishable with imprisonment for/up to fourteen years, in addition to fine and forfeiture of all or any part of the property. A person found to be in possession of property/assets disproportionate to known sources of income stood disqualified from being elected as a member of parliament

or provincial assembly.

J. The Representation of People Act 1976

This deals with the conduct of elections to the national/provincial assemblies. The emphasis is on the conduct of elections through a fair and impartial manner, prohibiting any use of illegal or corrupt practices. The law placed an embargo on persons from contesting elections who have either written-off any loan or have defaulted in the payment of a loan, taxes or utility expenses like telephone, electricity, gas and water charges.

A successful candidate is to submit a statement of the assets and liabilities in respect of themself, their spouse and any dependent family members. Any candidate to the election can inspect such a statement furnished by another candidate. All members of parliament/provincial assembly are required to submit a yearly statement of their assets and liabilities.

A candidate returned to an assembly is required to submit a statement of expenses incurred in connection to their election compaign. A ceiling of one million rupees is fixed for the election to national assembly and six lacs rupees (six hundred thousand) for provincial assembly. Candidates found to have incurred expenses beyond the prescribed limit stand disqualified for a period of five years.

K. Ehtesab Act 1997

For the effective administration of criminal justice, in order to check corrupt activities, the promulgation of the Ehtesab Act 1997, was a milestone in the history of the laws of accountability in Pakistan.

The public clamour for accountability became louder as the media revealed scandals and stories of the plunder of national wealth by public representatives and public officials. Repeatedly raised by the political parties, vehemently stressed by the pressure groups and the public at large, the demand for accountability became more pronounced. The government responded by introducing a bill called the Fifteenth Constitutional (Amendment) Bill, 1996. It sought to enforce the accountability of public representatives, public servants etc. It provided for the creation of a special committee of parliament to send references against corrupt persons to court, to be decided by a two-member bench of the High Court. The punishment prescribed included imprisonment for/up to seven years and the imposition of a fine. Such persons also stand disqualified from being or from being chosen to be a member of parliament/ provincial assembly for a period of five years. The bill proposed the constitution of an Ehtesab (Accountability) Commission, consisting of a serving judge of the Supreme Court as chairman, and two serving or retired judges of the Supreme Court or High Court as members, to try and decide cases of misconduct.

Due to acrimony and confrontation among the government and the opposition, no consensus could be reached in parliament on either of the two bills, and consequently no legislation could be enacted.

The newly installed care-taker government responded to public pressure for accountability by promulgating an ordinance called the Ehtesab (Accountability) Ordinance 1997. Just before the ordinance promulgated by the care-taker government could lapse (in 120 days), the government quickly moved and adopted the Ehtesab (Accountability) Act 1997.

With some variations, the Act borrowed the provisions of the Ordinance; it applies

to the holders of a public office, including a former president or governor, present or past prime minister/chief minister, federal/ provincial ministers, ministers of state, advisors, consultants, political secretarie, special assistants or holders of a post or an office with equal rank or status, secretary, members of parliament/ provincial assembly, speakers, deputy speakers of the national/provincial assembly, chairmen and deputy chairmen of the senate, attorney general and law officers of the federal government, auditor general, advocate general, additional advocate general and assistant advocate general.

The law also applies to a public servant of the federal/provincial government or a local council in basis pay scale (BPS-18) and above or equivalent thereof in corporations, banks, financial institutions. The Law is further extended to chairman/ vice chairman of Zilla (District) councils, municipal committees, municipal corporations or metropolitan corporations. The law is also made applicable to the holders of an office or post in BPS-17 or below, if such an officer is found to be involved in the commission of an offence with the public servants earlier mentioned. The Law excluded the institution of the judiciary and the members of armed forces, except when a person who is a member of any such force is holding or has held an equivalent post or office in any pubic corporation, bank, financial institution or any other institution.

There is no material deviation in the definition of corruption or corrupt practices as given in the previous laws. They also provide for a presumption against the accused, in that it is presumed that the property/assets are illegally acquired if the accused cannot satisfactorily account for them or if they are disproportionate to known sources of income.

The Ehtesab (Accountability) Act assigns the responsibility of conducting enquiry into and investigating exclusively the Ehtesab (Accountability) Cell; to be completed within one month and its findings to be communicated to the Chief Ehtesab (Accountability) Commissioner. The Ehtesab (Accountability) Cell is headed by a chairman who is appointed by the governor.

It provides for the establishment of the Ehtesab (Accountability) Commission, headed by the Chief Ehtesab (Accountability) Commissioner, appointed by the Federal Government in consultation with the leader of the opposition in the National Assembly and the Chief Justice of Pakistan. Qualifications for appointment as Chief Ehtesab (Accountability) Commissioner, requires the person to be a serving or retired judge of the Supreme Court. S/he is appointed for a period of four years and cannot be removed except by the Supreme Judicial Council, on the grounds and as per the procedure prescribed in Article 209 of the Constitution.

Reference against the accused is initiated by the Chief Ehtesab (Accountability) Commissioner either on receipt of a reference from the federal/ provincial government or on a complaint from any citizen or on his/her own accord. On completion of an enquiry, the Ehtesab (Accountability) Cell communicates the findings to the Chief Ehtesab (Accountability) Commissioner, who evaluates the evidence and decides whether or not to refer the case to court. These offences are non-bailable and no court, other than the High Court, has jurisdiction to grant bail. Bail is not permissible if there are reasonable grounds for belief that the accused is *prima facie* guilty.

On voluntary return of the property, the trial proceedings are discontinued but the accused is required to resign from office and the court may impose an additional fine or penalty. The Chief Ehtesab (Accountability) Commissioner (CEC) can grant a pardon to an accomplice, subject to approval by the federal government. The Law applies not only to the recipient of illegal gratification and/or pecuniary advantage but also to the one who gives or offers the same. In case a complaint succeeds up to the final stage, the complainant may be entitled to such rewards as may be determined by the court. However, in case the complaint is proved to be false, *malafide* or made for some ulterior motive, the complainant may be punished with imprisonment for/up to three years, as well as by fine.

This law is most likely to achieve its object in eradicating corruption from society, provided the machinery thereof (constituted by the government itself) is not partisan and discriminatory with the potential to be abused and misused against opponents, dissenters and non-conformists, and provided it is given effect from a year that includes the period of the ruling government as well. The Law Commission of Pakistan has recommended that the Law of Accountability should be amended and made applicable with effect from 14th August 1947, the day the country came into existence, and that it should not grant immunity to certain incumbent holders of public office or the functionaries of certain institutions like the army and the judiciary. The immunity of the judiciary is not that alarming because it has its own system of accountability, provided in the Constitution.

L. Wafaqi Mohtasib (Federal Ombudsman)

The institution of Wafaqi Mohtasib (Ombudsman) was established in 1993 in order to check the excesses of the officials of various departments, without resorting to lengthy judicial processes. The public was to have quick and inexpensive redress of their grievances, seek rectification of wrongs and get compensation for acts of malfeasance/misfeasance on the part of a government agency or its officials. The Mohtasib (Ombudsman) has been given powers to investigate complaints against any office of the federal government, except the judiciary and the armed forces. Its functions include diagnosing, investigating, redressing and rectifying acts of injustice or mal-administration. During investigation/enquiry, the ombudsman is not bound to strictly follow judicial procedure. S/he may choose and adopt any appropriate procedure and may also seek the settlement of disputes through any informal method, e.g conciliation. Against the orders of the Ombudsman, a representation can be filed before the President of Pakistan.

VI. CONCLUSION

The discussion so far has brought us to the conclusion that the levels of corruption are of two kinds. One is at the higher/ government level and the other is among the lower strata of government officials. Notwithstanding the plethora of criminal laws for the prevention and punishment of corruption among public representatives and government servants, the results have not been very encouraging. Hardly any prominent figure has been convicted. The reason for such dismal failure may be scribed to the selective, rather vindictive, use of the law, by the successive government against their opponents. Unfortunately, the process of accountability could never acquire the level of legitimacy and credibility which the people expected. Lack of political will to initiate the process of accountability and apply the law in earnest, without fear or favour, has

resulted in a situation where corruption is not only tolerated but allowed to spread.

I cannot avoid recalling the words of a Chinese sage philosopher, Confucius, who said in the middle of the sixth century, before Jesus, that;

> *"If a ruler is himself upright, his people will do their duty without orders; but if he himself be not upright, although he may order, they will not obey".*

In another place, he said:

> *" When a ruler loves good manners, his people will not let themselves be disrespectful; when a ruler loves justice, his people will not let themselves be unsubmissive; when a ruler loves good faith, his people will not venture to be insincere."*

To give a bribe to a public servant has been considered a usual thing amongst under-developed and developing countries for centuries. As the bribes are paid secretly, it is really difficult to procure evidence in order to prove the crime. Another complicated phenomenon of corruption is that both the receiver, as well as the giver, are happy at the same time, gaining advantage simultaneously. Such crimes are difficult to identify, investigate and prove.

Experience has shown that the more stringent the laws, the higher the rate of payment. It is therefore necessary that various measures are organized as to make an appeal to the conscience and morality of the public in general, and of public servants in particular. True and undistorted religious teachings should be given to the people serving in various offices of government. Economic policies should be devised so as to eliminate poverty and to reduce the gap between the rich and the poor. Such a yawning gap between the two gives impetus to the race for money and hence, corruption. Lack of education is another factor that leads to corruption. Lack of nationalistic feelings have been observed to be the most powerful factor which makes public servants irresponsible, less honourable and more greedy. If all these factors are universally available, it would be much easier to identify the culprit, investigate the crime and to take the guilty to task.

ANEXURE I

CAUSES OF CORRUPTION

1. Lack of morals.
2. Lack of nationalism.
3. Poverty.
4. Low salary of investigating officers and judges.
5. Wide gap between the cross-section of people *qua* their wealth.
6. Sense of false standards and competition in the race for money.
7. Lack of education and employment protection for the children of civil servants.
8. Lack of protection to civil servants after retirement.
9. High rate of inflation.
10. High rate of population in developing and underdeveloped countries.
11. Bad customs regarding various social cultural ceremonies and a sense of false competition theirabout.
12. Pressure from political high-ups and their own superiors.
13. Lack of basic facilities.
14. If one can do wrong under the orders from an other, why not such dishonesty for his/her own monetary benefit.
15. Lack of accountability. Those who interfere, they protect from.
16. Uncertainty about the future.

CAUSES OF LACK OF CONVICTION

1. Sub-standard investigation
2. Lack of protection to the complainant and witnesses.
3. Low education of the investigating officers.
4. Insufficient training of investigating officers.
5. Complicated record of offences relating to accounts.
6. Lack of competence among public prosecutors.
7. Incompetent people appointed as public prosecutors.
8. Good lawyers not inclined to work in public agencies.
9. Witnesses transferred, influenced or won-over.
10. Interest lost - matter forgotten by the public.
11. Public not vigilant nor reactive.

SOLUTIONS

1. Extensive teachings about honesty, morality, nationalism, good conscience, humanity and religion to children from the day they attain understanding.
2. Enhancement of the salaries of investigating officers, public prosecutors and court staff.
3. Enhancement of the salaries of judges and magistrates, and provide them free basic facilities of life like accomodation, conveyance, petrol, healthcare, telehone, gas and electricity.
4. Provide club and other cultural facilities to judges where they do not have to mix with other people.
5. Full retirement benefits to judges, as they have during service.
6. No allurement, i.e, judges expectation of political and other jobs after retirement.
7. Equip the police and court officers with the most modern electronic devices and thorough training thereof.
8. Fair economic standards with the gap between the rich and poor completely eliminated.
9. Complete legal and physical protection to complainants and witnesses.
10. Strict laws be enforced to eliminate extravagant expenditure on social customs.
11. All political interference be discouraged, taken serious notice of and political authorities be subject to impeachment without delay.
12. Means of communication be improved so that witnesses are served on time to appear in court.
13. Number of courts to be increased, at least to double the existing number.
14. Strict action to be taken against lawyers at the court level, as well as Bar Council level, who are found using delaying tactics and thus impeding the course of justice.
15. Highly educated officers, academically as well as technically, be apointed as investigating officers.

THE EFFECTIVE ADMINISTRATION OF CRIMINAL JUSTICE FOR THE PREVENTION OF CORRUPT ACTIVITIES BY PUBLIC OFFICIALS

*Roderick Kamburi**

I. INTRODUCTION

Recent years have witnessed a growing awareness of the nature and extent of the threat posed by transnational criminal activities. The initial concentration on organised international drug trafficking for instance, or terrorism, has gradually started to broaden to include other criminal areas. Areas such as fraud, corruption, counterfeiting and money laundering yield high profits. Such forms of organised transnational criminality is characterised by the ability to diversify operations and engage in new activities or in new geographical areas as soon as they appear promising.

Corruption in public life is not a new phenomenon of the 1990s. However it has taken an alarming dimension in recent years. Such activities became a global concern as countries around the world began to realise that corruption, fraud, counterfeiting and money laundering has become a multi-dimensional, national and international problem. As a result, it has hindered development, created poverty, destroyed confidence in the legal and political system, and undermined good governance.

Having identified this problem, countries around the world moved into introducing anti-corruption bodies such as Interpol, Europol and Transparency International. Countries such as Australia, Singapore and Hong Kong for instance, have ready introduced anti-corruption agencies of their own. As we acknowledge that corruption in the public service has flourished to an extent that almost nothing can stop its continuous germination, what can the authorities do to minimise, or rather terminate entirely, corruption in the public service?

In my paper I will look at the level of corruption as I see it in my country (PNG). I will look at individuals and agencies engaged in this illegal activity. I will also look at the laws and legislation that deal with corruption matters and explain the role of anti-corruption agencies such as the Ombudsman Commission and the police force; the problems faced by these organisations in carrying out their duties; and suggest ways to improve on the current system of combating corruption.

II. LEVEL OF CORRUPTION

Corruption in the public service is not new. In PNG it has reached the stage where politicians and senior bureaucrats are frequently taking bribes, especially from foreign companies intending to do business in the country. Those that are already operating in the country also contribute to this illegal activity. It has reached the stage where corruption has become part of everyday life in the public service. This is evident from the statistics (appendix A) that those who have been prosecuted for corruption related offences are people who occupied high offices.

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Our records shows that politicians tend to be the ones up-front accepting bribes in return for favours (eg, awarding government contracts to a road construction company whose owner is a friend of the Minister for Works). Major foreign companies are also the main source of corruption. They offer tempting gifts and favors with the intent to lure those in authority to submit to their demands. Cash transaction is the main form of corruption in the country.

III. PROBLEMS ASSOCIATED WITH CORRUPTION

(i) Bad organisational structure
(ii) Poor recruitment policy
(iii) No Code of Ethics / old Code of Ethics
(iv) Low salary / no promotion
(v) Laws and legislation (draconian/ weak)
(vi) Desire for wealth (greed, selfishness)
(vii) Inadequate training
(viii) Inadequate auditing and management system
(ix) Lack of non-formal penalties (transfers, publication)
(x) Organisational culture

IV. LAWS AND LEGISLATION

Besides other relevant legislation, the Criminal Code deals with almost all the serious crimes committed in the country. It imposes a maximum penalty of life imprisonment.

V. THE ANTI-CORRUPTION COMMISSION AGENCIES

There are two distinct anti-corruption agencies operating in the country, the police and the Ombudsman Commission. However, a number of organisations, through their unique functions, indirectly assist these two agencies in the fight against corruption. I will take you through these organisations later in this report. But first, let us look at what the police and the Ombudsman Commission do.

A. Police Force

A division of the police force known as the Fraud Squad is responsible for investigations into matters concerning fraud and corruption. They have been successful in getting a number of convictions, some of which have received long term custodial sentences. Although the Constitution guarantees independence for the police force (eg, it is not subject to direction or control by anyone) it is really at the will of the politicians.

1. Appointment of the Police Commissioner

The Police Commissioner is appointed by the Cabinet though recommendation of the Minister of Police. Therefore, it is always the Minister's candidate who gets appointed to the position. Past experience shows that Police Commissioners have been subject to direction and control by politicians through the Office of the Police Minister. Therefore, unless an independent appointment committee is set up to appoint the Police Commissioner, there is no guarantee that the police force is independent, as the Constitution allows.

Our police force is a member of Interpol, which means it has connections with other international police forces who are also members of Interpol.

B. Ombudsman Commission

The Ombudsman Commission was established under Section 217 of the Constitution. There are three (3) Members of the Commission (MOC); the Chief Ombudsman and two Ombudsman.

1. Appointment

The members of the Commission are appointed by the Head of State (Governor General) acting to and according to the

advice of an Ombudsman Appointment Committee consisting of:

(i) Prime Minister
(ii) Chief Justice
(iii) Leader of the Opposition
(iv) Chairman of the Permenant Parliamentary Committee on Appointments
(v) Chairman of the Public Service Commission.

2. Qualification

The Chief Ombudsman must be a person of very high personal qualities. It does not necessarily mean being a person with a particular qualification.

3. Ombudsman

The Constitutional Planning Committees Report, to the then House of Assembly, recommended that the two Ombudsman should have the qualification of an accountant and a lawyer. However the Constitution does not clearly indicate whether the Ombudsman should acquire specific qualification. Therefore, anyone can be appointed as Ombudsman.

4. Salary

The salary terms and conditions of the Chief Ombudsman shall not be less then or inferior to the salary and other conditions of a Judge, other then the Chief Justice and Deputy Chief Justice. Likewise, the salary terms and conditions of the Ombudsman shall not be less than or inferior to the salary and other conditions of a public prosecutor.

5. Term and Removal from Office

The term of office is six (6) years. There are only two grounds upon which an Ombudsman can be removed from office. First, by reason of physical and or mental disability, and secondly, removed in-accordance with Division 2 (Leadership Code) of the Constitution.

6. Functions

The Ombudsman Commission has three primary functions conferred by Section 219 of the Constitution. They are:

(i) To investigate alleged wrongful conduct and defective administrative practice by government departments, statutory authorities and other governmental bodies: the so-called traditional role of the Ombudsman; and
(ii) To investigate alleged or suspected discriminatory practices; and
(iii) To supervise enforcement of the national Leadership Code.

My paper is based on the third item - the Leadership Code which, in the absence of an Independent Anti-corruption Commission, operates as a de facto anti-corruption agency in the country.

VI. LEADERSHIP CODE

The Leadership Code, and the Ombudsman Commission charged to enforce it, both came into being at our independence in September 1975. At the time of our independence, few Papua New Guineans were exposed to western influence, foreign ideals or were proficient in the English language. The majority of our people were, and still are, living in villages, practicing their traditional economy of barter and give and take, where social obligations are so closely knit that leadership is a natural outcome of such social interactions. Today, PNG has leaders in many different areas of involvement who look after our interest at the national and provincial levels, as well as at the local and village community levels.

Our constitutional planners saw that as an independent country, we could go through a period of adjustment where our leaders would have to be strong and

committed in order to steer our country through all kinds of influence, both good and bad, so that the dominant culture of the west would not undermine our sovereignty and independence.

It was for this reason that our constitutional planners decided that we should write into the Constitution a Leadership Code which would regulate the behaviour of our national leaders, who not only have the responsibility of guiding, but also of determining, the destiny of our people. The third goal of our Constitution accommodates this:

> "*We declare our third goal to be for PNG to be politically and economically independent, and our economy basically self-reliant. We accordingly call for our leaders to be committed to these national goals and directive principles, to ensure that their freedom to make decisions is not restricted by obligations to or relationship with others, and to make all of their decisions in the national interest...*"

A. What is a Leadership Code?

The Leadership Code is a set of rules which have been written into the national constitution and the Organic Law on the Duties and Responsibilities of Leadership (OLDRL) to serve one purpose only. That purpose is to regulate the behaviour and conduct of our national leaders who occupy positions of power, authority and influence. Breach of these rules may result in the leader being prosecuted in the Leadership Tribunal for misconduct in office.

B. Who does the Leadership Code apply to?

Section 26 (1) of the Constitution provides that the Leadership Code applies to a wide range of public office holders. In short, the Leadership Code applies to the upper echelons of public office-holders. The only high public office holder excluded from the ambit of the Leadership Code is the Governor General, who is the Queen's representative as Head of State.

C. Why the Leadership Code applies only to Leaders

We believe that the success of the nation depends ultimately on the leaders and the people. Therefore, as the leaders are people who occupy positions of power, authority and influence, they are vulnerable to the offer of tempting gifts and favours from outside forces. In accepting the offer, the leader will no doubt compromise their position thus placing themself in a potential conflict of interest situation. Therefore, in order to ensure that our national leaders do not fall victim to the outside force, the Leadership Code was drafted specifically to regulate the conduct of the leaders whilst performing their official duties' as well as their private life.

D. How is the Leadership Code Enforced?

The Ombudsman Commission conducts investigations into allegations against a leader, and when it finds that there is a *prima facie* case of misconduct in office, it is obliged under the Constitution to refer the matter to the Office of the Public Prosecutor for prosecution before an Independent Leadership Tribunal. The Tribunal consists of the chairman, who is a judge of the National Court, and two senior members from the magisterial service, all appointed by the Chief Justice. Offences considered as "misconduct in office" range from immoral behaviour to criminal offences capable of being prosecuted both in civil and criminal courts.

Section 27 of the Constitution very broadly defines general acts of misconduct in office. In addition, the Organic Law on

the Duties and Responsibilities of Leadership, which was enacted to implement the Leadership Code, prescribes in detail some very specific acts that constitute or amount to misconduct in office. These are not exhaustive provisions of the Organic Law, nor are they quoted word for word from the relevant law.

E. Double Prosecution

It is not a bar for those found guilty in the Leadership Tribunal to be tried before the Criminal Court or vice-versa, based on the same facts. The Tribunal is considered an administrative proceedings and not a criminal proceeding as such. Therefore, the question of double jeopardy is immaterial under our law.

F. Standard of Proof

The standard of proof required in the Leadership Tribunal is proof on the balance of probability. Although this is the case, judges sitting as chairman of the tribunals have aired serious concerns on the standard of proof and insist that in any leadership tribunal, the standard of proof should be raised to almost equivelent to that of the case brought before the criminal courts, although rules of evidence do not apply in the Tribunal proceedings.

G. Penalties

The maximum penalty for anyone found guilty by the Leadership Tribunal is dismissal from office. The dismissal remains in force for three years from the date the Governor General signs the instrument of dismissal from office. This means that the person cannot hold any public office for a period of three years. The Alternative Penalties Act also provides for lesser penalties if the Tribunal considers that the offence committed is not so serious to order dismissal from office.

H. Independence

The Ombudsman Commission is established directly unde.r Section 217 (5) of the Constitution, which states that in the performance of its functions, the Commission, is not subject to direction or control by any person or authority. Section 217 (6) states that the proceedings of the Commission are not subject to review in any way except by the Supreme Court or the National Court, and only on the grounds that it had exceeded its jurisdiction. History shows that the Ombudsman Commission has been vigilant in its defence of the independence the Constitution has conferred upon it.

I. Cartoon Incident

In March 1992, the three Members of the Commission were summonsed before the bar of the National Parliament to give an explanation for the inclusion in the annual report of the Ombudsman Commission of several cartoons dealing with the ethical standards of parliamentarians and ministers in particular. The cartoons were considered by the Parliamentary Privilege Committee to be offensive, and an apology was sought from the Ombudsman Commission. However, the then Chief Ombudsman, Sir Charles Maino, declined to appologise. Instead, he gave what was in effect a measured and rational explanation to the MPs on the educational value of the cartoons and the need to maintain ethical standards in public life. Subsequently there were in parliament some rather undignified attacks made on the Ombudsman Commission, and a draft resolution was circulated which called for the immediate sacking and imprisonment of the three Members of the Commission. Fortunately, it was soon realised that the Parliament had no power of imprisonment nor did it have the power to remove the members of the Commission.

J. How does the Leadership Code Fight Corruption?

Corruption takes place between two

persons, the giver and the taker. In almost all cases, takers are people who occupy positions of trust, authority and influence. Therefore, the Leadership Code acts as a regulator and prevents policy makers and those in high offices from making decisions which will benefit themselves, their families, friends and relatives. The Leadership Code also helps to eliminate those who seek to compromise their position for the benefit of others whose aim is to manipulate and underpin the legitimate process. In fact, the Ombudsman Commission is referred to as the watchdog of the nation and is a very much feared anti-corruption agency in the country.

VII. OTHER ORGANISATIONS WHICH HELP FIGHT CORRUPTION

The following organisations also play important roles in the fight against corruption in the country. They are:

(i) Judiciary
(ii) Correctional Institution Services (CIS)
(iii) Auditor General
(iv) Media
(v) Transparency International

A. Judiciary (Courts)

There are five different court systems in the country:

(i) Supreme Court
(ii) National Court
(iii) District Court
(iv) Local Court
(v) Juvenile Court
(vi) Village Court

The Supreme Court is the highest court in the country. It sits to hear appeals and judicial reviews on the decisions of the national courts. The courts play an important role in deterring the level and extent of the criminal activities by imposing punishment provided by law. Such punishment may include a custodial sentence, fine, good behaviour bond, parole or even confined to 'Boys Town' (if a juvenile). These are measures the courts can take to deter the further commission of serious crimes.

So far, since the establishment of the court system in the country, the neutrality and independence of the judiciary has always been maintained. It is a requirement under the Constitution that the courts are given independence and are neutral at all times. The courts have a separate budget, which they get through submission in Parliament.

The problems of speedy administration of trial depends entirely on the effectiveness of the institutions involved in the criminal justice process, such as the public prosecutor, public solicitor, CIS, police and courts working together. Right now we have a shortage in the number of judges available to sit on trials and have them processed.

Sentencing to goal remains the last available resort, depending upon the circumstance of the case. Alternatives to goal are quite popular, such as fines and probation, but the lack of available resources such as probation officers, halfway-houses and rehabilitation centers, make it quite difficult for alternative sentencing options to be considered.

Constant and immediate communication and cooperation amongst government agencies and statutory organisations is non-existent. This is because some institutions felt that the laws under which they operate guarantees their independence; eg, they are not subject to direction or control by anyone, or that they are not obliged to disclose to anyone the

nature and extent of their affairs, except to the Parliament. This is bad in the administration of criminal justice because such situations do not help the anti-corruption agencies to fight corruption. There should be constant dialouge between each criminal justice agency and administrative organisation. As I have indicated earlier, problems of co-operation and co-ordination occur due to the creation of institutions to be independent from any influence.

1. International Co-operation in Corruption Cases

At the Legal front, we are currently corroborating with neighboring South Pacific countries and South-East Asian countries for the purpose of facilitating international co-operation on money laundering, environmental pollution, sharing of expertise, etc.

In so far as the extradition treaty is concerned, we do not have in place an extradition law or a treaty with other neighboring South Pacific and Asian countries. However, we do operate under the commonwealth banner for the purpose of the extradition of fugitives and other related matters. Meanwhile, government lawyers are currently putting together a draft bill, soon to go before Parliament, for the enactment of our own law in dealing with extradition cases.

B. Correctional Institutional Service (CIS)

The main function of this institution is to rehabilitate prisoners to live a normal life when they return to the community. The rehabilitation programs conducted in this institution are:

(i) Education
(ii) Religious programs
(iii) Conflict resolution courses
(iv) Prison industry
(v) Community out-reach

The institution plays an important role in changing one's life through these programs.

C. Auditor General

The Office of the Auditor General was created by an Act of Parliament. The duties of this office are mainly to audit the books of government departments and statutory bodies which exercise governmental functions. The Auditor General tables his/her report in Parliament annually, with findings and recommendations.

Auditors play an important role in exposing, or rather revealing, what can be stealing, misappropriation or even an abuse of power by those in authority (eg, approval granted for the funding of a certain project without following tendering procedures). Exposure by the Office of the Auditor General helps organisations such as the police and the Ombudsman Commission in many ways. It shows where the inquiry should start, and generally sets the foundation for an indepth investigation.

D. Media

Media also plays an important role in exposing shady and questionable deals, negotiations and agreements made in secret and in confidence by certain public officials which are considered improper and bad in substance. Independence for the media is guaranteed under the Constitution. Therefore there are no sanctions whatsoever, resulting in its right to report on almost anything.

In PNG, we have a private run television station called EMTV. It is the only electronic media we have in the country. There is also a government owned radio station called the National Broadcasting Commission (NBC). It has its headquarters based in the capital, Port

Moresby, with stations located in all the 19 provinces. There are also two private owned radio stations called NAUFM and YUMIFM.

There are four print media publications in the country. They are the Post Courier, The National, The Times and Wantok. The Post Courier and The National are printed daily from Mondays to Fridays, whilst the Times and Wantok are printed once a week. Exposure by the media immediately sets the clock ticking the moment it is published, thus it greatly assists the police and the Ombudsman Commission. Unfortunately, I was unable to collect data on the media reports. However, I can say that about two to three corruption related matters are exposed by the media each month.

E. Transparency International

Transparency International was introduced in PNG in 1998. Although the institution is quite new in the country, it made its presence known when it organised a number of seminars and workshops in the nation's capital, Port Moresby, to explain what it can do to help fight corruption in the country.

F. Independent Anti-corruption Commission

The Government will shortly be introducing in Parliament an Independent Anti-corruption Commission bill. We expect this to happen before the end of the year.

VIII. PROBLEMS FACED BY ANTI-CORRUPTION AGENCIES

Problems faced by anti-corruption agencies vary very much from country to country. For instance, some countries have laws which gives their anti-corruption agencies autonomy, independence and the powers that other anti-corruption agencies do not have in their countries. For example, some have the power of search, arrest and seizure without warrants, whilst others don't. Extradition laws, for instance, are one of the main barriers in some countries. For this and other reasons, it cannot be said that anti-corruption agencies operating in their respective countries face similar problems as those in other countries. Nevertheless, I have listed below some problems faced by my organisation in its fight against corruption:

(i) Poorly resourced in terms of budget allocation
(ii) Poorly staffed
(iii) Lack of skilled staff
(iv) Inadequate training for staff
(v) Bad organisational structure

IX. SUGGESTIONS FOR IMPROVEMENT

(i) That PNG take all the steps necessary to rectify the problem areas mentioned in this report.

(ii) That PNG should introduce an Independent Anti-Corruption Commission, given powers similar to that of the Ombudsman Commission. This organisation should have the powers of search, arrest and seizure of properties (without warrant) which are considered illegal.

X. CONCLUSION

Though we have come a long way since our independence, we are still trying to impress upon those who are affected by the Leadership Code the significance of the law and what it means in practice. We still have problems in our hands, that is why I am here in search of the answers to our problems.

ANNEXURE A

LEADERSHIP TRIBUNAL

YEAR	OFFICE	RESULT
1976	MP (1)	Dismissed
1978	Statutory Body (2) Suspended (1)	Reprimanded (1)
1981	MP (1)	Dismissed
1982	MP (1)	Resigned
1983	MP (1)	Dismissed
1985	Statutory Body (1) Manager - NPF	Fined
1988	MP (1) PNGBC - Chairman	Fined Fined
1989	MP (1)	Dismissed
1990	MP (1)	Resigned (later jailed five years on the same crime)
1991	MP (1) MP (1)	Resigned (later jailed for the same offence. Resigned prior to dismissal)
1992	MP (2) MP (4)	Resigned Dismissed
1993	MP (1)	Resigned
1995	MP (1) MP (1) MP (1)	Dismissed (later jailed for the same crime) Fined Dismissed
1996	MP (1)	Jailed

* MP = Minister of Parliament

OFFICE	DISMISSED	RESIGNED	REPRIMANDED	FINE	SUSPENDED	TOTAL
MPS	10	7	-	2	-	19
OTHERS	-		1	2	1	4

GRAFT AND CORRUPTION: THE PHILIPPINE EXPERIENCE

*Nelson Nogot Moratalla**

I. INTRODUCTION

This paper will present a condensed report on graft and corruption in the Philippines. Information was compiled by the author from documents, articles, newspaper clippings and other data gathered from the reports and journals of the Ombudsman and the Sandiganbayan, two of the constitutional bodies mandated by Philippine law to investigate and act on complaints filed against public officials and employees for violations of graft and corrupt practices. More specifically, this report will cover input from an unpublished research paper prepared by scholars from the University of the Philippines, College of Public Administration, whom I will accordingly acknowledge in this work.[1]

This report will generally follow the outline as provided. The first portion will introduce the theoretical perspective and context of corruption in the Philippines. It clarifies the national context within which corruption operates. It will look into the intersection of corruption and Philippine history and culture. It will likewise discuss some public perceptions of corruption. Estimates of the extent and losses of corruption in the Philippines will be briefly discussed. The history of the Philippine fight against corruption will be taken up in terms of law, anti-corruption constitutional bodies, and other government agencies and non-government initiatives. Finally, there will be an assessment of the anti-graft and corruption programs, and recommendations on what might be done in the light of Philippine democracy, culture and development.

II. THEORETICAL PERSPECTIVE

We view corruption as an agent's departure from the principal's demand for the responsible use of power in society. As such, although it is centered on a public official's act and is indicated by a violation of law, it does not involve the state alone. Rather, it is embroiled in the accountability of public officials, and indeed of the state, to the people. Thus, in analyzing and combating corruption, we look beyond the state. Corruption shows up what the society views as the responsible use of power and thus what it will accept and support. In this light, any attack against corruption must come to terms not only with the law, but also with the country's history, ie what is accepted by the culture and the behavior of civil society as well.[2]

III. THE CONTEXT OF CORRUPTION IN THE PHILIPPINES

In the late 1980's, the Philippines entered the Guinness Book of World Records for allegedly the biggest corruption of all time, referring to the period of the dictatorship of the former President,

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[1] "Initiatives Taken Against Corruption: The Philippine Case"; unpublished paper prepared by Ledivina V. Cariño, University Professor and Dean, Gabriele R. Iglesias, Assistant Professor, and Ma. Fe V. Mendoza, Associate Professor, College of Public Administration, University of the Philippines.

[2] Ibid, "Initiatives Taken Against Corruption: The Philippines Case"; p.4

Ferdinand Marcos. Marcos was ousted from his twenty-year presidency by a bloodless people's power revolution in February 1986. To describe the corruption of his regime, "kleptocracy" and "plunder" became part of the Filipino's political vocabulary and discourse.[3] "Government by thievery" did not stop with the enactment of the Republic Act No. 7080 in 1991, entitled "An Act Defining Plunder". Indeed, although both laws and agencies to combat corruption have increased in the post-Marcos period, it remains one of the prime problems complained of by the people. The currency and gravity of the problem are manifested in the following clippings from a September 7, 1998 issue of the Philippine Daily Inquirer:

> "*On board a Philippine Airlines chartered flight to Manila from Mindanao where he inspected on-going government infrastructure projects, President Joseph Ejercito Estrada... thought of a slogan reminding Filipinos that he is serious in fighting graft and corruption in the government. Dubbed "Supilin, pigilin ang pagnanakaw sa pamahalaan," ("Win over, stop thievery in government"), he thought of putting-up such a message on billboards, huge posters and the like to remind people in government and the private sector not to succumb to the "evils of stealing from government coffers." Stealing, if aggregated with other misdemeanors of public service and their "transactees," he said, would sum up to about 20 percent of the national budget. With a proposed budget of more than 500 billion in 1999, "this means roughly 100 billion pesos will go to waste if corruption remains unchecked.*"

While the figure cited above is a ballpark figure that cannot be validated, the concern of President Estrada is certainly warranted by the findings of this research. It is also not a recent phenomenon but one that has been identified and decried since the Spanish colonization in the 16th century.

A. Filipino Culture and Corruption

Corruption has been viewed as a "*cultural and psychological phenomenon in a country marked by incompatible legal and cultural norms*" (Tapales 1995:407). The former emphasizes "*rationality and universal principles of action*" as against and in conflict with "*reliance and obligation toward kinship, friendship and primary groups*" (Bautista 1982). This conflict is highlighted in the use of the alibi of a gift-giving culture to justify bribery and extortion, or the Filipino regard for the other (*pakikipagkapwa-tao*) to justify giving benefits to unqualified but personally known recipients.

This is a real problem, but it can be overblown. For instance, both culture and law similarly define cases of corruption and rectitude. One's kin may ostracize a bureaucrat who chooses to stay within the law. The state may, however, leave them alone, provided they do not compromise their official role. Another case is when an official participates in a decision involving kin, even if they vote against that person's interest, that official (under the Republic Act 3019) can still be charged with corruption. For an official similarly situated, but who bends over backwards to make sure their kin gets a prized government contract engages in so called "favour corruption". This is indeed the quintessential conflict between culture and law.

[3] Lengthy discussion on this is presented in "Politics of Plunder: The Philippines Under Marcos", Belinde Aquino, Great Books Trading and UP College of Public Administration, 1987.

The idea of cultural acceptance of corruption also needs to be re-examined in the light of a string of public opinion polls where Filipinos decry it as a major problem. The media, church pastoral letters and other culturally valued sources likewise denounce this. Indeed, the long list of laws enacted against them manifest that graft and corruption are not colonial impositions but are desired by Filipinos themselves.

B. Public Perception of Graft and Corruption

In a speech in 1988, Jaime Cardinal Sin, Archbishop of Manila, stated that "*corruption was the biggest problem of them all*" (Murphy, October 9, 1988). In 1989, after months of declaring the rectitude of the government she heads, President Corazon C. Aquino despaired, "*Corruption has returned, if not on the same scale, at least with equal shamelessness (Cagurangan, 1989).*" Apparently, many Filipinos agree with her. In a survey conducted in July 1989 in Metro Manila by the Social Weather Station (SWS), a respected public opinion polling firm, as much as 58 percent of respondents agreed that given current conditions, corrupt government officials are a greater threat to the country than the NPA (New People's Army, communist guerrillas who lost ground after Aquino's assumption to office). Those who were satisfied with the performance of the Aquino administration in fighting graft and corruption decreased from 72 percent in March 1987 to 26 percent in July 1989 (Guidote, 1989). In her State of the Nation Address in July 1989, President Aquino shared the people's exasperation that she would leave as a problem the very issue that she wanted to leave as a legacy: a clean and accountable government.

Indeed, her successor, Fidel V. Ramos, ranked graft and corruption as third among the major problems that obstruct the country's achievements in his development strategy for the Philippines 2000. The SWS poll of September 1993 validates this fear: 89 percent of the respondents felt that corruption would indeed be a big obstacle to attaining this vision.

Other SWS polls since have produced consistent results. An August 1990 survey conducted in Metro Manila asked respondents to state their satisfaction with the activities of several agencies in reducing graft and corruption. The proportion of dissatisfied respondents is consistently higher than those satisfied, for each agency. They stated that graft and corruption is big in the Presidential Commission on Good Government (PCGG), the Bureau of Internal Revenue (BIR), the Cabinet as a whole, the courts of justice, the Bureau of Customs (BOC), and in the police force. They considered corruption in the courts and in the military as small. Very few thought that there was no corruption in any of these government institutions.

In November 1991, 41 percent of those polled agreed that most high-ranking government employees are not suited to their positions based on their knowledge and capabilities, and 62 percent noted that the performance of government employees has not improved from 1986 (SWB, July 1993). In a February 1992 nationwide poll on the attributes of high officials in government, 40 percent of its respondents stated that, based on personal observation, "most" of these high officials are corrupt, and another 27 percent said "some" of them were, a total of 67 percent weighing in on the positive side (SWB, July 1993).

The public verdict on the judiciary is mixed. In 1985, a Bishop-Businessmen's Conference poll revealed that 30 percent agreed and 29 percent disagreed with the statement that most judges could not be

bribed. In 1993, a similar split in half can be discerned. While 50 percent said none or few judges could be bribed or bought, 49 percent thought many or most could (SWB July 1994). However, one out of two Filipinos considered the degree of corruption in the judiciary serious (SWB July 1993).

Over the years, the performance of the government in fighting graft and corruption was evaluated more poorly than that of the overall performance. It indicated that the government performance in fighting corruption has indeed has been dismal. Philippine Ombudsman, Aniano Desierto, in a nation-wide public affairs TV program, Firing Line, aired on September 14, 1998, stated that the Philippine anti-corruption landscape "*is improving as evidenced by the good marks the country is getting from international groups like Transparency International (IT) and the Political and Economic Risk Consultancy (PERC), Ltd*". The Hong Kong based Political Economic Risk Consultancy Ltd, likewise graded 12 Asian countries and ranked the Philippines the 4th least corrupt country in its survey.

As PERC (1998:1) hinted, most survey grades deteriorated probably as a reflection of the change of sentiment in businessmen from "*turning a blind eye to corruption when economic times are good. As economic conditions worsened, however, such tolerance disappeared... Economic conditions were becoming more difficult and it was easier for businessmen to see the link between that deterioration and corruption.*" On the whole, the results of national and international surveys consistently depict the Philippines as riddled with corruption and unable to effectively fight corruption.

C. The Magnitude of and Losses due to Corruption

It is difficult to estimate the total losses due to corruption. The best measure is the amounts involved in cases filed with the Ombudsman. The Office of the Ombudsman (OMB) reported that about P9 billion was lost to government due to malversation, *estafa* (swindling) and violation of the provision of RA 3019 (the Anti-Graft and Corrupt Practices Act) for a period of eight and a half years (1990 to June 1998) (OMB 1998). In the Ombudsman's report, 63 agencies and departments contributed to the losses. However, the top ten of these agencies alone accounted for almost P8.5 billion.

Large though these sums are, bigger amounts are involved in cases involving the Marcoses. From the Office of the Special Prosecutor under the Ombudsman, the money value of cases filed against the Marcoses involving the same offences (malversation, *estafa* and RA 3019 violations) for the same period was P1,117 billion. These cover cases of behest loans, both filed and under review and investigation, forfeiture cases, PCGG cases for recovery, criminal cases against Marcos cronies, and criminal cases against other public officials. The Ombudsman claimed that, "*the government lost P1.4 trillion and continues to lose P100M daily since the Office began investigating corruption in government since 1988.*"[4] This is similarly pointed out by President Joseph Estrada when he said, "*at least P24.13 B of what the Philippine government spent last year for various projects was lost to graft and corruption, or barely 20% of all project funds are lost to grafters.*"[5]

[4] Desierto, Philippine Daily Inquirer, July 10, 1999.

[5] Estrada, Philippines Daily Inquirer, June 10, 1999.

III. ANTI-CORRUPTION POLICIES AND PROGRAMS

Philippine initiatives against corruption have taken the form of law and anti-graft bodies created by the Constitution, law and executive orders. In addition to the state, others institutions have been active in the fight against graft and corruption.

A. Anti-corruption Laws

The accountability of public officials is enshrined in the Constitution of 1987, as it has been in the Malolos Constitution of 1898, the Commonwealth Constitution of 1935 and then the Constitution of 1973, the Martial Law period. Article XI of the 1987 Constitution, entitled "Accountability of Public Officers", states the fundamental principle of public office, as public trust. It requires full accountability and integrity among public officers and employees. The President, Vice-President, members of the Supreme Court, members of the Constitutional Commissions and the Ombudsman may be impeached for violations of the Constitution, treason, bribery, graft and corruption, other high crimes, and for betrayal of public trust. Other public officials committing such acts can be investigated and prosecuted through the regular judicial process provided by law.

The Philippine government is directed to maintain honesty and integrity in the public service, and to take action against graft and corruption (Section 27, Art. II). It is also directed to give full public disclosure of all transactions involving the public interest (Section 28, Art. II). This provision is complemented by the Bill of Rights within the Constitution, which gives people the right to information on matters of public concern, including official records, documents and papers pertaining to official acts, transactions or decisions, and to government research data used as the basis for policy development (Section 7, Art. III).

The Anti-Graft and Corrupt Practices Act (RA 3019) was passed in 1960. It enumerates what may be considered corrupt practices by any public officer, declares them unlawful and provides the corresponding penalties of imprisonment (1 month, 6 years and 15 years), perpetual disqualification from public office, and confiscation or forfeiture of unexplained wealth in the favour of the government. It also provides for the submission by all government personnel of a statement of assets and liabilities every two years. Considered landmark legislation at the time, it also elicited the following wry comment:

> "*The anti-graft law was passed not because there was a need for it but only to appease public opinion. There was no urgent need for anti-graft legislation because the Revised Penal Code and other laws were sufficient to bring the guilty to court*" (Congressman Manuel Zosa, quoted in G.U. Iglesias, 1993:35).

B. Laws During the Martial Law Period (1972-1986)

Presidential Decree no.6, which took effect six days after the imposition of Martial Law, was the "legal" basis for the purge of almost 8,000 officials and employees in the first year of the dictatorship. The provision for summary proceedings was reiterated in Presidential Decree No. 807, the Civil Service Act of the period and was repealed by the Corazon Aquino administration. All other anti-graft presidential decrees remain in effect. This includes:

(i) Presidential Decree No. 46 (1972), making it unlawful for government personnel to receive, and for private persons to give, gifts on any occasion including Christmas, regardless of whether the gift is for past or future

favors. It also prohibits entertaining public officials and their relatives.

(ii) Presidential Decree No. 677 (1975) requires the statement of assets and liabilities to be submitted every year.

(iii) Presidential Decree No. 749 (1975), granting immunity from prosecution to givers of bribes or other gifts and to their accomplices in bribery charges if they testify against the public officials or private persons guilty of these offences.

C. Laws of the Redemocratization Period (1986 to the present)

Immediately after Aquino's assumption to office, she promulgated the "Freedom Constitution" which, among other provisions, declared all government positions vacant unless otherwise identified (Section 3, March 28, 1986). This Freedom Constitution was the basic law of a revolutionary government and was superseded by the Constitution of 1987. Six new anti-corruption laws emerged under its operation.

The Administrative Code of 1987 (Executive Order No. 292)[6] incorporates in a unified document the major structural, functional and procedural principles and rules of governance. It reiterates public accountability as the fundamental principle of governance. In 1989, the Republic Act No. 6713, the Code of Conduct and Ethical Standards for Public Officials and Employees was passed. It promotes a high standard of ethics and requires all government personnel to make an accurate statement of assets and liabilities, disclose net worth and financial connections. It also requires new officials to divest ownership in any private enterprise within 30 days from assumption of office, to avoid conflict of interest. The Ombudsman Act of 1989 (RA 6770) provides the functional and structural organization of the Office of the Ombudsman. The Act further defining the Jurisdiction of the Sandiganbayan (RA 8249) places the Sandiganbayan as a special court on par with the Court of Appeals.

D. Constitutional Anti-corruption Bodies

The 1987 Constitution established special independent bodies to support the principles of honesty, integrity and public accountability. These are:

(i) the Office of the Ombudsman as the people's protector and watchdog;
(ii) the Civil Service Commission as the central personnel agency;
(iii) the Commission on Audit as the supreme body responsible for auditing the government's expenditures and performance; and
(iv) The Sandiganbayan as a special court that hears cases of graft and corruption.

To ensure that these organizations and their commissioners can fulfill their duties without fear of reprisal from other agencies of the government, the Constitution grants them fiscal autonomy[7] (Section 2, Article VIII). Their actions are appealable only to the Supreme Court.

The Office of the Ombudsman was created to investigate and act promptly on complaints filed against public officials and

[6] Executive orders promulgated by President Aquino during the revolutionary period when she was sole legislator (1986-87) have the force of the law.

[7] Fiscal autonomy in that their approved annual appropriation shall be automatically and regularly released, so that there can be no undue delay in the execution of their duties. Their annual appropriation cannot be reduced from that of the previous years.

employees, and to serve as the people's watchdog of the government. It is an institution with the biggest responsibility to prevent graft and corruption. It provides for a Deputy Ombudsman for the military, and at least one each Deputy for the geographical divisions of Luzon, Visayas and Mindanao.

The Civil Service Commission is the central personnel tasked to promote efficient and responsive public service delivery, to establish a career service, strengthen the merit system and human resource development, promote public accountability and enforce the Code of Conduct and Ethical Standards for Public Officials and Employees (RA 6713). It undertakes anti-corruption functions, such as values orientation workshops and employee voluntarism.

The Commission on Audit, while primarily regarded as an evaluator of the government's performance in handling funds, also has as a function on the input side, as it conducts audits on the income and revenues of government. Aside from ensuring financial accountability, the Commission may also inquire as to the effectiveness and impact of programs, and not alone into the economy, efficiency or the legality and regularity of government operations.

The *Sandiganbayan*, literally "the pillar of the nation", is a special court with jurisdiction over civil and criminal cases involving graft and corrupt practices.

E. Presidential Anti-corruption Bodies

Each president has appointed his or her anti-graft or investigating agencies "*as an exercise of the president's power to probe into the anomalous members of his/her administrative organization* (Alfiler, 1979: 329)". President Aquino broke tradition by organizing a committee of cabinet officials rather than an agency with full-time personnel, the President's Committee on Public Ethics and Accountability (PCPEA). Its framework advanced the inseparability of accountability from other acts of governance, the idea that corruption can be tackled by management actions that increase its risks and decrease its benefits, and decentralized graft-busting.

President Fidel V. Ramos created the Presidential Commission against Graft and Corruption (PCAGC) under Executive Order No. 151 dated January 11, 1994. It was tasked to investigate presidential appointees charged with graft and corruption. Likewise, it functions as a coordinating body in the efforts of inhibiting the practice of graft and corruption, to expeditiously prosecute such practices by officials in the executive department, and to monitor the implementation of the Moral Recovery Program.

Unlike other presidents, President Estrada has not created his own anti-corruption body and has allowed the Ramos' created PCAGC to continue in office. He seemed to be inclined to use instead the Inter-Agency Anti-graft Coordinating Council, composed of the Commission on Audit, Civil Service Commission, the Ombudsman, the Department of Justice, the National Bureau of Investigation and the Presidential Commission against Graft and Corruption.

F. The Rank and File as Graft Busters (Cariño, 1992)

Because of their knowledge of the workings of both formal and informal processes, employees are natural sources of information about deviations from accountability. It was in the Aquino regime in 1986, that the potential of employees as

graft-busters was tapped. Several unions had tangled with their respective management on the issue of their accountability and performance. The union in the National Electrification Administration has unearthed anomalies and delays in the implementation of some projects such as the USD$ 192 million rural electrification revitalization program, a joint project of the World Bank and the Office of Economic Cooperation Fund of Japan (Manila Chronicle, November 13, 1995:4). The most successful effort is still that as described by Gaffud (1994), which was able to remove the top administrators of an agency in 1990. The union questioned transactions worth P176 million, including overpricing, purchases made without being utilized, purchases made for non-existent projects, etc. After being ignored by the Department of Justice and the higher officials of the department to which it is attached, the union finally found a listening ear in an NGO (non-government organization), the Gising Bayan Foundation, which then filed complaints with the Ombudsman. After investigation, President Aquino dismissed three assistant administrators, but not the head administrator.

Since 1986, the leadership of at least seven other unions faced harassment, intimidation, and sometimes, removal from office for their anti-corruption stance. Nevertheless, they have succeeded in bringing cases of corruption, abuse and nepotism practiced by their superiors to the attention of control bodies such as the Commission on Audit, the Ombudsman and legislative committees for further investigation.

G. Participation of the Non-governmental Sector

People power energized in the EDSA inflamed non-government organizations (NGOs) to get concerned about issues of integrity and corruption. Their initial approach centered not on punishing corruption, but in being involved in keeping government operations clean and effective. The Community Employment and Development Program (CEDP) of the late 1980s became the laboratory for this new partnership of government and cause-oriented groups. For instance, the National Movement for Free Elections (NAMFREL)[8] branched from election cases to the monitoring of CEDP implementation in various local areas. Based on this virtual experiment, the government promulgated guidelines on the use of such volunteer groups for exception monitoring.

Some associations focused directly on preventing corruption. *Operasyong Walang Lagay* (OWL), its name connoting a movement to prevent bribery, assisted some departments and local governments in streamlining procedures and improving bidding committees. However, it folded in 1989 because the volunteers could not cope with the increasing demands on their time, a very real problem for volunteerism in a growth field such as corruption.

The National Coalition of Transparency was launched in 1989 to show that public support for measures to enhance accountability could still be mustered. Composed of over thirty NGOs, including Bishop-Businessmen's Conference (BBC), NAMFREL, and other groups that were in the forefront of the anti-Marcos struggle, it put forward a comprehensive approach to the problem as it recognized the private sector's incrimination in the continuation of governmental corruption. Lacking self-righteousness, its first campaign was for its membership to pay the proper taxes, and thus be morally capable of censuring the dissipation of public revenues by

[8] NAMFREL is now active in sponsoring seminar-workshops on Japan's *koban* system of policing.

government. It was in meeting with them that the President admitted the return of shameless corruption in her administration (Cagurangan, 1989).

Anti-corruption organizations associated with religious groups include the BBC, the *Gising Bayan* Foundation[9] and the religious right, calling itself Citizens Battle Against Corruption (CIBAC)[10]. The Nationalista Party, a political party, also formed an anti-graft panel, composed largely of former officials of the Marcos regime (Manila Bulletin, June 4, 1989), making it suspect as a political neutral body.

Meanwhile, the Anti-Police Scalawag Group (APSG) is focused on police corruption. It recently called on the Philippine National Police (PNP) to curb rampant "*tong*" and *payola* collection from operators of illegal gambling, ironically perpetrated by members of the PNP's own illegal gambling task forces. An APSG spokesperson disclosed that in Metro Manila alone, there were about 30 to 45 gambling "maintainers" of vice dens such as video *karera*, *sakla*, *hi-lo*,[11] lottery, bookies, and prostitution dens who give goodwill money ranging from P500, 000 to P1 million, aside from the monthly "*payola*" for protection of P100, 000 to P500, 000 (Philippine Daily Inquirer, August 10, 1998:22).

[9] "*Gising Bayan*" means "Wake Up Nation." It was originally the title of a radio program under Radio Veritas, the Catholic station.

[10] CIBAC is coined from the Tagalog word "*sibak*" which means to cut down.

[11] These are local gambling practices considered illegal.

IV. THE OMBUDSMAN'S STRATEGY AGAINST GRAFT AND CORRUPTION

In this portion, I will present some data from the Ombudsman and the *Sandiganbayan* that can provide us with insight on the results of the Philippine anti-corruption effort. These efforts are focused on the intriguing causes of corruption:

(i) Individual causes which are attributed to weak moral fiber and distorted values among bureaucrats, such as materialism, lack of integrity and nationalism;
(ii) Organizational causes refer to deficiencies, in the bureaucratic apparatus such as low salary, poor recruitment and selection procedures, and red tape in government; and
(iii) Societal causes where corrupt behavior is itself the norm of society.

A. Programs of the Office of the Ombudsman

The OMB is mandated under the Constitution to protect the people from abuse or misuse of power by government, its agencies or functionaries. It must fight for justice for all citizens, prevent loss of government funds and bring the culprit to justice. It faces a gigantic challenge in carrying out the government's determination to rid itself of undesirables in the public service. The conferment of this extensive authority by the Constitution insulated the Office from political influence or interference by:

(i) Stating that the Ombudsman is removable from office only by impeachment;
(ii) Prescribing a fixed term of office for seven years without reappointment;
(iii) During the term, his/her salary cannot be diminished;
(iv) Leveling the Ombuman's rank with

that of a Supreme Court justice.

B. Five (5) Major Functions[12]

The Ombudsman performs five major functions, such as investigation, graft prevention, public assistance, prosecution, and administrative adjudication. It is invested with corresponding authority to be able to carry out these functions. The investigative function of the Office involves determination of violations of the anti-graft laws by public functionaries through fact-finding or evidence gathering. It also includes the finding of probable cause through formal preliminary investigation for the purpose of prosecution.

In graft prevention, the Office has the authority to prevent the commission of graft by ordering or stopping the implementation of government contracts that are found to be disadvantageous to the government. In the exercise of its public assistance, the Office of the Ombudsman extends assistance to citizens in getting basic public services from the government. In prosecution, the Office may file charges or prosecute cases in court against erring public officials and private citizens found to have connived with them. The Office of the Special Prosecutor may prosecute the case in the *Sandiganbayan*. In the regular courts, regular prosecutors are deputized by the Office of the Ombudsman to handle prosecution.

Under its administrative adjudication function, the Office has the authority to conduct administrative penalties where the erring public official or employee, including Cabinet Secretaries, may be suspended or dismissed from public service. It holds disciplinary authority over all government functionaries, except the president and members of congress and the judiciary and other impeachable officials. In all other criminal cases, however, all public officials and employees, without any exception, are under the Ombudsman's investigative jurisdiction.

In consonance with all these functions performed by the Ombudsman, s/he shall act on all complaints, but not limited to acts or omissions which:

(i) are contrary to law or regulations;
(ii) are unreasonable, unfair, oppressive or discriminatory
(iii) are inconsistent with the general course of an agency's function, though in accordance with law;
(iv) proceed from a mistake of law or an arbitrary ascertainment of facts;
(v) are in the exercise of discretionary powers but for an improper purpose; or
(vi) are otherwise irregular, immoral or devoid of justification.

In its effort to solve the twin evils of graft and corruption, the Office of the Ombudsman employs a two-pronged strategy: confrontational and psychological approaches.

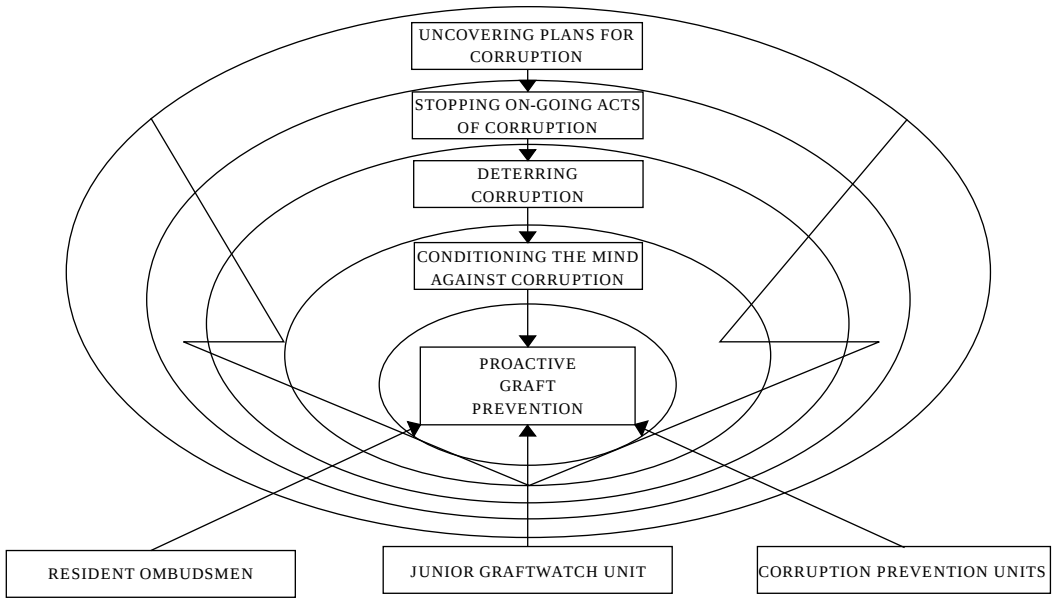
The confrontational approach involves the administrative and criminal investigation and prosecution of erring members of the bureaucracy. In this regard, a number of criminal cases were filed in the *Sandiganbayan* involving high-ranking officials and about 2,500 cases referred to the ordinary courts involving low-ranking members of the bureaucracy. To complement this capability, the Inter-Agency Consultative Committee with the Commission on Audit (COA), Civil Service Commission (CSC), Philippine Commission Against Graft and Corruption (PCAGC), and the National Bureau of Investigation (NBI) have been formed and organized for effective coordination.

[12] The Ombudsman Primer, p.2.

As part of the strategy, the tripod system was adopted to enforce honesty and efficiency. This system includes the establishment of Corruption Prevention Units (CPUs), Junior Graftwatch Units (JGUs) and installation of the Offices of the Resident Ombudsman. The CPU's were organized to broaden community participation and serve as the Ombudsman's eyes and arms, closely monitoring critical and substantially funded government projects and/or transactions in their respective areas of concern. They also serve as a front desk to receive and facilitate requests for assistance, complaints, or reports of any anomalous or corrupt practices. In addition, the CPU's work hand-in-hand with the Office of the Ombudsman in promoting the objectives of the latter through the conduct of various activities involving community participation, such as consultative workshops, symposia, seminars and conferences, developing moral values of honesty, as well as educating the public on preventive measures in its fight against graft and corruption. At present, about 200 CPU's have been already organized from among civic-minded non-governmental organizations.

The Junior Graftwatch Units (JGU's) have been organized to mobilize the youth (both at high school and college level, including the out-of-school youth) in the fight against graft and corruption, by encouraging them to become the primary coordinating arm of the Ombudsman with respect to the educational and motivational projects involving youth, and as an effective ally of the Office of the Ombudsman. All over the country, there are already seven hundred and seventy-four (774) Junior Graftwatch Units accredited by the Ombudsman. These are organized to develop and strengthen their instinct of goodness and idealism which is anchored

Figure I. THE POLICY OF GRAFT PREVENTION
Stages of Graft Prevention



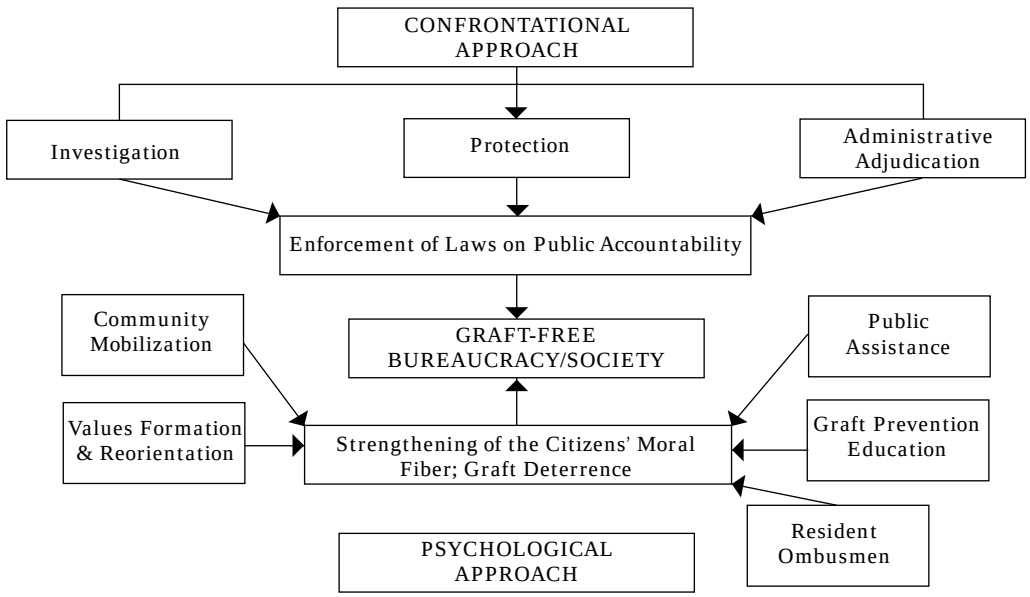
in the principle that a child who grows up in an environment of honesty will be difficult to corrupt when s/he attains maturity.

The Office of the Ombudsman believes that in empowering the citizenry to practice their innate virtues of honesty and uprightness, and getting them involved in the Ombudsman's struggle for the right values, we can expect a citizenry with even stronger moral fiber in the future. The Office's graft prevention efforts are directed at sustaining the support of all sectors of Filipino society, which is a healthy sign of empowering the citizenry in nation building. It has likewise installed Resident Ombudsmen (ROs) in 22 important departments of the government to serve as watchdogs and guardians of integrity and efficiency. They closely monitor the performance of government functionaries, thereby producing strong deterrence to bureaucratic corruption and inefficiency. See Figure I for the stages of graft prevention as conceived by the Ombudsman.

The psychological approach adopted has been designed to create and nurture an environment of integrity in the Philippine society. This proceeds from the principle that corruption cannot thrive in a milieu of honesty. This approach, which has a long-range objective, is expected to have a lasting effect because it aims to develop a strong moral fiber for the citizenry.

For this purpose, the Office has worked with the Education Department on introducing graft prevention modules that will teach students old Filipino values of honesty and integrity. It has forged an agreement with the Movie and Television Review and Classification Board (MTRCB) to ascertain that corrupt practices pictured in movie films and television programs have redemptive values or punishment of

Figure II. THE OMBUDSMAN'S TOTAL STRATEGY AGAINST GRAFT AND CORRUPTION



the corrupt. Orientation seminars for new government entrants are also conducted to provide a deeper understanding of public service values and of the accountability attached to their positions in the government. It has continuously conducted values orientation seminars/workshops to enhance organizational effectiveness and strengthen the moral fiber of the personnel. The totality of the Ombudsman's strategy against graft and corruption is shown in Figure II.

C. Focus on New Initiatives: Dealing with "Graft-prone Agencies"

Given the fact that stolen money is usually never recovered, even if a conviction is obtained, the Ombudsman decided that the problem must be confronted before it is committed. A psychological approach was developed to address the social environment within which graft and corruption occur. The approach as previously mentioned attempts to strengthen the citizen's moral fiber and deter the opportunities for graft.

In determining the graft-prone agencies of the government, the Ombudsman adopts three criteria:

(i) the size of the budget of the agency,
(ii) the number of its personnel; and
(iii) the number of cases filed in the Office of the Ombudsman.

As may be noted, the first two criteria relate to the presence of opportunities for corruption, while the third relates to actual cases uncovered by complaints and investigation. The agencies meeting these criteria are the following:

(i) Department of Education, Culture and Sports (DECS)
(ii) Department of Public Works and Highways (DPWH)
(iii) Department of Environment and Natural Resources (DENR)
(iv) Department of Agriculture (DA)
(v) Department of Health (DOH)
(vi) Department of Transportation and Communication (DOTC)
(vii) Department of Interior and Local Government (DILG)
(viii) Department of National Defence (DND)
(ix) Department of Foreign Affairs (DFA)
(x) National Irrigation Administration (NIA)
(xi) National Power Corporation (NPC)
(xii) Bureau of Immigration and Deportation (BID)
(xiii) Philippine Economic Zone Authority (PEZA)
(xiv) Philippine Ports Authority/Bureau of Customs (PPA/BOC)
(xv) Bureau of Internal Revenue (BIR)
(xvi) Board of Investment (BOI)

For these agencies, the Resident Ombudsmen reviews processes to cut red tape, and inspects bidding requirements and contracts for evidence of graft.

This program appears to be a worthwhile initiative to the extent that the Ombudsman assists an agency in improving policies and programs to prevent corruption. In that sense, it is proactive, and views corruption from a systemic perspective. However, the work that the Resident Ombudsman is given should not duplicate or take away the responsibility of the management, through a working internal control unit, in supervising the performance of the functions assigned to that agency. To transfer this responsibility to an outside agency may enmesh the Ombudsman in implementation problems, as well as corruption opportunities, and decrease its capacity for enforcement and provision of sanctions. This seems to us similar to the pre-audit functions that used to be performed by the Commission on Audit, until it recognized that management

should wield this important power, for which it is responsible.

Another problem may be in the labelling of agencies as graft-prone. Bigness alone is not necessarily a prelude to corruption. Besides, the third criteria of the number of cases may be misleading if they primarily consist of cases still under investigation, rather than resolved. A litigation-prone agency may not be equivalent to a corruption-prone one. We may point out that this issue shows the urgent need for the Ombudsman to expeditiously dispose of cases brought to its jurisdiction.

VI. CONCLUSION AND RECOMMENDATIONS

The Philippines has unleashed many weapons against irresponsible behavior in the government. It has a comprehensive set of laws that may have ascertained all the possible instances of graft and corruption that can be devised. The anti-corruption agencies have been given ample powers to identify and punish offenders. They recognize the burden of power, with special agencies to give priority to catching the "big fish" and grave offences, over the acts of lower ranking personnel. They started on their own to coordinate with each other for greater over-all effectiveness. They approach corruption in both a preventive and punitive way. They recognize that the task is not only with the government, and have enlisted civil society in the struggle. For their part, citizens have also volunteered, in cooperation with state agencies or by themselves, in fighting corruption. On the whole, the Philippine approach has used democratic means, relying on due process, transparent procedures, and volition in effecting many of its aspirations. Yet corruption continues. What else needs to be done?

A. Re-examination of Existing Laws

The Philippines does not need any more laws against corruption. If anything, what it needs is a re-examination of anti-corruption laws not only to remove duplication, but also to ensure that those existing are accepted by the populace and enforceable by the anti-corruption agencies. We can only cite a few areas for further study. There are at present some provisions that, in their strictness, may encourage their breach:

(i) The Anti-gift Decree has never been implemented, but it can conceivably be used against a completely innocent, generous person, who (being a devout Christian) cannot help but give gifts on Christmas day, an act sanctioned by PD 46 and ignored by almost everybody immersed in Philippine culture.

(ii) The statement of assets and liabilities, a simple but potentially strong mechanism to find unexplained wealth, is submitted yearly by all public officials, but no one ever studies them. In any case, any well-paid accountant can hide unexplained wealth, and so the only people potentially at risk are civil servants that cannot afford to have others write their statements.

(iii) Other provisions may work against getting good people in government, for example, by the requirement for divestment. This approach to possible conflicts of interest will be met by well-qualified people entering into the highest reaches of the state apparatus. The current divestment procedure may be too harsh, since it could effectively mean that no top industrialist for instance can be Secretary of Trade and Industry, and no top banker may be Central Bank

Governor. That would be denying the government valuable human resources.

A possible alternative is to put more trust in transparency and the press (which requires an amendment of existing law). When a president chooses a person who shows reluctance because of the divestment requirement, exemption must be made for that person, provided that he or she discloses in detail and publicly all personal interests that have public implications. This could mean that the citizenry could keep track of the development of the relevant businesses and industries, while a valued member is in public office. Conversely, the problem of conflict of interest must be tackled head on by removing persons whose personal interest prospered while they were in office. This is amply provided for in RA 3019 and RA 6713, even without the divestment requirement.

(iv) The schedule of penalties may also be looked into. In some cases the penalty may be too low, e.g, the maximum imprisonment for corruption under RA 3019 is 15 years. In others, it may be too high, e.g, the sole penalty for grave misconduct on first offence is dismissal from the service. Extreme penalties do not encourage prosecution of offences, even when they are blatant, because of the cultural trait of "*sayang*" (waste of time) for those who will merit only low penalties and "*awa*" (pity) for those who will be hit by harsh punishment.

B. Enforcement

The Philippines has an impressive number of laws to tackle practically all cases requiring fast actions. However, enforcement of these laws leaves much to be desired. The retention of officials whom the President's anti-graft agency itself recommended to be removed suggests a lack of political will, and the priority of partisanship over the public interest. This would have provided an occasion for articulating the Administration's ethical vision, catching a big fish, and warning everyone that the leadership means business.

The people expect not only equal enforcement of the law, but even more strictness on persons perceived to be in the President's inner circle. Decisiveness would also be perceived if the public is informed of a clear connection between the official's misdeed and his/her removal. Part of the popular dissatisfaction with the conduct of accountability is the lack of closure of cases. The number of investigations that were not finished, or have "softer" findings and conclusions when no longer laboring under the public eye, does not increase public confidence in the anti-corruption programs.

C. Leadership in the Anti-corruption Drive

Leadership of the organizations primarily focused on fighting corruption requires higher qualifications than what is normally demanded. This applies particularly to the Ombudsman and to the heads of other agencies specifically created for this purpose. The very concept of an Ombudsman requires a person of high integrity whose very presence provokes respect and rectitude. The Philippines has not been blessed with the appointment of such persons to this office. Instead, they have been controversial, such that they raised questions about the Office, itself not only about its head. The President who appoints the Ombudsman should be cognizant of the high expectations of the

people to bring to the Ombudsman's office persons known for their ethical role modeling, non-partisanship, and good judgement.

D. More Resources for Enhancing Accountability

Resources for enhancing accountability and attacking corruption must be provided. This is an investment that will pay off in the long run. Guardians must be supported in their programs and given incentives not to stray from accountability. The funds, personnel, technology, and other resources of the Ombudsman and the *Sandiganbayan* must allow them to keep in step with the corrupt they are trying to catch. The personal income of such officials should be competitive with the private sector, subject to the conscientious performance of their duties. Their organizations should be provided with the necessary equipment high-tech devices like hidden cameras, etc and mundane matters such as paper clips, envelopes, filing cabinets as is needed in their work. Incumbents should be imbued with a sense of mission early, via a well-planned orientation program, and keep them going with peer group and leadership support, and a hotline for counseling on the problems they meet.

Civil servants who perform exceptionally well should be recognized. The Civil Service Commission program to this effect is a step in the right direction, but it honors too few people. The increase of salaries across the board through the Salary Standardization Law is a way to keep up with inflation, but it has had the pernicious effect of eating up any resources that may be given competitively. Merit increases and promotion can signal that an agency recognizes that one official is doing better work than the others are.

E. Better Public Administration

The management approach started under the Aquino administration should be continued and improved. Persons in decision-making positions should be trained and encouraged to think strategically. The challenge is to use whatever capacity there is towards work that is focused on enhancing the public interest. There is also a need to institutionalize some of the efforts that have been put into enhancing accountability since 1986. This means the support of agency reform measures, as well as the establishment of new procedures, to pave the way for cleaner administration.

F. Encouraging Public Sector Unions

Democracy is developed in the bureaucracy as the rank and file are given the chance to air their grievances, press for better working conditions, and demand responsibility and rectitude from the management. Even with Civil Service Commission encouragement, unions still face an uphill battle in being heard by their bosses. An arrangement where the union keeps its independence while remaining open to a partnership for service with management would provide the best avenue not only for policing how accountable management is, but also for improving the performance of everyone at all levels of the organization.

G. Reform of Politicians and Business People

Changes should also focus on the main corrupters, the politicians and the private sector. The NGOs that require their members to pay the right taxes and conduct activities towards corruption prevention within their ranks should be encouraged. Political parties should reform themselves, primarily through the continuous training of their members on party principles and policies, and their acceptance of the

principle of political neutrality among civil servants. Pending that, the passage of the law required by the Constitution against political dynasties, and increased recourse to and encouragement of the activities of the Ethics Committees of both Houses would be more immediate steps. Cause-oriented groups and public sector unions may assist politicians, especially those who regard themselves as non-traditional, in developing support groups to re-enforce their desire for true public service, not mere patronage.

H. Transparency and Accountability

Make transparency real, allowing civil servants and the public to access information in government. A question hour in Congress, or a radio-TV program with questions and comments to be answered by executive officials may help inquiries into any aspect of their policies and performance. Reports of investigations should be made available to the public. The support of the mass media in these endeavors, accompanied by their own efforts at reforming their ranks, would be crucial to the success of these efforts.

Accountable performance would be supported if the public is informed about what the agency does and why. It is a means of ensuring that the personnel themselves know its mission. At the same time, both they and the public would also then understand the reasoning behind what seem to appear only as red tape. Information sharing - particularly of steps in service delivery - also makes it unnecessary for the client to seek out a 'fixer'. Open transactions can build a sense of partnership between the government and the people the agencies serve.

I. Moral Reform

Having role models, a code of ethics and value formation exercises speak of a desire for moral reform within the government. While cultures cannot be changed overnight, support for value changes must be developed through a system of rewards and punishments that becomes regularized in standard operating procedures. Also, the meting out of positive and negative strokes must be swift but fair, and even-handed. Value development seminars should be case-oriented, thought provoking, and able to encourage innovative behavior, while raising alarm about continued violations.

J. Role of the People

There is a need for popular involvement in ethics and accountability. Paying the proper taxes, obeying regulations, being well informed about government services - these are only the first steps in moving to a disciplined but democratic society. In addition, support for politicians who promote causes rather than just their charm and personality would also make the line of accountability clearer. The development of parties with coherent platforms should then be a focus of people's participation, to tie up with the reforms suggested above. These are all in addition to the encouragement of NGOs that are non-partisan in exposing corruption and bringing violators to justice. The start of many of these measures has already been made. They are in tune with democratic principles, as well as the culture. One hopes that many more financial, human and moral resources will be placed at the service of accountability in the country.

Table 1
OFFICE OF THE OMBUDSMAN
STATISTICAL REPORT ON CRIMINAL/ADMINISTRATIVE CASES
From 1988 to 1998

	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998
OMB Cases Received during the year	57	3,722	3,997	5,142	5,303	8,172	9,454	6,122	8,117	8,150	8,551
Cases received back to pending								19	92	28	18
Old Tanodbayan Cases	1,811	2,814	998	145	314	105	154	46	552		
Carry-over from the previous yeaer		6	3,536	6,403	8,805	9,928	12,789	14,652	12,975	12,473	9,159
Total Workload of Criminal/ Administrative Cases/ Complaints	**1,868**	**6,592**	**8,511**	**11,690**	**14,422**	**18,205**	**22,397**	**20,839**	**21,736**	**20,651**	**17,728**
Disposed of	**1,862**	**3,056**	**2,108**	**2,885**	**4,494**	**5,416**	**7,772**	**7,864**	**9,263**	**11,492**	**10,816**
Dismissed/ Closed and terminated	1,862	2,996	1,908	2,278	3,839	3,605	4,851	4,262	5,109	8,986	8,397
Penalty Imposed						73	93	95	179	296	253
Prosecution		60	200	607	655	1,738	2,828	3,507	3,975	2,210	2,166
Regular Courts				405	393	1,378	2,198	2,988	3,734	1,722	1,700
Pending	**6**	**3,536**	**603**	**8,805**	**9,928**	**12,789**	**14,625**	**12,975**	**12,473**	**9,159**	**6,912**

Table 2
WORKLOAD AND STATUS OF CRIMINAL AND ADMINISTRATIVE CASES
(as of December 31, 1997)

Particulars	Central Office	Luzon	Visayas	Mindanao	Military	Total
Cases received during the year	**1,246**	**1,494**	**2,075**	**1,150**	**2,185**	**8,150**
Referred by the other OMB office	8	13	0	49	0	445
Disposed cases reverted back to pending	0	0	0	28	0	28
Carry-over from 1996	3,980	2,460	1,932	3,244	857	12,473
Total workload of criminal and administrativecases	**5,234**	**3,967**	**4,007**	**4,471**	**3,417**	**21,473**
Less cases recalled to central office / transferred to OMB office	186	68	177	9	5	445
Net workload of cases	**5,048**	**3,899**	**3,830**	**4,462**	**3,412**	**20,651**
Disposed	**3,249**	**1,772**	**2,094**	**2,034**	**2,343**	**11,492**
Dismissed / exonerated	2,812	1,337	1,527	1,520	989	8,185
Prosecution	254	383	357	451	765	2,210
Penalty imposed	148	15	86	47	0	296
Closed and terminated	35	37	124	16	589	801
Pending	1,799	2,127	1,736	2,428	1,069	9,159

Table 3
WORKLOAD AND STATUS OF CRIMINAL CASES
(as of December 31, 1997)

Particulars	Central Office	Luzon	Visayas	Mindanao	Military	Total
Cases received during the year	880	1,125	1,242	847	1,370	5,454
Referred by the other OMB offices	7	13	0	46	255	321
Disposed cases reverted to pending	0	0	0	25	0	25
Carry-over from 1996	2,989	1,997	1,281	2,765	756	9,788
Total workload of criminal cases	**3,876**	**3,125**	**2,523**	**3,683**	**2,381**	**15,855**
Less cases recalled to central office / transferred to OMB offices	179	2	132	6	3	321
Net workload of criminal cases	**3,697**	**3,123**	**2,391**	**3,678**	**2,378**	**15,267**
DISPOSED	**2,749**	**1,480**	**1,440**	**1,746**	**1,643**	**9,058**
Dismissed	2,460	1,097	1,070	1,295	878	6,800
Closed and Terminated	35	0	13	0	0	48
Prosecution	254	383	357	451	765	2,210
with regular courts	176	244	291	309	752	1,772
with Sandiganbayan	78	139	66	142	13	438
Pending	948	1,643	951	932	735	6,209

Table 4
WORKLOAD AND STATUS OF ADMINISTRATIVE CASES
(as of December 31, 1997)

Particulars	Central Office	Luzon	Visayas	Mindanao	Military	Total
Cases received during the year	366	379	833	303	815	2,696
Referred by the other OMB offices	1	0	0	3	120	124
Disposed cases reverted back to pending	0	0	0	3	0	3
Carry-over from 1996	991	463	651	479	101	2,865
Total workload of administrative cases	**1,358**	**842**	**1,484**	**788**	**1,036**	**5,508**
Less cases recalled to central office /transferred to other OMB offices	7	66	45	4	2	124
Net workload of administrative cases	**1,351**	**776**	**1,439**	**784**	**1,034**	**5,384**
DISPOSED	**500**	**292**	**654**	**288**	**700**	**11,492**
Dismissed / exonerated	352	240	457	225	111	1,385
Penalty imposed	148	15	86	47	0	296
Closed and terminated	0	37	111	16	589	753
Active / awaiting final disposition	851	484	785	496	334	2,950

Table 5
TOTAL WORKLOAD OF CRIMINAL AND ADMINISTRATIVE CASES
(as of December 31, 1996)

Particulars	Central Office	Luzon	Visayas	Mindanao	Military	Total
Cases received	1,342	1,525	2,026	1,140	2,084	8,117
Referred by other OMB offices	19	13	1	16	243	292
Disposed cases reverted back to pending	0	0	5	87	0	92
OSP / TBP transferred cases	6	1	1	544	0	552
Carry-over from 1995	4,718	2,063	2,062	3,079	654	12,576
Total cases received	**6,085**	**3,602**	**4,095**	**4,866**	**2,981**	**21,629**
Less cases recalled to central office /transferred to other offices	65	7	210	6	4	292
Net workload of cases	**6,020**	**3,595**	**3885**	**4,860**	**2,977**	**21,337**
Disposed	**2,974**	**1,135**	**1,765**	**1,219**	**2,121**	**9,214**
Dismissed	2,063	879	1,472	909	741	6,604
Prosecution	350	185	201	221	549	1,506
Penalty imposed	21	65	46	39	8	179
Closed and terminated	0	6	46	50	823	925
Pending	3,046	2,460	2,120	3,641	856	12,123

Table 6
WORKLOAD AND STATUS OF CRIMINAL CASES
(as of December 31, 1996)

Particulars	Central Office	Luzon	Visayas	Mindanao	Military	Total
Cases received	**1,028**	**1,213**	**1,424**	**828**	**1,228**	**5,761**
Referred by other OMB offices	18	13	1	10	178	220
Disposed cases reverted to pending	0	0	4	76	0	80
OSP/TBP transferred cases	6	1	1	544	0	552
Carry-over 1995	3,402	1,657	1,342	2,605	605	9,611
Total criminal cases received	**4,454**	**2,884**	**2,772**	**4,103**	**2,011**	**16,224**
Less cases recalled to central office /transferred to other offices	60	7	144	5	4	220
Net workload of criminal cases	**4,394**	**2,877**	**2,628**	**4,098**	**2,007**	**16,004**
DISPOSED	**2,339**	**880**	**1,159**	**936**	**1,252**	**6,566**
Dismissed	1,989	695	941	701	703	5,029
Closed and terminated	0	0	17	14	0	31
Prosecution	350	185	201	221	549	1,506
with Regular Courts	195	181	153	194	542	1,265
with Sandiganbayan	155	4	48	27	7	241
Pending	2,055	1,997	1,469	3,162	755	9,438

Table 7
ADMINISTRATIVE CASES / COMPLAINTS
(as of December 31, 1996)

Particulars	Central Office	Luzon	Visayas	Mindanao	Military	Total
Cases received	**314**	**312**	**602**	**272**	**856**	**2,356**
Referred by the Central Office	1	0	0	6	65	72
Disposed cases / reverted back to pending	0	0	1	11	0	12
Carry-over 1995	1,316	406	720	474	79	2,965
Total administrative cases received	**1,631**	**718**	**1,323**	**763**	**970**	**5,405**
Less cases recalled to central office /transferred to other offices	5	0	66	1	0	72
Net workload of administrative cases	**1,626**	**718**	**1,257**	**762**	**970**	**5,333**
Disposed	**635**	**255**	**606**	**283**	**869**	**2,648**
Dismissed / exonerated	614	184	531	208	38	1,575
Penalty imposed	21	65	46	39	8	179
Closed and terminated	0	6	29	36	823	894
Active / awaiting final disposition	993	463	651	479	101	2,685

Table 8
TOTAL WORKLOAD AND STATUS OF CRIMINAL AND ADMINISTRATIVE CASES (as of December 31, 1995)

Particulars	Central Office	Luzon	Visayas	Mindanao	Military	Total
Cases received	**1,203**	**0**	**1,159**	**1,354**	**617**	**4,333**
Referred by the Central Office	0	1,142	109	137	248	1,636
Disposed cases / reverted back to pending	0	0	0	19	0	19
Referred by the other OMB offices	27	18	6	19	285	355
OSP / TBP transferred cases	9	0	0	1	36	46
Carry-over 1994	5,855	1,692	2,257	3,459	602	13,865
Total criminal / administrative cases received	**7,094**	**2,852**	**3,531**	**4,989**	**1,788**	**20,254**
Less cases recalled to central office /transferred to other offices	30	2	85	231	7	355
Net workload of criminal / administrative cases	**7,064**	**2,850**	**3,446**	**4,758**	**1,781**	**19,899**
Disposed	**1,984**	**1,416**	**1,475**	**1,834**	**1,155**	**7,864**
Dismissed	1,637	1,140	1,143	1,311	473	5,704
Prosecution	307	252	246	379	336	1,520
Penalty imposed	1	24	15	55	0	95
Closed and terminated	39	0	71	89	346	545
Pending	5,080	1,434	1,971	2,924	626	12,035

Table 9
CRIMINAL CASES (as of December 31, 1995)

Particulars	Central Office	Luzon	Visayas	Mindanao	Military	Total
Cases received	**955**	**0**	**710**	**1,135**	**295**	**3,095**
Referred by the Central Office	0	852	85	100	217	1,254
Disposed cases reverted back to pending	0	0	0	11	0	11
Referred by the other OMB office	21	15	4	10	250	300
OSP / TBP transferred cases	9	0	0	1	36	46
Carry-over 1994	4,372	1,272	1,446	2,796	559	10,445
Total criminal cases received	**5,357**	**2,139**	**2,245**	**4,053**	**1,357**	**15,151**
Less cases recalled to central office /transferred to other office	26	2	64	206	2	300
Net workload of criminal cases	**5,331**	**2,137**	**2,181**	**3,847**	**1,355**	**14,851**
Disposed	**1,576**	**1,105**	**929**	**1,397**	**775**	**5,782**
Dismissed	1,266	853	648	987	439	4,193
Closed and terminated	3	0	35	31	0	69
Prosecution	307	252	246	379	336	1,520
Pending	3,755	1,032	1,252	2,450	580	9,069

Table 10
ADMINISTRATIVE CASES / COMPLAINTS
(as of December 31, 1995)

Particulars	Central Office	Luzon	Visayas	Mindanao	Military	Total
Cases received during the year	**248**	**0**	**449**	**219**	**322**	**1,238**
Referred by the Central Office (CO)	0	290	24	37	31	382
Disposed cases / reverted back to pending	0	0	0	8	0	8
Referred by the other OMB office	6	3	2	9	35	55
Carry-over from 1994	1,483	420	811	663	43	3,420
Total administrative cases received	**1,737**	**713**	**1,286**	**936**	**431**	**5,103**
Less cases recalled to CO /transferred to other office	4	0	21	25	5	55
Net workload of administrative cases	**1,733**	**713**	**1,265**	**911**	**426**	**5,048**
Disposed	**408**	**311**	**546**	**437**	**380**	**2,082**
Dismissed	371	287	495	324	34	1,511
Prosecution	1	24	15	55	0	95
Closed and terminated	36	0	36	58	346	476
Active / awaiting final disposition	1,325	402	719	474	46	2,966

REPORTS OF THE COURSE

GROUP 1

CURRENT SITUATION OF AND RECENT TRENDS IN THE CORRUPT ACTIVITIES OF PUBLIC OFFICIALS, AND CRIMINAL LEGISLATION AGAINST CORRUPTION

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Rapporteur	Mr. Asmadi Bin Hussin	(Malaysia)
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	Mr. Naoki Ujita	(Japan)
	Mr. Yoji Tanaka	(Japan)
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I. INTRODUCTION

All members of this group agree that no country in the world is safe from corruption. The only difference is that some countries are suffering from serious and widespread corruption, so much so that in certain countries corruption has become the norm, if not a culture, while corruption in other countries is at manageable level. Group one was given the task to discuss the current situation of and recent trends in the corrupt activities of public officials, and criminal legislation against corruption in three sub-topics. The first part dealt with the phenomenon of corruption, reasons and background (including by domestic/transnational organized crime group). The objective of this sub-topic was to examine the concept of corruption, which segment of the public service is involved, the reasons why the perpetrators of corruption committed the offence, impact of corruption and the involvement of transnational organized crime groups in corrupt activities.

Secondly, sub-topic two required this group to discuss the current provisions against corruption and their judicial interpretation. In every country in the world, legalistic approaches are the dominant countermeasures against corruption. Over time, laws are made and amended when the need arises, to strengthen the fight against corruption. In recognition of the role played by legislation in stamping out the menace of corruption, this group exhaustively discussed issues regarding the criminal provisions against corruption, and a comparison of the criminal provisions relating to corruption between countries represented by this group and their judicial interpretation.

Lastly, in sub-topic three this group discussed and proposed effective domestic and international criminal legislative countermeasures against corruption. Considering that current legislation against corruption in the respective

countries is inadequate, and also the need to intensify the fight against corruption, measures to rectify this defect by amending existing legislation and creating better legal provisions should be taken immediately. Proposals for model domestic and international criminal legislative measures were discussed and proposed by this group. Various international documents were referred to during the discussion in order for this group to come up with better and more effective legislative countermeasures, be it for application domestically or internationally.

II. THE PHENOMENON OF CORRUPTION, REASONS AND BACKGROUND

A. Definition of Corruption

Considerable time was given in discussion on whether to develop a universally acceptable definition of corruption between the members. As it is extremely difficult, if not impossible, to define what constitutes corruption, all members agreed to explain and illustrate what constitutes corruption, rather than to define it.

As the participants come from different countries with different political systems, criminal justice systems, cultural values and beliefs, and levels of economic development, to have consensus on a definition of corruption is something we dared not endeavor to do. Nevertheless, members of the group agreed for reference and guidance purposes to use the definition of corruption of the Council of Europe:

> "*bribery and any other behavior in relation to persons entrusted with responsibilities in the public...which violates their duties that follow from their status as public officials...and is aimed at obtaining undue advantages of any kind for themselves or for others*".

Actions by public officials which constitute corruption are as follows.

1. Bribery

The penal provisions of most countries include the offence of bribery, where private parties offer or promise money or other advantages to public officials in order to influence their decisions while exercising their official duties or functions. Bribery offences may be committed as variations of deceitful acts such as attempts, promises, giving, soliciting, or acceptance of a bribe. Demanding, soliciting and extorting anything of value by public officials may be called 'active bribery', while accepting bribes can be safely be referred to as 'passive bribery'.

Another form of bribery is receiving illicit payments. This situation covers public officials who solicit or accept monies in order to do something or not to do something which the official has, by nature of the official's duty, to do or not do anyway. These payments are often referred to as "speed money", and are paid to public officials in order to expedite a decision making or other process, to cut 'red tape' and bureaucratic delays.

2. Leaking Information

A situation whereby public officials give confidential information belonging to the government to a particular business enterprises or individual, which enables that business enterprise or individual to gain an advantage over competitors.

3. Abuse of Power

Whenever public officials abuse or misuse their power and discretion for personal benefit, or for the benefit of another person related to the official, such actions constitute corruption. They range from favoritism, nepotism and cronyism,

to illegal discrimination through misuse of the powers and discretion bestowed upon public officials. In countries where privatization policies are carried out in the process of the liberalization of economies and development, the wide discretionary powers given to the public officials have become a ripe field in which to benefit themselves and others related to them by abusing their designated power and discretion. Instances of public officials awarding government tenders to their children, buying stocks of companies that they know will be awarded a contract by the government (the value of which will surely go up), and disclosing a competitor's bid for public construction work, are all very common in those countries engaging in privatization policies.

4. Breach of Trust

Whenever public officials are entrusted with power or anything tangible to be administered, and he/she misuses that entrusted power for personal benefit, he/she is committing the offence of breach of trust. Public officials may divert public monies, funds, resources or properties to themselves, their relatives, or to those not related to them. History has shown that some autocratic rulers and despotic regimes are best known examples of this kind of systematic looting of their country's wealth.

5. Conflict of Interest

This situation occurs when public officials contaminate their decision making process with personal interest, resulting in bias. These types of public officials completely disregard their obligation to be fair, impartial, trustworthy and efficient in their public roles. Instances of public officials taking part in decision making processes affecting enterprises or companies in which their wives, children, or siblings are shareholders or directors are examples of this kind of corrupt practice.

6. Misappropriation of Public Funds

This situation occurs whenever a public official dishonestly uses public funds or other assets of the government for their benefit or for the benefit of others not authorized to receive them. Domestic and international financial institutions are favorite places to hide the loot, taking advantage of the protection of banking secrecy laws.

Based on the above discussion, it may be safely said that corruption involves two main elements:

(a) Receiving advantage, either economic or non-economic, for personal profit, gain and enrichment.

(b) Misuse of one's official capacity, duty, and discretion for personal benefit or the benefit of others who have a relationship with that public official.

B. Aims of Corruption

All members of this group agreed that the aim of the perpetrators of corruption may be classified into two categories:

(a) *Economic*

The perpetrator of corruption can be said to have committed that offence for economic reasons, perhaps influenced by insufficient income, greed, traditional customs of accepting gratification, enriching themself because of a limited tenure of office, and collaborating with organized crime groups.

(b) *Non-economic*

Non-economic motives include a public official's desire to obtain fame, power, or status through corruption. This also includes cases where they may be ordered by a superior to commit corruption.

C. Subject (Who)

All members of the group were given the opportunity to discuss the level of corruption in their respective countries. After extensive discussion, it was agreed that corruption practices involve not only low ranking public officials, but also those who hold high positions in government.

Corruption among lower ranking public officials may be called small scale corruption and may cause little detriment, but a high degree of severity of corruption involves persons holding high positions. Lower ranking public officials include traffic police asking for money from motorists who commit traffic violations, clerical employees who falsify overtime claims, etc.

Small-scale corruption in some countries constitutes the bulk of prosecution cases in courts of law, perhaps because corruption by high-ranking government officials is often more difficult to expose and investigate. Secrecy by certain governments does not allow the law to take its course to bring perpetrators to justice.

Bribery by politicians involved in vote buying was hotly debated by members of the group. The argument was whether a politician who contested an election, and who eventually becomes a public official, can be considered a public official. One point of view is that a candidate in an election is not a public official until and unless he/she wins the election, but he/she is possibly a future public official. If the contestant who engages in a vote buying process is elected, his/her election is contaminated by corruption. One who resorts to corrupt practices is prone to commit the same while in office.

Special attention must be given to corruption amongst criminal justice officials, such as judges, public prosecutors, and public defenders who are government employees. If corruption is allowed to penetrate this area, it will destroy the administration of justice and the public will lose confidence in the nation's justice system.

D. Impact of Corruption

If corruption is allowed to flourish, especially corruption involving high ranking public officials, the nation may be severely damaged economically. Business opportunities and wealth will be restricted to those who are connected to the ruling elite, and this will reduce or eliminate competition in the business sector. Collusion and nepotism will become the rule of the day. This in turn will lead to political instability, as well as depriving citizens access to basic needs. The people will feel frustrated and the general population's distrust will rise and eventually chaos will reign. Foreign investment will also be curtailed if widespread corruption is in place. This will affect the country's development.

Corruption directly increases the cost of a transaction. If a business pays a bribe to be awarded a contract, it will pass on that cost to the purchaser. Prices skyrocket and the purchasing power of consumers will decrease.

E. International Dimension of Corruption

All members of the group agreed that crime cannot always be solved with the effort of each country alone. All social phenomena have become transnational as a result of the remarkable progress in transport and communication. Crime, which is the negative side of social phenomena, is no exception. Accompanying the internationalization of commercial activities, it is frequently reported that companies offer bribes to foreign officials. It is been alleged, for

example, that several major Asian construction companies bribed officials in Southeast Asia to obtain favorable treatment of their bids on major projects.

With respect to organized crime, it can be said that it is natural for crime organizations to move the main sphere of their activities from their own country to other countries, to avoid strict control or in expecting more benefit. On the other hand, the criminal justice power of enforcement authorities does not extend beyond national boundaries. This fact will spur the internationalization of crime.

Corruption of public officials is no exception. When a criminal organization seeks enormous profits abroad, they need to avoid any control and get advantageous treatment. Then temptation to corrupt foreign public officials by crime organizations increases.

Crime organizations obtain enormous profits in cooperation with other organizations through the smuggling of drugs or weapons, intermediation of illegal immigration, traffic in persons etc. Temptation of public officials who are responsible for detecting such illegal activities, e.g customs officers, immigration officers, police officers, prosecutors and their assistants, judges and court officials etc, is not only an international concern but also a serious problem which damages the base of each state. The main instances of this reported by members of the group are as follows.

1. Trafficking of Illegal Immigrants

As Malaysia during the past nine years has been enjoying an economic boom, it has attracted illegal immigrants from Pakistan, Bangladesh, China and other nations to come and work. It is alleged that illegal immigrants use the services of transnational organized crime groups for transportation into Malaysia, and Malaysian registration officials accept bribes from transnational organized crime groups to issue registration cards. Because of the high incidence of this activity and the difficulty of finding sufficient evidence to bring the culprits to court, the government has to use preventive detention to detain those suspected of engaging in this illegal activity.

2. Trafficking of Illicit Drugs

It is common knowledge that outlaw gangs in Colombia bribe police, customs and immigration officials to facilitate the easy passage of narcotics through Venezuela for distribution in the United States. Drug trafficking provides an excellent, but appalling, example of the role of transnational organized crime groups in corruption. The demand for cocaine has resulted in a supply line that starts in the Andean Mountains of South America, flows through Latin America and the Caribbean, and ends up on the streets of almost every city in the US. This demand and supply process involves billions of dollars, some of which is used to bribe public officials in Colombia, where the coca plants are processed to produce cocaine, in Mexico and some nations in the Caribbean, which are major transit routes, and in the US, the destination of the drugs. The head of Mexico's drug enforcement agency was arrested in February 1997 for drug trafficking, organized crime, bribery, and illicit enrichment, and in August 1999 Mexico's number two prosecutor was indicted in the US for laundering more than $9 million in drug payoffs through a bank in Houston, Texas. In the US, between 1992 and 1999, 28 Customs and Immigration and Naturalization agents stationed along the US-Mexican border were convicted for a number of crimes involving facilitating drugs crossing the border. In fiscal year 1997, 150 law enforcement officers in the US were

convicted of corruption-related crimes, over half of which involved drugs. These are just a few examples of a much larger problem of drug-related corruption affecting many countries in the Americas.

F. Causes/Background of Corruption

The problem of corruption is a problem of systems and institutions, combined with human factors. Causes of corruption, which are examined and discussed, are as follows.

1. Lack of Transparency and Accountability

Transparency and accountability are related to the right to information. Corrupt practices, especially amongst public officials holding political power, goes unchecked and undiscovered because there are insufficient mechanisms to control their exercise of power. The right to information is sometimes curtailed through the implementation of various laws that protect disclosure of the improper exercise of power and discretion. In order to expose any wrongdoing committed, investigating agencies need to have unrestricted power to examine public records, financial institution documents and other relevant documents in the possession of the concerned bodies. Nevertheless, in most countries, banking secrecy laws are the most common hindrance to investigation. Corrupt public officials, especially in dictatorial regimes, almost always avoid prosecution by manipulation of these loopholes in the law.

2. Wide and Broad Discretionary Power

Wide and unfettered discretionary power in the hands of public officials can generate temptation and motive for corrupt practices. Without the proper mechanisms of transparency, and checks and balances, public officials will have ample opportunity to take undue advantage of their powers. Discretionary powers vested in public officials opens the door of corruption. Public officials may use their discretionary powers as an instrument to seek illegal gratification. Delaying processing certain documents has becomes a very common practice in government departments. In order to speed up applications submitted for approval, the public has to grease the palms of public officials.

3. Monopolistic or Oligopolistic Situations

This situation means that in a given market economy, one or a handful of companies are given tasks to perform or carry out specific development projects or provide certain services. This happens quite commonly in developing countries that intensify privatization policies, and also in the field of defence projects. Controlling the market has become a tool to commit malpractice, such as overcharging, providing low quality work, manipulating prices etc. Companies hoping for a monopolistic market normally bribe public officials to secure specific development projects.

4. Low Salary

It is a common belief that poverty tends to encourage public officials to commit corrupt acts. With low salaries, they find it difficult to attain a modest standard of living, so much so that they have to revert to corruption to enhance their income. But if corruption has become accepted in the public sector, however much public officials salaries are increased, the temptation of corruption will forever exist. However, one may argue that this notion is not necessarily true, since in developed countries where public officials have very high incomes and ample welfare, corruption among public officials still exists. Thus, one may conclude that low salary alone is not the real reason for corruption, but is used as an excuse to indulge in corrupt activities.

5. Lack of Ethical Consciousness

Ethical consciousness is interrelated with moral values. Public officials with low ethical consciousness succumb to the temptation of corruption easily, compared to those with firm ethical standards.

6. Greed Factor

This factor explains above all why high-ranking public officials and politicians with high salaries and adequate means are involved in corruption. The pursuit of personal satisfaction, which has no limit, means that these kinds of public officials never have enough, and corruption is the only way to seek satisfaction.

III. CURRENT CRIMINAL PROVISIONS AGAINST CORRUPTION AND THEIR JUDICIAL INTERPRETATIONS

A. Criminal Provisions against Corruption

Summaries of the criminal provisions against corruption in the respective countries of these group members are as discussed below. The specific provisions of each country represented in the group may be found in the Appendix.

1. China

Corruption offences in China may be divided into two broad categories, which are as follows:

(a) Bribery and embezzlement
(b) Abuse of power

One significant difference between China's legal provisions on corruption and those of the other countries of this group is that the maximum punishment that can be imposed by the court is death. If an accused person is convicted of corruption offences where the amount of the bribe or embezzlement exceeds RMB100,000, a death sentence may be imposed, but is not mandatory. Even though the court has the power to impose a death sentence, it is not commonly exercised if the convicted can return the amount that has been taken. A unit may be the subject of bribery allegations, and may be punished if found guilty. In addition, public officials whose property or expenditures exceed their lawful income, the source of which cannot be explained properly, may also be penalized. Corruption is becoming complex and rampant as China opens its doors to a market economy, so there is a need to enact separate legislation to deal with corruption effectively and to establish a special agency to investigate and counter corruption.

2. India

There are two laws which deal with corruption in India:

(a) The Indian Penal Code (1860)
(b) Prevention of Corruption Act (1988)

Both statutes seem to have similar provisions, but under the Prevention of Corruption Act, punishment is more severe. Imprisonment under this Act may be a maximum of 7 years, whereas under the Penal Code the maximum imprisonment that can be imposed is 3 years. Minimum sentences are also provided for, with or without fine.

It is to be noted that neither the word "corruption" nor "bribery" is used in the Indian penal provisions against corruption. Instead, the word "gratification" appears in Indian criminal legislation against corruption. But neither in the Penal Code nor the Prevention of Corruption Act is the word "gratification" defined. The Prevention of Corruption Act does not provide for confiscation. Confiscation proceedings can be initiated under the Criminal Law Amendment Act of 1944.

Although there is no definition of "bribery" and "criminal misconduct," what constitutes these offences are described under the relevant sections of law. However, under section 169 of the Penal Code there is a provision for confiscation of the property bought or bid for by a public servant through misuse of their office.

3. Japan

Criminal provisions against corruption are mainly found in the following statutes:

(a) Penal Code
(b) National/Local Public Service Law

The Penal Code covers the offences of bribery, abuse of power, fraud, and larceny by public officials. Prohibitions against disclosing official secrets are found in the National Public Service Law and also in the Local Service Law. Public officials who assume positions as directors or advisors in private companies contrary to the law may, if convicted, be punished under the National Public Service Law.

4. Malaysia

Penal provisions against corruption may be found in the following statutes:

(a) Penal Code
(b) Customs Act of 1967
(c) Anti-Corruption Act of 1997
(d) Emergency (Essential Power) Ordinance No. 22 of 1970

In Malaysia, corruption was first made an offence in 1871 with the introduction of a Penal Code copied from India by the British colonial masters. These provisions are still preserved in the Penal code. A separate enactment dealing with corruption was first introduced in 1938. Since then, the specific legislation has been the subject of numerous amendments, and in 1997 the government introduced the Anti-Corruption Act, which came into effect on 8 January 1998. Another feature of corruption legislation in Malaysia is the use of emergency powers to combat corruption. In order to tackle certain practices which would have escaped the net of the Prevention of Corruption Act of 1961, which was the predecessor of the Anti-Corruption Act of 1997, the Supreme King of Malaysia on 21 February 1970 promulgated the Emergency (Essential Powers) Ordinance No. 22, which is popularly known as Ordinance 22.

With the coming into effect of the Anti-Corruption Act of 1997, which is considered to be the comprehensive law regulating corruption practices, the government on 23 October 1998 passed a resolution in the *Dewan Rakyat* (The Lower House of Parliament) repealing the Ordinance retrospectively from 8 January 1998. At the time of passing of the resolution, several prosecutions under the Ordinance were still pending in the court. Arguments were put forward in those cases as to the legality of the charges under the said ordinance, as the law was considered to have no effect after it was repealed. In the case involving the former Deputy Prime Minister of Malaysia, the defence team raised a preliminary objection that as the Lower House of Parliament has repealed the Ordinance, charges under the Ordinance were no longer sustainable.

After hearing arguments from the prosecution and the defence team, the learned trial judge ruled that, as the Ordinance was promulgated under Article 150(2) of the Federal Constitution at a time when a grave emergency existed, the Ordinance will only cease to have effect if both Houses of Parliament pass a resolution annulling such a law as stipulated by Article 149(2) of the Federal Constitution. As the *Dewan Negara* (the Upper House), which is the other component of Houses of Parliament, has

not passed a resolution annulling the Ordinance at the time of the trial, it was held that the trial was not a nullity and was therefore sustainable.

5. Palestine

Corruption offences in Palestine may be grouped into three different classes of misbehavior:

(a) Bribery
(b) Embezzlement
(c) Abuse of Power

Bribery offences are stipulated under Penal Code No. 41 of 1944, by sections 106, 107, 108 and 109. The punishment provided ranges from one to three years' imprisonment, depending upon the seriousness of the offences committed. Embezzlement is punishable under Penal Code No. 57 of 1946, which carries a maximum of one year of imprisonment upon conviction. Abuse of power and tyranny are dealt with under the same law, and can be punished with a maximum of two years imprisonment.

6. Thailand

Legal provisions to combat corruption in Thailand can be separated into two categories:

(a) The Penal Code
(b) Supplementary legislation to rectify loopholes in the Penal Code

Apart from the prescribed punishment, the court in certain offences can impose confiscation of the property or assets acquired through corruption. But this provision has it shortcomings, as it cannot be imposed if the property or assets have been transferred to another person, or have been changed or transformed into another asset which is different than the original. To rectify this situation, the Thai government has enacted the Money Laundering Act which, *inter alia*, empower the court to order confiscation, even though the assets have been transferred to another or have changed form.

There is also the Mutual Legal Assistance Act and Extradition Act which empower investigative agencies to provide assistance to a requesting country to facilitate the investigation of corruption, and to seek the assistance of another country in bringing to justice perpetrators of corruption who have escaped from Thailand and have taken refuge in another country. The same principle applies *vice versa* to other countries which seek Thailand's cooperation.

7. Venezuela

There are two penal provisions dealing with corruption in Venezuela:

(a) The Venezuelan Penal Code
(b) Organic Law for Safeguarding Public Administration

Recently, political changes took place in Venezuela whereby a new democratic government was elected after a long period of corruption and a degenerative process with a democratic mask. The Venezuelan Parliament is in the process of enacting a new constitution and it is expected that with the changes to the legal system, new laws relating to corruption will be enacted.

B. Judicial Interpretation of Corruption Offences

1. China

In China, a new criminal law which has two independent chapters against corruption just came into force two years ago. It is new legislation, so almost all definitions of corrupt activities are found in the law. Judicial decisions relating to corruption cases mostly focus on strategies to tackle the recent trends of corrupt activities and judicial countermeasures.

Recently, with assistance from various legal experts, the Supreme People's Procoratorate (SPP), China's top criminal watchdog, drafted judicial explanations concerning 52 crimes related to corruption, bribery, dereliction of duty and the violation of the personal and civil rights of citizens, committed by officials. The object of the offences of bribery and embezzlement is restricted to money or property only, and if one accepts intangible things, such as entertainment, it is not considered a crime of corruption.

2. India

Neither the word "bribe" nor "corruption" is defined in the Indian penal provisions against corruption. "Illegal gratification" is used to denote the offence of corruption in the Indian Penal Code and in the Prevention of Corruption Act of 1988. Judicial decisions over the years have interpreted illegal gratification to include all improper and selfish exercises of power and influence attached to a public office or to the special position one occupies in public life. It has to be viewed from the entire gamut of moral values, social ethics, and acknowledged norms of behavior in public life. In other words, "gratification" is not restricted to pecuniary gratification, but encompasses intangible things. Thus, anything which affords satisfaction to one's mind or body, and does not form part of a public servant's legal remuneration and is obtained as a motive or reward for showing favor or disfavor in the course of their official act, would be gratification. Elected representatives, such as members of legislatures, are public servants as held by the Supreme Court. Trapping bribe-takers red-handed is held to be part of the investigation, under a Supreme Court ruling.

3. Japan

(a) *Bribe*

The word "bribe" under the Penal Code has been interpreted by the court as not only restricted to tangible things, but also to intangible things. This may include money, interests, favors, entertainment, etc. Examples:

(i) *Tangible Things*

The case of a former Vice-Minister of Health and Welfare who was accused of having accepted cash of about 60 million yen from a director of a social welfare company in return for giving it advantages in distributing subsidiaries. He was convicted by the Tokyo District Court and sentenced to imprisonment for 2 years and forfeiture of the bribe money.

(ii) *Intangible Things*

In the 'Recruit' case, high-ranking governmental officials, including political appointees, gave preferential treatment to the Recruit Company in return for a special offering of stock of the company before its public release. The court ruled that the benefit of such an advantageous purchase of such stock, which was certain to increase in value, was a bribe.

(b) *Official Duty*

The bribe must be taken or obtained by public officials in relation to their official duties. In a Supreme Court ruling it was held that "official duty" includes, but is not restricted to, their designated duties.

4. Malaysia

Under the Malaysian criminal provisions against corruption, the words "bribe" and "corruption" are not used. Instead, the word "gratification" is found in the Penal Code and Anti-Corruption Act of 1997. The Penal Code does not define what constitutes gratification, but under the Anti-Corruption Act of 1997, the word "gratification" is defined as:

(a) Money, donation, gift, loan, free reward, valuable security, property, interest in property, being property of any description, whether movable or immovable, or any other similar advantage;
(b) Any office, dignity, employment, contract of employment, or service, and any agreement to give employment or render service in any capacity;
(c) Any payment release, discharge or liquidation of any loan, obligation, or other liability, whether in whole or in part;
(d) Any valuable consideration of any kind, any discount, commission, rebate, bonus, deduction or percentage;
(e) Any forbearance to demand any money or money's worth or valuable thing;
(f) Any other service or favor of any description, such as protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted, and including the exercise or the forbearance from the exercise of any right or any official power or duty; and
(g) Any offer, undertaking or promise, whether conditional or unconditional, of any gratification within the meaning of any in the preceding paragraph.

In one celebrated case involving an officer of the Immigration Department who asked for sexual favors in return for immediate processing of an application for renewal of a passport, it was held to amount to soliciting gratification, which is an offence under Section 4 of the old Prevention of Corruption Act 1961. This interpretation is still applicable for offences under the Anti-Corruption Act of 1997, since the content of both provisions is the same.

Under the Emergency (Essential Power) Ordinance No. 22, the subject of corruption is in the form of misusing the office or position for pecuniary or other advantages. "Pecuniary advantages'' has been interpreted by the High Court, in the case of *Public Prosecutor vs. Dato' Tan Swee*, to mean wrongful or undue gain, that is something to which a person is not entitled or is not yet entitled to or is getting something more than s/he is lawfully entitled to. "Other advantages" also has been subject to judicial interpretation. In the case of *Nunis vs. Public Prosecutor*, it was held that the words "other advantages" includes favoring circumstances or benefits of some of kind, other than pecuniary.

In the case of *Public Prosecutor vs. Dato' Seri Anwar Bin Ibrahim*, the accused was charged with four offences of corrupt practices under section 2 of Ordinance 22. It was revealed by witnesses that the accused, while holding the office of Deputy Prime Minister and Minister of Finance, had used his position to order two police officers to get retraction statements from two persons, in order to save him from embarrassment and criminal prosecution. It was held that saving oneself from embarrassment and criminal prosecution amounted to "other advantages" stipulated by section 2 of Ordinance 22.

5. Palestine

In Palestine, the offence occurs only when the bribe-taker receives or demands tangible things such as money, cars, land, etc. Intangible things, such as entertainment, cannot be the object of a bribery offence.

6. Thailand

Corrupt activities in Thailand can be classified into two main groups. The first

group can be called "misuse of power" or "abuse of power". The relevant sections that may be grouped into this category of offences are 147, 148, 151 and 152. The essential elements which the public prosecutor has to prove are:

(a) The accused or offender is a public official; and
(b) Such a person unlawfully and wrongfully exercises his functions for a particular purpose.

The second group can be termed "bribery". Sections 149, 150, 201 and 202 are grouped into this. The essential elements of crime in this are:

(a) The accused or official is a public official (including members of the State Legislative Assembly, member of the Municipal Assembly, etc); and
(b) The accused accepted, demanded, or agreed to accept any undue property or benefit for themself or another person; and
(c) For exercising or not exercising any of their functions, whether such exercise or non-exercise of their functions is wrongful or not.

The Public Prosecutor, however, has the burden to prove a strong link between the corrupt activities and the official's designated functions in both groups.

As for the offence of bribery, nowhere in the Penal Code or any other legislation defines the meaning of "bribe". However, in the relevant sections, they use the wording "property" and "any other benefit" to express the meaning of "bribe". The Supreme Court interpreted these two words as interchangeable. The Civil and Commercial Code of Thailand provides the definition of "property" in this context: property is anything, tangible and intangible, which an individual person or persons can retain, having in their possession, and having pecuniary value, can be sold or transferred to another person. Thus, under the Thai judicial interpretation, "bribe" is restricted to pecuniary benefit, or to benefit that can be estimated in money. Other forms of benefit, such as entertainment, service or meals, is out of the scope of the bribe.

To apply the law to a real situation, however, is sometimes difficult because there still is a legal vacuum in the definition of cash or property to be considered as unlawfully obtained. There is no any legislation in Thailand which prevents a public official from receiving cash, property or any other kind of benefit, due to affection or appropriate amount of reward on traditional occasions. Thus, it appears very often that the accused usually argued that such money or property had not been obtained corruptly, but was given as a token of affection or as a reward.

Another controversial issue about judicial interpretation, before the year 1999, was the interpretation of Sections 33 and 34, which stipulated the rule of forfeiture or confiscation. A Thai court ruled that property forfeited by means of these sections should be property acquired directly through the commission of an offence. Thus if the property was transferred, sold or changed in form, these two sections are inapplicable. However, since August 20, 1999, the Money Laundering Control Act has come into force, and this kind of situation should not be a problem anymore.

7. Venezuela

In Venezuela, the interpretation of "bribe" is different from case to case. The principle of binding precedent is not applicable in the Venezuelan judicial system. The lower court is not obliged to follow the higher court's decision. This

situation has created inconsistency in judicial interpretation of the subject matter of bribery. Thus, both tangible and intangible objects can be the subject matter of bribery, depending on the judge's discretion.

IV. PROPOSED DOMESTIC AND INTERNATIONAL CRIMINAL LEGISLATIVE MEASURES EFFECTIVE AGAINST CORRUPTION

Noting the increasing complexity and growing sophistication of corruption, as well as the multiplicity and diversity of the problems it creates at the national and international level, proposed legislative improvement must be made to various legislation, including criminal and procedural legislation, administrative regulations, as well as international mutual legal assistance related provisions.

One can expect that in response to the new measures or legislation, corrupt activities will become more sophisticated. Offenders always probe for weak spots in legislation, seeking new avenues, venues and persons to exploit. Reviewing, modernizing and harmonizing existing substantive and procedural legislation to ensure their continued relevance, efficiency and adaptability to the various forms of corrupt practices, including elaborating and adopting new laws and regulations designed to meet the challenges posed by the complexity and sophistication of organized crime and corruption, should be carried out by every country on a regular basis.

A. Domestic Substantive Criminal Law

1. Punishment

To enhance their capacity to respond to all forms and manifestations of corruption, as well as to any conduct assisting or facilitating corrupt activities, every country should review their criminal legislation and identify lacunas in the existing legislation and make necessary amendments to rectify such defects. Every country should examine the inadequacy of their penal sanctions in dealing with corruption cases, which indirectly helps this evil activity to flourish.

Existing legal sanctions against corruption offences should be increased substantially where necessary. Mandatory custodial sentences upon conviction might be necessary to reflect the government's policy in corruption cases. Mandatory imprisonment sentences may act as a deterrent to committing the offence, not only for the offender but also to the public at large.

In addition to custodial punishment, penal provisions should include the power to impose fines. The imposition of fines should not only apply to the bribe-taker, but also to the bribe-giver. Courts should be given the power to inflict substantial fines, as nominal fines do not have a deterrent effect. The amount of fine that can be imposed should be equivalent to the amount received as the bribe, or a larger figure, such as two or three times the accepted amount.

Among the participating countries in this course, only China and Vietnam empower their courts to impose capital punishment in corruption cases. The question of whether capital punishment should be provided for in corruption legislation is a matter of policy for that particular country and should not be subject to criticism by any other country. Any sovereign country must be allowed to carry out any policy that is considered appropriate to suit its own domestic situation.

2. Subject Matter of Corruption

It was agreed by all members of this group that the subject matter of corruption offences may include monetary worth or benefits, as well as indirect benefits such as dinner, entertainment, discharging of debts, etc. Legislatures in every country should consider legislation that defines corruption as including such indirect advantages. Experiences in some countries have shown that without clear and comprehensive provisions, there will be ambiguity in the interpretation of the law.

3. Exercise of Confiscation or Forfeiture

It is commonly agreed that confiscation has a strong deterrent effect on potential perpetrators of corruption. Since corruption is frequently committed for pecuniary reasons, taking away the fruit of corruptly gained assets, equivalent monetary value, or the proceeds of the crime, is an effective preventive measure. In addition to imprisonment and fines, courts should be given the power to impose confiscation orders on the offenders' unlawfully gained assets or other property that the offender cannot prove to be his/her true and lawful property, and that no other person is entitled to that property. In cases where the benefit or advantage accepted by the accused person is not pecuniary in nature, such as sexual favors, confiscation orders can not be pronounced by the court. In cases such as these, as a substitute, the court should be given the jurisdiction to impose equivalent penalties upon conviction of the accused.

4. Guarantee of Transparency

The lack of transparency and accountability may facilitate corruption, thus legislation allowing the public to access governmental information should be introduced to guarantee transparency in the management of public funds and in the decision-making process, to ensure accountability. Since corruption produces distortions in the world of business, the establishment of transparent and competitive procedures, such as unfair competition prevention and anti-trust laws, are deemed necessary.

5. Establishment of Anti-Money Laundering Laws

Corrupt public officials benefit from money or properties obtained through illegal means. To avoid detection, in some cases, proceeds from corrupt activities are being laundered by corrupt public officials in legitimate transactions. Existing laws, such as penal codes, anti-corruption Acts, and the like, are often not adequate to suppress either money laundering or illegal use of crime-related money and property. Thus, in order to cut off this vicious circle of crime, measures to effectively control money laundering should be established. In addition, to combat corruption more effectively, all kinds of corrupt activities should be included in the predicate offences of the legislation against money laundering.

6. Enhancing the Financial Institutions' Role

Countries should consider introducing measures or legislation to clarify the role of financial institutions. Such legislation might require the financial institutions to:

(a) Identify, on the basis of official or other reliable identifying documents and records, the identity of their clients.
(b) Take reasonable measures to obtain information about the true identity of the person on whose behalf an account is opened or a transaction is conducted, if there is any doubt as to whether these clients or customers are not acting on their own behalf.
(c) Maintain, for a certain period of time, all necessary records on transactions, both domestic and international, to enable them to comply swiftly with

information requests from competent authorities.

(d) Report any suspicious transactions to competent authorities.

In addition, to encourage the cooperation of financial institutions and their employees, there should be legal provisions to protect them from criminal or civil liability for breach of any restriction on disclosure of such information, if they report to competent authorities in good faith.

7. Illegal Enrichment

Laws to apply criminal penalties to public officials who appear to have in their possession valuable assets, goods and means that are clearly beyond their financial remuneration, and who fail to explain how they got the properties, should be considered. See the OAS document entitled "Model Legislation on Illicit Enrichment and Transnational Bribery".

8. Limitations on the Activities of Former Public Officials

In order to prevent conflicts of interest, laws must be enacted, where they do not already exist, that prohibit public officials from taking positions that involve them representing private or personal interests before their former governmental agency or department, within specified periods of time.

9. Prohibition of Tax Deductions

Countries should consider legislation that would prohibit tax deductions for bribes or other expenses related to corruption, whether within the country itself or internationally, as recommended by United Nations Resolution A/RES/51/59, dated 28 January 1997.

10. Criminalization of Bribery of Foreign Public Officials

All countries should consider enacting legislation consistent with the Organization of American States (OAS), Organization for Economic Cooperation and Development (OECD) and Council of Europe (COE) recommendations relating to criminal penalties against citizens who bribe or attempt to bribe foreign public officials.

B. Domestic Procedural Law

We recommend the following:

(a) Provisions which promote banking secrecy should be relaxed to facilitate the investigating authorities pursuing and gathering material evidence to expose corruption. Many times, the effectiveness of investigation is hindered because of the veil of banking secrecy. Investigating authorities should be empowered by legislation to conduct inspections and confiscate any document, movable or immovable property, in the custody of financial institutions, which is suspected to be the subject matter of corruption offences.

(b) Investigating authorities should be given the power of directing public officials, who are suspected and arrested in connection with corruption charges, to surrender all travel documents in order to prevent them absconding from the country.

(c) Every country should consider reviewing and adopting provisions, without infringing upon the fundamental rights of accused persons, for the reversal of the burden of proof in cases where the accused appears to have in their possession or have available, directly or indirectly, goods or assets and means that are clearly beyond their normal

financial standards.

(d) Introducing a Witness Protection Law. Bearing in mind that witnesses are frequently essential to law enforcement authorities in collecting evidence to prove allegations, and that those witnesses may be threatened by others involved, every country should consider new legislation, or review existing legislation, in order to encourage and facilitate the cooperation of witnesses, including the introduction of witness protection schemes.

C. International Legislative Measures

1. Mutual Legal Assistance Law or Treaty

Since corruption and money laundering are global problems, the international community should recognize that these kinds of crimes have no national boundaries. Action by individual states alone is inadequate to combat those activities effectively. It requires a global response. Failure to participate in an international effort is not neutral but rather facilitates victimization of other states, including those which believe wrongly that they can stay on the sidelines. Thus, close cooperation between the law enforcement authorities of each country, through bi-lateral and multi-lateral arrangements, is urgently suggested. International authorities should be given responsibility for gathering and disseminating information to competent authorities about the latest measures being used in corrupt activities by perpetrators.

Each country should review and expand, where necessary, practical countermeasures against corruption, in order to coordinate with other countries and relevant international organizations in anti-corruption efforts. It is also recommended that every country should keep the issue of action against corruption under regular review. All forms of corrupt activities, including bribery of foreign public officials, should be included in the treaties for mutual assistance. The requested country should not decline to render legal assistance based only on financial secrecy laws. In another words, treaties for mutual legal assistance must prevail over the domestic financial secrecy laws of the requested country.

2. Extradition Law or Treaty

Corrupt offences, money laundering, bribery of foreign public officials and related illicit activities, should be deemed by every country as an extraditable offence. In case the requested country declines to extradite its own national who is sought for committing corruption offences, or who is involved in money laundering activities in the requesting country, the requested country should submit the case, as required by its domestic legislation, to its competent authority for prosecution.

V. CONCLUSION

The phenomenon of corruption has become increasingly complex and sophisticated. In addition, corruption of public officials is frequently used by the perpetrator as a primary tool to conduct other criminal activities. Corruption causes uncountable damage to our society. It destroys every person, institution, and system wherever it can emerge. Corruption is not the problem of any individual country anymore, but rather a global problem which requires strong cooperation among the various countries to combat. Every country should recognize its danger and urgently cooperate with each other to suppress and eliminate this kind of evil activity from our society. In fighting corruption, the continuing process of reviewing, strengthening and enacting legislative measures which are deemed

effective to prevent and control corruption and related activities should be seriously exercised. Harmonizing and modernizing existing legislation, rules and regulations to facilitate enforcement and enhance cooperation among the law enforcement agencies, at both the national and international level, should be done simultaneously. Every country must devote its energy and resources to enhance and expand international cooperation in the fight against the evils of corruption.

Appendix I

Criminal Provisons against Corruption in Participating Countries

Country	Section	Subject	Behavior	Object / Funds	Punishment	Confiscation
China	Criminal Law 383,394	Public servant	Embezzles	Public money or property and gift 1: Up to 5,000RMB 2: 5,000 to 50,000RMB 3: 50,000 to 100,000RMB 4: more than 100,000RMB	1: Up to 2Y detention 2: 1Y to 10Y 3: 5Y to life 4: 10Y to death	3,4: property
	CL 384	State functionary	Taking advantage of and misappropriation	Public funds	1M to life imprisonment	
	CL 385 to 388	State functionary	Accepts	Bribes 1: Up to 5,000 2: 5,000 to 50,000RMB 3: 50,000 to 100,000RMB 4: more than 100,000RMB	1: Up to 2Y detention 2: 1Y to 10Y 3: 5Y to life 4: 10Y to death	3,4: property
	CL 389 to 391	Any person or unit	Bribes or introduces	Money or advantages	1M to life imprisonment	Property
	CL 392	Any person	Introduces a bribe to a state functionary	Bribes	Not more than 3Y	
	CL 393	Any unit	Other bribes for the purpose of securing illegitimate benefits	Bribes	Fine (only unit) and not more than 5Y (for individual)	
	CL 395	State functionary	Property exceeds lawful income undeclared large bank savings outside China	Property	1M to 5Y	Part of exeeding property
	CL 396	State-owned unit	Divides up in secret (in the name of unit)	State-owned assets	1M to 3Y	
	CL 397	Any functionary of a state organ	Abuses or neglects or engages in malpractice for personal gain	Power or duty (causing heavy losses to public funds)	3Y to 10Y	
	CL 398	Any person	Divulges	State secrets	1M to 10Y	
	CL 399 to 401	Any judicial officer	Abuses or neglect	Power or duty	1M to 10Y	
	CL 402 to 419	Any functionary of a state organ	Abuses or neglect	Power or duty	1M to 10Y	

Country	Section	Subject	Behavior	Object / Funds	Punishment	Confiscation
India	Penal Code 1860 Section 161	Public servant	Takes	Illegal gratification	Up to 3Y or fine or both	
	PC 162	Any person	Takes gratification to influence a public servant by corrupt or illegal means	Illegal gratification	Up to 3Y or fine or both	
	PC 163	Any person	Takes gratification to influence a public servant by corrupt means	Illegal gratification	Up to 3Y or fine or both	
	PC 164	Public servant abetted other person	Abets taking	Illegal gratification	Up to 3Y or fine or both	
	PC 165	Public servant	Takes or obtains	Valuable things without consideration	Up to 2Y or fine	
	PC 165A	Public servant	Abets offences under sections 161 to 165		Up to 1Y or fine or both	
	PC 166	Public servant	Disobeys a direction of the law (to cause injury to any person)		Up tp 1Y or fine or both	
	PC 167	Public servant	Frames an incorrect document with intent to cause injury		Up to 3Y or fine or both	
	PC 168	Public servant	Unlawfully engages in trade		Up to 1Y or fine or both	
	PC 169	Public servant	Unlawfully buys or bids for property		Up to 2Y or fine or both	Property
	The Prevention of Corruption Act 1988 Section 7	Public servant	Takes gratification	Gratification	6M to 5Y and fine	
	PCA 8	Any person	Taking gratification to influence a public servant by corrupt means		6M to 5Y and fine	
	PCA 9	Any person	Takes gratification to exercise personal influence with public servants		6M to 5Y and fine	
	PCA 10	Public servant	Abets an offence under sections 8 and 9		6M to 5Y and fine	
	PCA 11	Public servant	Obtain without consideration	Valuable thing	6M to 5Y and fine	
	PCA 12	Any person	Abets the offence under sections 7 and 11		6M to 5Y and fine	
	PCA 13	Public servant	Criminal misconduct		1Y to 7Y and fine	
	PCA 14	Public servant	Habitually commits offences under sections 7 and 12		2Y to 7Y and fine	
	PCA 15	Any person	Attempts to commit offences under the Act		3Y and fine	

Country	Section	Subject	Behavior	Object / Funds	Punishment	Confiscation
Japan	Penal Code 197.1.1st	Public officer or arbitrator	Accept	Bribe	1M to 5Y	Bribe or Monetary Equivalant
	PC 197.1.2nd	Public officer or arbitrator	Accept with entreaty	Bribe	1M to 7Y	Bribe or Monetary Equivalant
	PC 197.2	A person to be a public officer or arbitrator	Accept with entreaty	Bribe	1M to 5Y	Bribe or Monetary Equivalant
	PC 197-2	Public officer or arbitrator	Causes to be offered to third persons	Bribe	1M to 5Y	Bribe or Monetary Equivalant
	PC 197-3.1,2	Public officer or arbitrator	Accept with dishonest act	Bribe	1Y to 15Y	Bribe or Monetary Equivalant
	PC 197-3.3	Ex-public officer or ex-arbitrator	Accept with dishonest act	Bribe	1M to 5Y	Bribe or Monetary Equivalant
	PC 197-4	Public officer	Bribe (for exertion of influence)	Bribe	1M to 5Y	Bribe or Monetary Equivalant
	PC 193	Public officer	Abuse authority	Authority	1M to 2Y	
	PC 194	Judicial, prosecutor or police	Abuses authority (special Public officer)	Authority	6M to 10Y	Equivalant
	PC 195.1,2	Judicial, prosecutor or police guarding or escorting person	Violence and cruelty (Special Public Officer)	Status	1M to 7Y	
	PC 196	Judicial, prosecutor or police guarding or escorting person	Aggravation by result	Authority/Status	2Y to 15Y	
	PC 101	Gurding or escorting person	Let prisoner escape	Status	1Y to 10Y	
	PC 138	Customs official	Aggravation by reason of official duty	Status	1Y to 10Y	
	PC 156	Public official	Drafts false official document	Authority	1Y to 10Y	
	PC 253	Any person	Embezzles in the conduct of business		1M to 10Y	
	PC 246	Any person	Fraud		1M to 10Y	
	PC 235	Any person	Larceny		1M to 10Y	
	National Public Service Law 100.1	National public officer and ex-officer	Disclose secrets obtained from official work	Secret	1M to 1Y Fine up to 30,000 yen	
	NPSL 103	National public officer and ex-officer	Assumes position as director or advisors in private company or runs such a business		1M to 1Y Fine up to 30,000 yen	
	Local Public Service Law 34.1	Local public officer and ex-officers	Disclose secrets obtained from official work	Secret	1M to 1Y Fine up to 30,000 yen	
	Unfair Competition Prevention Law 13	Any person	Give, offer or promises bribe to a foreign public official	Any pecuniary or other advantage	Up to 3Y or fine up to 3,000,000 yen in the case of juridical person: 300 million yen	

Country	Section	Subject	Behavior	Object / Funds	Punishment	Confiscation
Malaysia	Penal Code 161	Public servants	Takes	Illegal gratification	3Y or fine or both	
	PC 164	Public servant abetted other persons	Abets taking	Illegal gratification	3Y or fine or both	
	PC 165	Public servants	Takes or obtains	Valuable thing without consideration	2Y or fine	
	PC 213	Any person including public servants	Accepts, agrees or attempts to obtain	Gratification to screening a person from legal punishment	3Y to 10Y	
	Customs Act 137 (1)(a)(b)(c)	Officer of customs or other persons employed for the prevention of smuggling	Accepts, agrees or attempts to obtain	Bribes, gratuity, recompense, reward for neglecting duty	3Y or fine not more 10 thousand ringgit	
	Anti Corruption Act 1997 10	Any person including public servants	Corruptly solicits, receives or agrees to receive	Gratification to do or not to do any matter or transaction	Not less than 14 days and not more 20Y, and fine not less than 5 times the sum or value or 10 thousand ringgit, whichever the higher	
	ACA 11(a)	Any agent including public officers	Corruptly accepts, obtains or agrees to accepts or attempts to obtain	Any gratification as inducement to do or not to do any act in relation to their principal's affairs	Not less than 14 days and not more 20Y, and fine not less than 5 times the sum or value or 10 thousand ringgit, whichever the higher	than
	ACA 11(c)	Any agent including public officers	Knowingly gives or uses a false, erroneous or defective document	Fraud	Not less than 14 days and not more 20Y, and fine not less than 5 times the sum or value or 10 thousand ringgit, whichever the higher	than
	ACA 14	Any public body officer	Solicits or accepts	Any gratification for not voting, preventing the passing of any vote in their capacity as such an officer	Not less than 14 days and not more 20Y, and fine not less than 5 times the sum or value or 10 thousand ringgit, whichever the higher	than
	ACA 15	Any public body officer	Uses office or position	Any gratification	Not less than 14 days and not more 20Y, and fine not less than 5 times the sum or value or 10 thousand ringgit, whichever the higher	than
	ACA 20	Any public officer or any person	Attempt to commit offences under the Act		Not less than 14 days and not more 20Y, and fine not less than 5 times the sum or value or 10 thousand ringgit, whichever the higher	than
	Ordinance No.22	Public officer or members of administration	Uses position or office for pecuniary or other advantage		14Y or fine 20 thousand ringgit or both	

Country	Section	Subject	Behavior	Object / Funds	Punishment	Confiscation
Palestine	Penal Code No.41 (1944) 106,107, 108,109	Public officials	Accept	Bribe	1Y to 3Y or fine or 200 pounds to 500 pounds or both	
	PC No.57 (1946) 110,111	Public officials	Embezzles	Embezzlement	1Y	
	PC No.57 (1946) 112	Public officials	Abuses authority	Tyrany/Entering without court order	2Y	
Thailand	Penal Code 147	Public officers	Misappropriates	Anything	5Y to life 2,000 to 40,000 baht	
	PC 148	Public officers	Misuses power	Property or any other benefit	5Y to death 2,000 to 40,000 baht	Property acquired
	PC 149	Public officers / politician	Demand, accepts	Bribe	5Y to death 2,000 to 40,000 baht	Property acquired
	PC 150	Public officers	Demand, accepts (before being appointed)	Bribe	5Y to life 2,000 to 40,000 baht	Property acquired
	PC 152, 153	Public officers	Embezzles	Any kind of benefit	1Y to 10Y 2,000 to 40,000 baht	Property acquired
	PC 154 to156	Public officers	Evades taxes		5Y to life 2,000 to 40,000 baht	
	PC 157	Public officers	Misuses power		1Y to 10Y or death 2,000 to 40,000 baht	
Venezuela	PC 200	Public officers / (in judicial office)	Misuses power		1)6M to7Y 1,000 to 14,000 baht 2)life or 1Y to 20 and 2,000 to 40,000 baht	
	PC 201	Public officers / (in judicial office)	Demand,accepts	Bribe	5Y to death 2,000 to 40,000 baht	Property acquired
	PC 202	Public officers / (in judicial office)	Demand,accepts (before being appointed)	Bribe	5Y to death 2,000 to 40,000 baht	Property acquired
	Penal Code 199	Public officer	Accepts	Bribe	3Y to 5Y	
	PC 200	Anybody	Gives	Bribe	1/2 preceding article	
	PC 204	Public officers	Does	Power abuse	15 days to 1Y	
	PC 207	Public officers	Does not	Power abuse	Fine, 50 to 1,500 bolivar	
	PC 196	Public officers	Requests	Extortion	18M to 5Y	
	Organic Law of Safeguarding Public Administration 58	Public officers	Misappropriate Gives opportunity to another person	Misappropriate	3Y to 10Y and fine 20% to 60 % of misappropriate money	
	OLSA 59	Public officers		Misappropriate	3M to 1Y	

Note: Y= years, M= Months

GROUP 2

CURRENT PROBLEMS IN RESPONDING TO THE CORRUPT ACTIVITIES OF PUBLIC OFFICIALS AT THE INVESTIGATION AND TRIAL STAGES, AND SOLUTIONS FOR THEM

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I. INTRODUCTION

The group discussion on current problems and solutions in responding to the corrupt activities of public officials at the investigative and trial stages was executed under three sub-topics. The first part dealt with the problems and solutions for securing independence and neutrality of the investigative agencies and the courts. The target of this sub-topic was to obtain an overview of the current structure, function, and control of investigative agencies and the courts in the participants' countries, and to find appropriate or recommendable measures to achieve independence and neutrality.

Secondly, the problems and solutions for detection and investigation of corruption by public officials was the subject of discussion in sub-topic two. Here, issues regarding the problem of gathering information, securing the cooperation of people involved in the case, investigative tools, investigators' skill, and coordination among different investigative agencies in the various countries, were discussed exhaustively. The group also identified appropriate solutions for the detection and investigation of corruption in the public sector, and recommended these for implementation by relevant agencies in different countries.

Thirdly, the group examined the problems of and solutions for speedy and efficient administration of trial. The focus of discussion was on the necessity for the introduction of witness protection programs, the reversal of burden of proof, resources at the disposal of trial courts, witness cooperation, dilatory tactics of the defence, court monitoring systems and sentencing patterns.

Finally, the mass media's role in exposing corruption, as an instrument of public mobilization against corruption, as well as its influence on the investigative agencies and trial courts in the participants' countries, was discussed.

II. PROBLEMS AND SOLUTIONS FOR SECURING THE INDEPENDENCE AND NEUTRALITY OF INVESTIGATIVE AGENCIES AND THE COURTS

A. Problems

The police force is widely accepted as the conventional organization responsible for criminal investigations in many countries. However, because it is also the duty of the police to maintain law and order (an issue for which society also holds the executive directly accountable), the tendency in some countries is to avoid making the police completely independent of executive control. The executive can apply controls through appointment or discipline of police chiefs, budget, and different forms of regulation. Where this is the situation, the independence and neutrality of the police in handling cases in which public officials charged with this duty of control are involved, may be seriously jeopardized.

Since in several countries public officials are the main target of legislation against corruption, the suitability of the police as the sole criminal investigative organ has come under wide review. In some countries, the police and the public prosecutor share this function, while in others special agencies are set up to investigate corruption offences.

The above situation is also true of trial courts. The conventional courts may prove inadequate to address the level of corruption in some countries, necessitating the designation of special courts for this purpose. However, whichever agency or court a country may use, the important issue is the guarantee of its independence and neutrality in the execution of the assigned function. The major elements with which the independence and neutrality of such an agency or court may be evaluated are:

(i) *Designation of Conventional or Special Organs for Investigation and Trial*
The important issue to consider here is whether the agency is part of a ministry as a government bureau or is a special organ directly under the Parliament, Prime Minister/President or some other independent committee.

(ii) *Procedure for the Appointment and Maintenance of Supervisory Control over the Investigative Agency and Trial Court*
The points of concern are the system of appointment of personnel, terms of employment, measures against unwarranted dismissal, and fair disciplinary procedures to secure their impartiality in the course of duty. Moreover, which agency should supervise the operation of the designated agency?

(iii) *Budgetary Control over the Investigative Agency and the Courts*
It is important to determine if the agency would be better off sourcing its funding directly from the legislature, or to depend on some other governmental organization.

B. Analysis of the Current Situation in Participating Countries

1. Brazil

The police service is responsible for the investigation of all criminal matters including corruption cases. This duty is spelt out in the Federal Constitution. The criminal legislation is contained in a federal criminal code and is enforced by the federal police in the federal domain and by the state civil police services in the state domain. The police do not require external permission to begin or prosecute a case.

The Governor appoints the State Secretary of Public Safety, the Police Chief General and the Chief Justice. Decisions

about promotions and dismissal of such officers are also made by the Governor. The Governor can veto the decision on an officer considered guilty after an administrative process, and the decision of the Administrative Court is not binding on him/her. Furthermore, the assignment of police officers, prosecutors and judges to respective state units/branches is also the prerogative of the Chief General of each institution, and may be politically influenced.

The executive arm of government proposes the police annual budget and submits it to the legislature for approval. Thereafter, disbursement of the fund is carried out by the executive. From this arrangement, it is obvious that the executive has extensive control over the appointment and promotion of police leadership, as well as budgetary control of the agency, which can affect its independence and neutrality in handling issues involving high-level public officials. An agency whose independence is guaranteed is preferred. The independence of the judiciary is guranteed under the Constitution. There are no special courts for the trial of corruption cases.

2. Grenada

The Royal Grenadian Police is the only organ responsible for the investigation of all criminal offences, including corruption. It is not under the statutory control of any other organ of government when conducting an investigation.

The appointment of the head of the Royal Grenadian Police is made by the Governor-General, on the advice of the Prime Minister. The Prime Minister almost always assumes control of the Ministry of National Security under which the police fall. The Police Commissioner may be appointed from outside the police service.

Annually, the Ministry of Finance requests and disburses budgetary support for the police under a separate vote. In all serious criminal investigations, the Director of Public Prosecutions must be notified and s/he provides advice. The independence of the judiciary is guranteed under the country's constitution. Grenada has no special courts for corruption offences.

3. Japan

The police (prefectural police) and public prosecutors are responsible for the investigation of corruption offences. There is no specialized anti-corruption agency in Japan. However, the three major District Public Prosecutor's Offices (Tokyo, Osaka and Nagoya) have Special Investigation Departments, which have successfully investigated a number of corruption cases involving high-ranking government officials and politicians. This system appears to be working efficiently because of mutual cooperation between the police and the public prosecutors, as well as their independence from political influence being sufficiently maintained.

The public prosecutors are appointed by the Minister of Justice and are under his control generally in regard to their functions. However, each public prosecutor is authorized to conduct their duties independently from political influences, and they enjoy almost the same guarantee of status as judges. In addition, the Minister of Justice is authorized to control only the Prosecutor-General in regard to the investigation and disposition of individual cases. In this way, the independence of prosecutors is secured.

On the other hand, prefectural police are established as one of the organizations of each local government. In order to secure the political neutrality of the police, it is subject to the control of the Public Safety

Commission, which is not under the command nor order of the prefectural governor. In Japan, independence of the trial courts is guranteed. There are no special courts for corruption cases.

4. Kyrgyzstan

The Ministry of National Security, Ministry of Interior Affairs and the Public Prosecutor's Office are responsible for the investigation of corruption offences in Kyrgyzstan.

The head of the Ministry of National Security, Ministry of Interior Affairs and the Prosecutor-General are appointed by the President, on the recommendation of the Prime Minister. The office of the public prosecutor is an independent entity. The parliament controls the budget of the above investigative organs. The salary of public servants, including the police, is inadequate.

There is no obvious political or administrative interference in the duty of these agencies, and although Krygyzstan is still a young republic, so far the agencies are effective in controlling corruption. The courts are independent. Corruption cases are tried in conventional courts.

5. Nigeria

The Nigerian police force is charged with the duty of investigating all criminal cases in the country, including corruption by public officials. There are special units within the police service responsible for the investigation of cases of corruption.

The Inspector-General of Police is appointed by the President. He can also fire him; and this prerogative has been exploited especially by military regimes, without explanation. The Ministry of Police Affairs exercises control over the promotion and discipline of senior members of the police service. The Ministry of Police Affairs also disburses the police budget. The perception is that if the independence and neutrality of the police is not directly influenced by the Head of State, it could also be checked through other State apparatus. This situation is amply expressed in the low budgetary provisions made for the police in the past which, combined with other factors, tend to erode public confidence in the ability of the police to fight corruption. The President has already sent a Bill to the National Assembly for the establishment of an independent agency to investigate corruption offences.

The independence of the judiciary is protected by the Constitution. However, there were cases of the forceful retirement of judges in the past. Moreover, the judiciary would like to have their budget allocated directly by the National Assembly. No special courts are designated to try corruption offences.

6. Pakistan

In Pakistan, two agencies are responsible for the investigation of corruption offences. They are the Anti-Corruption Establishment which was set up in 1947, and the Ehtesab (Accountability) Commission which was added in 1998 to complement the activities of the Anti-Corruption Establishment. The Anti-Corruption Establishment is headed by a director who is subject to appointment or removal by the government. S/he is completely controlled by the government, and operatives are often seconded from the police service (to where they can also return). On the other hand, the Chief Ehtesab Commissioner is appointed by the government in consultation with the leader of the opposition in the National Assembly and the Chief Justice of Pakistan. The Chief Ehtesab Commissioner cannot be removed from office, except by a decision of the Supreme Judicial Council on charges

of misconduct. The budget of the Anti-Corruption Establishment is controlled by the Finance Ministry. The Ehtesab Commission gets its budget from the parliament.

In the wake of the prevailing circumstances, the independence of the Anti-Corruption Establishment is yet to be assured. However, the Ehtesab Commission enjoys a reasonable degree of independence although, there is public apprehension that the agency might be used against groups opposing the government in power.

In Pakistan, the Constitution guarantees the independence of the judiciary. There are specific judges assigned to try corruption cases. However, the financial resources of the judiciary are very lean. Moreover, judges are sometimes appointed from outside the bench. Because, therefore, of the financial insecurity of the judges, and the lack of confidence and overt political inclination of those judges appointed from outside the bench, they sometimes cannot exercise their independence.

7. Sri Lanka

Sri Lanka has established a separate agency known as the Allegations of Bribery and Corruption Investigation Commission, to deal with corruption cases. The Commission is statutorily independent. The members cannot be removed from office except by a two-third majority decision of the Parliament. Members of the Commission consist of two retired judges of the Supreme Court or Court of Appeal and one senior officer of a law enforcement branch.

The President appoints members of this commission in consultation with the Prime Minister. The salary of members of the Commission is paid from a consolidated fund created in the Constitution. Their salaries cannot be diminished during the period of service with the Commission. Investigators are usually seconded from the police. Only two courts located in the national capital try corruption cases. The independence of the Commission and the judiciary is guaranteed by the Constitution.

8. Hong Kong

In Hong Kong, the Independent Commission Against Corruption (ICAC) is responsible for the investigation of corruption offences. This agency has three functional departments: namely Operations, Corruption Prevention and Community Relations. Respectively, these departments are responsible for the investigation of corruption offences, plugging of corruption loopholes in institutional practices and procedures, and the education and enlistment of public support.

The head of the ICAC, the Commissioner, is appointed by the Governor. The Commission is independent in its operation, however its activity is monitored by the legislature. It also has four advisory committees chaired by non-members. A Complaints Committee acts as check on the agency. The ICAC budget is guaranteed by law and is provided directly by the legislative arm of government. The agency receives sufficient resources for its day-to-day operations and to hire professionally competent staff.

C. Recommendations for Achieving Independence and Neutrality of Investigative Agencies and the Courts

Depending on the situation in each country, the choice in features of a particular agency will differ considerably. However, sustainability of the independence and neutrality of any agency saddled with the responsibility of

investigating corruption cases hinges on the following factors:

(i) The strengthening of the commitment to duty, professionalism and economic base of the operators of the system through adequate remuneration and training. This is judged necessary to increase their confidence and self esteem, and to avoid external influence.

(ii) Exclusion of political and bureaucratic control by applying constitutional as well as legislative checks against any interference with the independence of the investigation agency and trial courts. Legislation is required to curtail excessive discretionary powers of the executive arm of government and bureaucrats, and to infuse transparency into governance, as well as the guarantee of basic freedom.

(iii) Democratization of procedures for appointment of judges/magistrates and the leadership of the investigating agency.

(iv) Establishment of an independent agency to investigate corruption cases in those countries in which the current system is not effective. However, countries that prefer the use of a distinct agency to combat corruption are advised to refer to the Global Program Against Corruption[1] for the guidelines necessary for securing the independence and neutrality of such an institution.

(v) The budget of the judiciary and the investigative agency should not be subject to undue bureaucratic control. If a special agency is responsible for investigation, ideally the parliament should allocate funds directly to this institution.

III. PROBLEMS AND SOLUTIONS FOR DETECTION AND INVESTIGATION

A. Problems and Solutions for Gathering Necessary Information and for Securing the Cooperation of People involved in the Case

The issues involved in the detection and investigation of any criminal case will include: cognizance of the crime, determination of time of its occurrence, the *modus operandi* of the perpetrators, persons involved in the act (including their various degrees of involvement) and possibly, reasons for the crime. To resolve these issues, the investigator mainly engages in the collection, analysis and communication of data related to the offence.

In corruption cases, the task of the investigator is often exacerbated by the uniquely limited sources of information. Discussion on this sub-topic sought to identify the sources of information open to the investigator, and the provision of an enabling environment for the detection and investigation of corruption offences.

1. Sources of Information

(i) *Investigation of Other Cases*

An investigator may come across information on corruption committed by a public official while in pursuit of a different case. This happens more frequently during investigations of

[1] This document was jointly prepared in February 1999 by the Centre for International Crime Prevention, Office for Drug Control and Crime Prevention, and the United Nations Interregional Crime and Justice Research Institute. It outlines the general principles guiding the establishment of a national anti-corruption investigative unit, its functioning, resources and operational methods.

money laundering and tax evasion cases. The experience in Japan and other participant countries has confirmed that this is an important means to reveal corruption cases which might otherwise remain unnoticed.

(ii) *Accusation/Complaint*
An individual or non-governmental organization might also file a complaint with the investigating agency regarding the corrupt activity of a public official. In this case, the complainant is usually willing to cooperate with investigators, although in many countries people seldom use this approach.

(iii) *Information Media*
Through investigative reporting, the news media sometimes reveals corruption cases. This is the case in all participant countries.

(iv) *Observation of Parliamentary Question and Answer Sessions*
The corrupt activity of public officials may be revealed by investigators through their private observations or information obtained during parliamentary question and answer sessions. Investigators in Japan utilize this source.

(v) *Anonymous Reports*
Sometimes people who do not want to disclose their identity pass information to the investigating agency to reveal the corrupt activities of public officials. These people may also take the cover of fictious names. In some cases, they may have insider information or they might come from outside the organization. Anonymous reports are more frequent in regions where special post office box numbers are provided to encourage the passing of information like in Indonesia, Hong Kong, Nigeria etc.

(vi) *Other Departments/Agencies*
Corruption of public officials may be revealed through information supplied by other government agencies, such as the audit/inspection departments, tax agency or Securities Exchange Surveillance Commission. In Japan, this is a useful source.

2. Associated Problems

Although the sources mentioned above are available to the investigator to obtain information regarding the corruption of public officials, there are nonetheless problems associated with the collection of such information and for securing the cooperation of people involved in the case. These problems include:

(i) *Unwillingness to Make Complaints/Accusations*
People are often unwilling to reveal corruption cases because of fear of reprisals that may endanger their life or career prospects, rejection from colleagues or peer groups, official secrecy laws and red tape, or lack of confidence in the investigative organ. It may also be that those who know about the crime are also involved in it. Whatever reason is responsible for the people to adopt this position, the effect is felt in most participating countries.

(ii) *Late Revelation of Incidents*
In several countries, as is the case in Nigeria and Pakistan, the tendency is for people to make a complaint about the demand of a bribe by a public official when the official fails to deliver the promise. In such cases, the official may have noticed the strained relationship with the victim and taken necessary action to cover

the trail. This is also true of cases revealed through the mass media.

(iii) *False Complaints*
When complaints of corruption are received, it is the responsibility of the investigator to verify such complaints. In many cases, complaints may be made to gain advantage over rivals or for several other malicious purposes, in which case they may be fabricated. This is typical of complaints received from anonymous sources or accusations made by political opponents in the participating countries.

(iv) *Refusal to Testify*
In many cases in the participating countries, there are people who may be willing to reveal corruption cases but are not inclined to being used as witnesses in court. This attitude may be developed due to perceived lengthy periods of investigation and trial, absence of effective witness protection schemes, or fears of cultural sanctions.

3. Recommended Solutions

(i) *Improving Tools for the Collection of Information*
Agencies are encouraged to set up information collection centers (information boxes, hot-lines, etc). The P.O Box 1000 of Hong Kong, P.O Box 5000 of Indonesia and A22 of Nigeria are applicable examples.

(ii) *Public Education*
The investigating agencies should create a section within their organization whose duty will include public education on the evils of corruption and the need to expose it wherever it is found. This is already being implemented by the ICAC in Hong Kong.

(iii) *Witness Protection*
Each agency should promote strong witness-protection schemes to safeguard witnesses from victimization arising from cooperation with the organization.

B. Problems and Solutions for Improving Investigative Tools

1. Problems Posed by Insufficient Investigative Tools

In some of the participant countries, investigation of corruption offences is actually hampered by the inadequacy or total lack of necessary tools. The group discussion considered some of the problems that confront investigators, caused by the lack of necessary tools for efficient investigation, under the following sub-headings:

(i) *Resources*

(a) *Infrastructure*
In developing countries like Grenada, Nigeria and Pakistan, the movement of investigators is often hampered by inadequate means of transportation. There are also situations when the only means of communication is by telephone systems which may not be reliable. Moreover, these agencies lack basic case management tools like computers and necessary office equipment.

(b) *Finance*
Efficient investigation requires the availability of funds for information, to offset investigators' travel expenses, and to meet other incidental needs. Adequate funds are also required to provide the training necessary for improved investigator performance and the acquisition of relevant equipment. However in some countries, sufficient funds

are not provided to meet these needs, either because of the weakness of the economy or simply that the needs of the investigating agency are not given adequate priority.

(ii) *Covert Operations*
The activities categorized under this sub-heading include decoy operations, communication interference and electronic surveillance. Decoy operations are carried out in several forms. One form is the trap procedure, applied where a person approaches the investigative agency to file an official complaint that a public officer is demanding a bribe. The use of undercover agents is another form of decoy operation. Furthermore, covert operations may be implemented through interference with the means of communication or other forms of electronic surveillance.

Whereas in some of the participants' countries like Brazil, Nigeria, Pakistan and Sri Lanka, the trap procedure is used to obtain corroborative evidentiary facts in bribery cases, it is judged a breach of the basic rights of the accused in other countries. Moreover, Brazil is currently the only country in the group where communication interference is legally permissible, with judicial approval, as a means of securing evidence in corruption cases. In view of the covert and consensual nature of the environment in which corruption is executed, the unavailability of these covert tools to investigators in the countries where their use is not permitted might constitute some obstacle to successful investigation.

(iii) *Secrecy of Financial Transactions*
In most of the participant countries, financial institutions are accorded some degree of secrecy from disclosing clients' particulars to any investigating agency, unless a warrant is obtained from a court of competent jurisdiction. Moreover, where there is the need to check the account record within a limited time, even the need to obtain a warrant is considered a hindrance to timely investigation.

2. Solution for Improving Investigative Tools

(i) Agencies should endeavor to install and use computerized criminal information management systems for faster storage and retrieval of information. Adequate security controls should be built into the system to safeguard it against misuse. An integrated criminal justice information system, is a model that may be adopted by all the countries.

(ii) Investigative agencies should be adequately equipped with operational vehicles, and necessary communication equipment. They should also be provided with adequate operational funds by the government, especially where there is the political will to combat corruption.

(iii) It may be necessary to review the existing laws in some countries to secure evidence through covert operations and also to guarantee the judicial admissibility of such evidence. This will depend on the situation of corruption in each country and the people's reception of such a measure. It is recommended, however, that its application be subject to judicial control, to avoid abuse.

(iv) The investigating agencies should work in concert with the financial institutions for the examination of a suspect's financial records without the hindrance of secrecy regulations, as is the case in Japan. In addition, legislation should be made in each country to make it mandatory for financial institutions to report transactions exceeding an amount to be determined by the circumstances of the relevant country.

C. Problems and Solutions for Improving Investigator's Skills

1. Problems Associated with Investigator's Skill

(i) *Assignment of Inexperienced Personnel to Investigate Corruption Cases*

The covert and consensual environment in which corrupt activities are executed often entails the application of a wide range of experience in the area of investigation to successfully solve a case. However, in some of the participating countries, rookies may be assigned to the investigation of these cases. The consequence of this is obvious.

(ii) *Lack of Relevant Skill*

Investigation of corruption cases often involves the examination of complicated financial and computer records. However, not many investigators possess the expertise to perform such examination. Under these circumstances, it would appear that criminals are operationally ahead of the law enforcement, which is not desirable.

(iii) *Heavy Workload*

In view of the limited number of investigators with relevant experience and skill, these investigators are often overworked. Not only does this affect the amount of time they can devote to a given case, it may sometimes result in the embarrassment of the agency, especially if there is pressure from government, the press or the public. Heavy workloads also do not leave the investigator, and invariably the agency, adequate time to analyze the underlying issues involved in corruption cases, in order to devise a strategy to combat it in the long run.

(iv) *Integrity Issues*

Unfortunately, in some agencies the level of corruption is high and this gravely impinges on the performance of the individual investigator.

2. Solutions for Improving Investigator Skill

(i) *Develop Professionally Competent Investigative Teams*

In each agency, the leader of an investigation team should possess adequate legal knowledge and operational experience. In addition, s/he should have maintained an impeccable integrity record.

(ii) *Specialized Training*

The agency should endeavor to avail investigators of the opportunity for specialized training, especially in accounting and information systems, at the local and international level (when appropriate).

(iii) *Re-training*

Agencies are enjoined to update the skills of investigators, when necessary, through re-training programs.

(iv) Adequate number of skilled personnel should be deployed to the investigation of corruption cases.

Ideally, the agency would need to set up an analysis unit.

(v) Investigation by public prosecutors, as long as it complies with the basic legal system of the country, might be an effective tool to tackle corruption by politicians and high-ranking officials. Among the participating countries, public prosecutors in Japan effectively carry out their authority to investigate corruption cases on the basis of their knowledge and expertise in law, as well as their political neutrality.

D. Problems and Solutions for Coordination amongst Different Investigative Organizations

1. Problem of Coordination

(i) *Absence of Multi-Agency Forums*

In the different countries, there are no common forums for exchange of information or ideas for the agencies involved in the fight against corruption. Inter-agency cooperation is on a case-by-case basis, and is not institutionalized. Worse still, unhealthy rivalry may develop among the different agencies, especially when their duties overlap. This state of affairs cannot provide a suitable environment for effective control of corruption.

(ii) *Audit Query*

In some countries, audit queries are not made available to anti-corruption investigation agencies for scrutiny. This results in the loss of opportunity for detecting corruption in the organizations concerned.

(iii) *Differences in Legislation*

Differences in the laws of each country often pose a serious threat to international cooperation against corruption. Where the proceeds of corruption are transferred outside the country of the perpetrator, legal differences usually make it very difficult for vital information regarding the transaction to be obtained, and for the repatriation of such funds.

2. Solutions for Better Coordination

(i) *Multi-Agency Committees*

It is not helpful for inter-agency cooperation on criminal investigations to be on an *ad hoc* basis. Multi-agency cooperation within the same country is important since it will provide the forum for different agencies to share vital information and to discuss various issues of common interest. In this regard, each country should consider the establishment of a Multi-Agency Committee Against Corruption. This committee is to be comprised of representative(s) of the agency responsible for investigation of corruption, as well as other members from various government departments. Their mission will be the exchange of information and ideas on how to tackle the phenomenon of corruption.

(ii) *Notification of Audit Query*

Internal and external audit reports should be given high priority and attention. Moreover, there should be cooperation between the different audit units. Copies of any adverse audit reports should be made available to anti-corruption investigation agencies for information and perusal.

(iii) *Bi-lateral Agreements*

Although each country's laws are made to suit the culture of the people, one cannot lose sight of the effects of globalization resulting from

advancement in information technology. The proceeds from corruption are usually transferred offshore to safe havens by the perpetrators. It is important to find new ways of cooperation amongst the different countries to combat corruption. At the international level therefore, each country should strive to increase bi-lateral or even multi-lateral agreements with different countries on criminal matters. Such agreements are especially relevant to combat money laundering.

IV. PROBLEMS AND SOLUTIONS FOR SPEEDY AND EFFICIENT ADMINISTRATION OF TRIAL

A. Problems Affecting Speedy Trial

While discussing the topic, the group considered the factors involved in criminal trial with a view to identifying associated problems. For corruption cases, the following issues were examined:

(i) Resources available to the Courts
(ii) Role of the Prosecution
(iii) Witnesses Cooperation
(iv) Defense Tactics
(v) Related Legal Issues
(vi) Sentencing Patterns
(vii) Control Measures

B. Analysis of Current Problems

The common problems identified at the trial stage in corruption cases include:

1. Resources Available to Trial Courts

(i) *Manpower Resources*

(a) *Excessive Caseload*

Most of the participants reported that although the cases the courts have to handle are on the increase, there is no commensurate increase in the number of judges/ magistrates to deal with these cases. In countries like Brazil, Grenada, Japan, Kyrgyzstan and Nigeria, there are no special courts to try corruption cases. Even in Pakistan and Sri Lanka, where specific courts are designated to try corruption cases, the number of cases they have to try by far outweighs their efficient operational ability. The result is that many cases are fixed for hearing on any given date, which subsequently lead to frequent adjournments. Moreover, judges are left with little time to write judgements or even to prepare adequately for court hearings.

(b) *Inexperience of Trial Judges/ Magistrates*

Incompetence and ignorance of the law and lack of experience of some judges/magistrates is judged as a contributory factor for delay in trial. This class of judges/ magistrates often fail to take proper control of proceedings during court sittings to such an extent that valuable time is lost on unnecessary cross-examination and arguments.

(c) *Unskilled Court Assistants*

Another major source of trial delay in several countries is the lack of competent and skilled court administrative personnel. These courts rely on unqualified court registrars, secretaries and bailiffs to assist the judge/magistrate.

(ii) *Material Resources*

(a) *Equipment*

In some of the participating countries, court proceedings are manually recorded by the judge/ magistrate. This is especially the case in Grenada, Kyrgyzstan and Nigeria. In these countries also,

the office equipment necessary for fast reproduction of court proceedings, such as word processors or photocopiers, are also lacking.

(b) *Finance*

Perhaps the biggest problem facing the judiciary in the participating countries is to deal with lean budgetary provisions. In Brazil, Grenada, Kyrgyzstan, Nigeria, Pakistan and Sri Lanka, salary and conditions of service of judges/magistrates and ancillary staff leaves much to be desired. This has tended to imbue low morale in the system. Financial inadequacy sometimes also hinders, or even stalls, the smooth-running of the courts, thereby delaying trial.

2. Prosecution Problems

(i) *Burden of Proof*

One of the tasks encountered in criminal trials is for the prosecution to prove the guilt of the accused. This task may pose a problem in corruption cases where the prosecution is required to prove the receipt of the bribe, despite the peculiar circumstances of the crime. In Pakistan, there is a law which shifts the onus of proof of innocence to the accused, when the prosecution has otherwise proved that such an accused is in possession of assets well beyond visible earnings. This is not the case in all other participant countries, hence the prosecution bears the entire burden of proving that the assets in excess of official remuneration were obtained through bribery. Prosecutors in these countries feel that this is an enormous task and contributes to delay in trials.

(ii) *Report of Experts*

In Brazil, Grenada, Nigeria, Pakistan and Sri Lanka, expert reports take a long time to be obtained because there are few recognized experts. These reports may be laboratory reports needed for cases in which a covert operation is used to obtain evidence, or the report of an expert handwriting analyst for disputed documents. Thus, trials are sometimes adjourned awaiting the receipt of an expert opinion.

(iii) *Lack of Preparation*

In several countries, the prosecutors are few compared to the number of cases they have to deal with. These prosecutors do not have enough time to prepare their cases, and coupled with inexperience, they are often inclined to seek adjournments to enable them to prepare to handle the issues raised by the defence.

3. Witnesses

(i) *Non-Attendance*

Another contributing factor to delay in trial of corruption offences is the failure of witnesses to attend court sessions when required. This situation arises especially in cases where the prosecution may be transferred to a different location and may not be summoned in time. However, the situation is worse in countries where there is no adequate compensation for witnesses' expenses.

(ii) *Witness Protection*

In most countries in the group, there is no protection scheme for trial witnesses in corruption cases. Moreover, it is difficult to secure direct witnesses in corruption cases, except those who may have participated in the crime. However,

in a country like Kyrgystan, there is no legal provision to allow any of the accused persons as a witness for the prosecution.

4. Defence

Defence attorneys are in the habit of prolonging trial time through unnecessarily lengthy cross-examination, disputation of exhibits being tendered by the prosecution, requests for adjournments and absence from trial on flimsy excuses. This perhaps is the chief cause of delay, especially when the accused person had been granted bail.

5. Control Measures

It was also noted that in certain countries, the judge/magistrates are not working as hard as they should. Sometimes, the situation degenerates to truancy, especially as there appears to be no authority designated to effectively monitor their output. In these cases, the trial judges/magistrates contribute to trial delay by their bad work habits.

6. Sentencing Patterns

The participants remarked that the pattern of sentencing for the same offence often varies in different courts in the same country. This practice may be caused by the differing disposition of judges/magistrates and is considered inefficient, if not unjust. The variance in sentencing is even more pronounced among different countries as a result of legal differences.

C. Recommended Solutions

(i) *Reduced workloads*

To reduce the workload on trial judges/magistrates, we recommend that the relevant authority in each country should appoint an adequate number of experienced trial judges. More court assistants would also be required to speed up the processing of court proceedings.

(ii) *Modernization of Judicial Information Systems*

It is necessary that trial courts keep abreast of developments in information technology and acquire the necessary equipment to improve the speed and accuracy of the documentation of trials.

(iii) *Training*

Initial training is recommended for judges/magistrates on first appointment, as is the case in Japan. Furthermore, periodic group training courses may be required to update their knowledge and to share experience on trends in corruption amongst public officials, and the necessary legal and procedural adjustments for efficient and speedy trial of these cases. Such training courses will also enable each judge/magistrate involved to identify when and how to intervene, to minimize delays that could arise due to defence dilatory tactics.

(iv) *Increased Budget*

The budget of the judiciary should be enough to provide adequate salary and conditions of service for judges/magistrates, public prosecutors and court assistants. Improved budget will also enable the payment of adequate compensation to witnesses and the purchase of necessary supplies for use in the trial courts.

(v) *Self Monitoring of Trial Duration*

It may be necessary to establish effective procedures for self-monitoring of the operation and productivity of judges/magistrates. This will improve accountability in the system and enhance speedy trial. Furthermore, it is recommended that trial judges/magistrates should endeavor to conclude all trials of

corruption cases within a reasonable period, such as six months from the date of indictment. However, in view of inherent variations in the complexity of cases and the different situation of each country, the presiding judge/magistrate should submit a report to the supervisory authority within the judicial branch for cases exceeding the relevant period, to explain the underlying circumstances of the case and reasons for the delay.

(vi) *Pre-Trial Meetings*
Pre-trial meetings involving prosecutors, defence attorney(s) and the judge to discuss/determine issues involved in the particular case and agree on lines of argument to be pursued, may speed up the trial process. For this procedure to be effectively applied, it is necessary for all the parties to understand the issues involved and also to take steps to avoid its abuse.

(vii) *Witnesses Protection*
An adequate witness protection scheme is recommended to be put in place in all countries to secure witnesses from the danger posed by reprisals that may be contemplated by the accused or their associates. This is a necessary condition to obtain full witness cooperation in the trial of corruption cases.

(viii) *Designation of Special Courts for Corruption Offences*
As stated earlier in this report, Pakistan and Sri Lanka have specific courts to deal with corruption cases, hence there was a proposal for the adoption of this practice in other countries. The advantage in this is that the presiding judge will devote more time to corruption cases, and through consistent practice, gain the experience necessary to speed up trials, as well as conduct efficient proceedings. However, the participants did not reach a consensus on this issue, as it was also argued that the designation of special courts will raise new issues of independence. Moreover, it was noted that the existing courts have more fundamental issues like manpower and resource problems to grapple with before the consideration of special courts.

(ix) *Reversal of the Burden of Proof*
It may be necessary to enact laws in each country requiring the accused in a corruption case to prove that assets considered disproportionate to their income were not obtained through corrupt practices. That such a law may be perceived in some countries as an infringement on the right of the accused to be presumed innocent until the contrary is proved cannot be overlooked. However, considering that human rights are involved here, different countries may have to deal with this issue depending on their peculiar circumstances regarding corruption, and the peoples perception of what measures may be taken to combat it. In Hong Kong and countries like India and Pakistan, such legislation was necessitated by the general outrage against corruption at the time of introduction.

(x) *Equitable Sentencing*
Trial courts in corruption cases should make an effort to adopt an even sentencing pattern within their country.

V. EFFECT OF THE MASS MEDIA

As already noted in section III, the corrupt activities of a public official may be revealed through publication by the mass media. The role of the mass media as a useful vehicle in the dissemination of information on the activities of an investigative agency, and for the education of the people on the evils of corruption, cannot be over-emphasized. Moreover, the mass media is perhaps most suitably located to generate the magnitude of public support and backing required for successful investigation of highly placed public officials under corruption charges. Furthermore, we cannot lose sight of the importance of a free press in any democratic society. However, that the activities of the mass media sometimes interferes with investigations, and even the trial, of corruption cases has become a thorny issue.

Most of the participants in the group felt that media interference in corruption cases in their countries is commonplace. In Brazil, Grenada, Nigeria and Pakistan, the mass media is so powerful that they sometimes influence investigations and the decisions of the court on several issues. This development is considered unhealthy since the media stance on a case may be based on several issues which may not be necessarily connected to the realization of justice or equity in the particular case.

Without the application of proper measures to avoid media interference, public confidence in the investigative agency and trial court may be eroded through irresponsible media practice. The solutions recommended for this problem include:

(i) Implementation of a strict code of conduct for media practitioners;
(ii) Pursuit of programs of mutual cooperation by investigative agencies with the mass media;
(iii) Application of existing laws on contempt of court by judges; and
(iv) Development of training programs for judges and investigators to enable them to resist the influence of the mass media in the course of their duty.

VI. CONCLUSION

The group discussed issues concerning the investigation and trial of corruption by public officials from the perspective of investigators and judges. Regarding the sub-topic on securing the independence and neutrality of investigative agencies and the court, the issue of whether or not a special independent agency like the ICAC in Hong Kong should be established in order to eliminate bureaucratic and political influences on the investigation was examined.

To tackle the problem of investigation, the group focused attention on seeking efficient methods to source initial information on corruption, as well as on the personnel and budgetary situation, the expansion of the witness protection program and immunity for securing the cooperation of the people concerned. The propriety of introducing new investigative tools, such as decoy operations and how to secure immediate access to bank accounts in order to strengthen the ability to collect evidence, was also given attention.

To enhance speedy trial, the necessity of improving the material and personnel resources of the court, as well as the possibility of introducing the shifting of the burden of proof or establishing special courts on corruption, were discussed. In addition, based on the consensus among the group members that excessive press coverage interferes with the efficient

administration of both the investigation and trial, the role of the media was given special attention.

The group reached the conclusion that each country should be entrusted with the selection and implementation of the recommended solutions in many aspects, since the problems differ for each country and the effectiveness of each solution depends largely on the legal system, culture and the seriousness of corruption in each country. However, the most important solution, which is common through all these issues, is that investigators and judges must keep making an effort to improve their skills and ability through training and self-discipline. We believe that those who are engaged in the administration of criminal justice must recognize their accountability in their duties and must, therefore, play an active role in realizing speedy and proper investigation and trial, which is the fundamental action against corruption.

GROUP 3

GENERAL PREVENTIVE MEASURES AGAINST THE CORRUPT ACTIVITIES OF PUBLIC OFFICIALS

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I. INTRODUCTION

A public official is a position of trust with the duty to always act for the public interest. Therefore, the ultimate loyalty of public officials shall be for the public interest of their country, as expressed through the democratic institutions of government. Public officials should be honest, fair and impartial in the performance of their functions and in dealing with the public. They should, at no instance, demonstrate undue preferential treatment to any particular group or individual, or improperly discriminate against any group or individual, or otherwise abuse and misuse the power and authority vested in them.

In so doing, public officials can avoid being publicly criticized. Corrupt activities by public officials, however, have persisted in many countries for years. Furthermore, the magnitude and complexity of corruption has been observed to be increasing recently. Sophisticated methods have been used to avoid detection and enhance this illegal activity. To make matters worse, corruption has been expanded into a transnational crime, respecting no borders.

Corrupt activities by public officials undoubtedly distorts their integrity and neutrality in performing their official duties. It also breeds a feeling of distrust and discontent by the public towards their government. As a consequence, these activities by public officials may ultimately weaken or collapse the administration of government and the economic structure of a country. It undermines good governance and causes a great damaging effect to the country.

As corruption becomes a global concern, effective preventative measures must be taken both at the domestic and international level. Critical use of such measures is deemed effective to deter further corrupt activities. Since most preventive measures used to address corruption in government are reactive, this report will attempt to focus on proactive

measures and to hit the problem right at the determined inception point.

II. ESTABLISHING A MANAGEMENT SYSTEM OF PERSONNEL AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS

The measures for deterring corrupt activities among public officials will be discussed here from the viewpoint of a management system of personnel; recruitment, training, rotation of personnel and staff; improving working environments; promotion systems; and discretionary power. In addition, a discussion on the importance of a code of ethics will be taken up.

A. Recruitment

At the very stage of recruiting government officials, two situations are identified that have bearing on the possibility of corruption. The first one is corrupt activities at the selection stage of government applicants. Presumably, some new government entrants are recruited through the practice of nepotism and bribe giving. The act of nepotism is itself taboo in government service, and bribe-giving is unlawful, hence, at the initial stage, it already constitutes corruption and a violation of law. To leave this practice unnoticed is both dangerous and costly to government. To preempt this problem, a fair and impartial process of recruitment should be established. The following measures are therefore suggested:

(i) The screening body or recommendation panel to be separate and distinct from the recruiting body or panel. This rationale is to ensure that each body or panel performs their task or obligation professionally, with utmost diligence, and to further ensure checks and balances. Furthermore, a system or procedure of screening applicants should be properly in place for strict adherence by the members. Likewise, it is proposed that recruitment policies and standards be established.

(ii) It is also recommended that interview procedures be determined. Instead of a single interviewer, a panel or an interview board may be organized by officers with a wide range of expertise. Hence, this could be one way of avoiding prejudice and bias from among the members of the board or panel.

The second situation is when the new government entrant succumbs to corrupt activities once they are in government service. Under the presumption that the new government entrants lawfully passed all the stages in the processing, without resorting to the first situation as stated above, this event may happen in the future. Those who may be blinded with fame and power are likely to be corrupt. Though his/her situation seems complicated, considering the time period or elements involved when that official starts to become dishonest or inept, and considering also the magnitude of factors such as environment, peer pressure, family problems, lifestyles, etc, this group favorably endorses the following points for consideration:

(i) Aside from qualifications and experience, it is also necessary that all government applicants are thoroughly screened, including extensive background or character checks in all areas of his/her public and private life. Vertification of personal records such as records from the police, organizations where he/she belongs, former employers or co-employees, teachers, community leaders and others should be

conducted, preferably before his/ her probation period expires.

(ii) Psychiatric and/or psychological testing may be conducted to further help in detecting those who have the tendency to change their attitude and character once in the service, with ready access to government resources and information.

B. Training

Provision of regular training to public officials is also encouraged. While training serves many purposes, such as improving skills and knowledge, it is also useful in redirecting attitudes and changing values, thus in a way deterring public officials from engaging in corrupt activities. To ensure the provision of effective training, the following are suggested:

(i) Morals and ethics are recommended to be the main subjects in the training program.
(ii) Initial training and in-service training should be made mandatory for all public officials.
(iii) Refresher training is likewise needed for obvious reasons, such as to re-emphasize the sense of accountability, responsibility and transparency in the performance of his/her duties.
(iv) Institutional training should be supplemented with on-the-job training to hasten professionalism, develop discipline, improve skills and enhance community interactions and relations.

C. Rotation of Personnel and Staff

Corrupt activities tend to occur when a public official remains in a particular unit or section in the organization for a long period of time. The longer he/she remains in the unit/section, the more he/she becomes a target of manipulators or the more intense the tendency to commit a wrong becomes. Then, the chances of compromising his/her position with undesirable elements within and outside of the organization become imminent.

What should be done to those who have over-lived in a particular unit or section? The answer is simple. The government is recommended to have a program of personnel and staff rotation within the functional positions in the organization or within the geographical location of the offices. With this measure, public officials would find it hard to establish strong connections with outside groups such that potential bribers may think otherwise before arrangements are made with officials. Similarly, rotation also deters the development of close attachments with all people and hence, special favors or preferential treatment with close associates may be avoided.

However, it may be difficult to find an alternative appropriate position for some personnel and/or staff. The number of positions which use his/her special skills and knowledge, may be restricted. Considering family members, some may hesitate to be transferred to organizations located at a different place. In the above case, at least, it is recommended that those who are responsible for the subordinate's behavior supervise his/her behavior more closely, considering the above risk.

D. Improving Work Environments

Public officials must be provided with proper and adequate work conditions in order to ensure a decent living for them and their families. Mostly lower and middle level public officials in some developing countries are low paid, compared with those employed in private business. In a situation like this, public officials may have the tendency to succumb to the temptation of committing dishonest acts in return for

a favor that has to do with the discharge or performance of his/her official duties. In consonance with this presumption, the provision of adequate salaries and facilities is recommended as long as the limit of government budget permits. By so doing, there is a possibility that need-based corruption at the lower and middle level will be minimized, if not totally reduced.

Additionally, the installation of a grievance system within the organization is also one way of ensuring effective communication among officials. It is helpful in improving working relationships and inducing a healthy work environment. Through this system senior officials will also be more careful in all their official dealings, for fear of being charged by subordinates or exposed unnecessarily. Furthermore, work simplification (including streamlining of the bureaucracy) is important. This not only reduces costs on the part of the government, but also contributes to easing the workload of each public official who has a backlog of work.

E. Promotion System

Since promotion encompasses an increase in salary and higher status in the organization, it is understandable that every person in an organization looks forward to his/her promotion. Promotion motivates public officials to work hard and continue to struggle to maintain their status or be promoted again. However, if a public official feels deprived of this privileged in the organization where he/she belongs, not because of his/her own ability but due to a lack of vacancies, he/she may seek alternative means of earnings. Those means could be illegal. The intensity of dissatisfaction with the higher-ups may tend to accelerate further if special favors or preferential treatment have been detected or are known to have been applied by the promoting authorities. To resolve this dilemma, adherence to existing standard procedures and criteria for promotion is most highly recommended. Some of the important factors to consider for promotion are:

(i) Seniority (the length of service in the organization)
(ii) Merit (the activities worthy of praise or reward; achievement)
(iii) Competence (the ability, skill or knowledge to do what is needed at work)

However, if promotion is strictly seniority based, officials promoted may not have the capability or competence required for the position. Therefore, seniority criteria should not be given much emphasis.

At the stage of conducting an evaluation of potential promotees, applicant officials may resort to utilizing undue influence or perhaps apply grease money to be favorably considered. This dirty tactic will again ruin or distort the established standard procedure, resulting in decisions with partiality and bias. To exclude bias in promotion, the following suggestions are forwarded:

(i) The criteria used to award promotion be spelt out clearly.
(ii) That selection of promotees shall be done objectively and in consonance with the established standard.
(iii) The system to ensure fairness shall be observed at all times.
(iv) An appropriate internal body shall be established to address and attend to complaints pertaining to unfairness and bias in promotion.

F. Discretionary Power

Wide discretionary powers granted to public officials always have the tendency to corrupt the said public official. So, in order to exercise due prudence in the performance of their official duties, public

officials are suggested to have only limited discretionary power, subject to such limitation as may be authorized by law. The more power an official has, the stronger the tendency to corrupt that power. In other words, people may exert influence on public officials who have wide discretionary authority, in order to gain preferential favors as in the awarding of contracts of works/projects or of delivery contracts of materials and supplies, and others.

For countermeasures, it is proposed that the scope of administrative discretion is clarified by legislation and enabling laws. In addition, fairness and transparency in the administrative procedure have to be pursued. Necessity for restrictions and the rationale of subsidies has to be reviewed periodically. Moreover, information disclosure and transparency in policymaking processes have to be advanced.

G. Code of Ethical Standards

An international Code of Conduct for Public Officials has been formulated and approved by the participating countries during the 1996 United Nations General Assembly. More so, some countries have their own Codes of Conduct for Public Officials fully institutionalized and implemented. Generally, these codes prescribe the conduct guidelines for officials holding public office.

A Code of Ethics is considered to be one effective tool in instilling discipline and harmonizing the job performance of public officials, and strict compliance or adherence to its provisions is a sure way of guaranteeing efficient and honest public service. When a country makes a code, the following are highly recommended to be considered:

1. Declaration of Income and Assets

A statement of income and assets is a document that would help to detect the disproportionate income of a government official. However, arguments were raised as to the extent of disclosure of income and assets, and whether a family member's income and assets should also be included. In some countries, all public officials are required to file their income and assets annually, while others file it every two years. Similarly in other countries, only high level government officials are required or mandated to file their income and assets to the government. From the standpoint of cost effectiveness, we need to determine the level/position of officials in the hierarchy who should be required to file. Disclosure of income and assets of all family members, in some instances, may show or indicate an unusual accumulation of wealth not proportionate to the official's legal income. In this regard, each country may consider such an act as an infringement of privacy, which may violate their constitutional rights.

2. Obligation to Official Duties

In principle, public officials are expected to devote their time only to official duties and functions. If a public official engages in income generating jobs directly or indirectly related to his/her official function, their official function might be placed in jeopardy or be compromised. In this regard, public officials have to refrain from engaging in other vested interest activities outside of their government function, to preserve their integrity and avoid conflicts of interest. Checking the risk of a potential conflicts of interest situation, or of compromising their official position, the unit head should make the decision of permission.

The following are some provisions that may be incorporated in formulating a Code of Ethics in each country:

(i) Public officials shall not be engaged in other paid employment unless the head of the organization approves it, considering the risk of a potential conflict of interest or compromise of their official function.
(ii) Public officials shall not ask for or accept any benefit in the course of or by reason of their official position.
(iii) Public officials, upon taking an oath of office, shall declare to the government all personal assets and liabilities, to include (possibly) that of their spouse and children.
(iv) Public officials shall not misappropriate public funds.
(v) Public officials shall not use their position for the benefit of themselves and /or their family.
(vi) Public officials shall take an oath of secrecy and loyalty.
(vii) Public officials shall not hold any personal interest in any business enterprise that conducts business for profit with the government. We term this 'divestment of interest'.
(viii) Public officials (except certain posts such as assumed by politicians) shall not be engaged in politics.
(ix) Public officials shall not allow their official integrity or personal integrity to be compromised.

III. INTERNAL INSPECTION AND DISCIPLINARY ACTIONS

Running a big organization may be a rather difficult task for management. If public officials eagerly seek means for their own convenience, this attitude may lead to engaging in corrupt activities to satisfy such own personal interests while in the public service. However, if other people have a way of monitoring such behavior, their selfish intent may be deterred. For this purpose, inspection and disciplinary action takes on important role. So, in the following discussion, we will deal more with the mechanism or system of installing internal inspection procedures and disciplinary actions.

A. Internal Inspection

Every organization should take the responsibility of regulating the behavior of each member. If unworthy behavior has been noticed, immediate and appropriate measures are suggested to be taken. In order to address this situation, internal inspection measures or systems are suggested to regulate and monitor the functioning of the organization. The other purpose of this is to check administrative problems in the organization, including determination of work efficiency and possible irregularities in their duties and functions. The following areas of concern are hereby discussed in this report.

1. Procedure of Internal Inspection

The procedure of internal inspection should be clearly established and formulated. Likewise, a standard should be determined and adhered to strictly, and be made known to all members of the organization. Keeping the members aware of the existing procedures will eventually guide them to behave in the manner expected of them by the regulations.

2. Internal Inspection Units

Establishment of an internal inspection unit is also necessary to carry out these functions. The unit should be an independent body, not controlled by anyone in the organization except the head. Interference from other sub-heads of the organization may make the unit ineffective and inefficient. In this regard, such units should be attached to the office of the head of the organization.

3. Internal Inspectors

Internal inspectors are expected to be professionally knowledgeable in all aspects of the trade, such as knowledge of the basic

law, research strategies, effective report writing, investigation techniques and procedures, record keeping, and other similarly required skills. They are also expected to possess the necessary attitude and character to perform the job with diligence and utmost honesty or impartiality. Furthermore, training for inspectors is also important. Preliminary training or orientation is necessary for them to initially acquire the qualities required of inspectors. In addition, it is also equally important to emphasize the inspectors' accountability and responsibility for their job in the course of the orientation or training.

4. Powers and Authority

Since this is an internal system, the powers and authority of internal inspectors should be as provided for in the organizations' internal administrative regulations, or as may be prescribed by a higher authority such as the head of the government agency or ministry, or by a national law.

5. Duties

The following may be some of the duties of an internal inspector:

(i) Audit the expenditure of the organization.
(ii) Ensure propriety in procurement procedures or systems.
(iii) Ensure observance of public tender or bidding procedures.
(iv) Ensure internal security policy on classified materials.
(v) Check on abuse or misuse of power by officials or employees.
(vi) Check on misuse or misapplication of the organization's resources.
(vii) Point out problems encountered during inspection work.
(viii) Other matters of interest.

6. Reporting

After the conduct of inspection, inspectors are required by regulations to submit results of the inspection to the head of the agency concerned or to where the inspection was conducted. The report needs to indicate all the important areas or aspects of the inspection as prescribed by the regulations, such as the answers to "Who? What? When? Where? and How?". More specifically, a pre-determined standard format should be proposed. Findings of grave concern involving serious violations of law should be known immediately by the head of the organization for his/her immediate and appropriate action.

7. Sources of Information

The conduct of internal inspections could be determined in many ways and could be initiated under the following circumstances or sources:

(i) Suggestion boxes.
(ii) Hotlines (telephone, computer etc).
(iii) Persons responsible for keeping sensitive records.
(iv) Informers or informants that provide information for free and for a fee.

The key is how to motivate people to offer information. At least, we must guarantee the confidentiality of the informer or informant. In addition, it is recommended to find easy and/or handy methods which let people offer information.

8. Conduct of Inspection

Inspections can be conducted either by schedule or randomly. Depending on the purpose and timing, such types of inspection can be adopted by any government agency or organization. Regular or scheduled inspections may have the important purpose of determining the efficiency of the performance of officials in terms of resource utilization or regular

administrative functions. On the other hand, the conduct of unscheduled inspections may detect misbehavior amongst officials, or react to reports or complaints of irregularities.

Areas for inspection must also be considered. Offices that are highly vulnerable or prone to corruption, e.g, finance or logistic sections, should be considered for frequent inspection, to ensure the efficient and effective use of organizational resources.

9. Manuals

The publication of a manual for internal inspection would greatly help in the smooth conduct of inspections, and guide users accordingly.

B. Disciplinary Action

1. Regulations

Internal administrative disciplinary action is an important deterrent measure in curbing corruption in the public service. However, disciplinary actions may inflict damage to the reputation of public officials if discriminately administered. In this context, regulations for disciplinary action should be established. The recommended disciplinary process is shown in the schematic diagram annexed to this report. In this process, opportunity for the accused to appeal is guaranteed if he/she feels deprived of his/her rights. It also provides an avenue or a system of compensation for damages to those who are victims of wrongful accusation.

2. Sanctions

The head of the organization should be held responsible for whatever his/her subordinate officials do. This is the essence of responsibility endowed upon all heads of agencies or organizations in government. In consonance with this authority, he/she also has the inherent power to impose disciplinary sanctions or punishment to his/her subordinates who have been found to have acted irregularly in the performance of his/her official duties and functions. The extent of that authority may be determined by internal regulations or by law. Penalty should be based on the gravity of the offence. Examples of the types of administrative disciplinary sanctions are as follows:

(i) Reprimand
(ii) Admonition
(iii) Censure
(iv) Reduction of pay
(v) Reduction in salary rank or grade
(vi) Forced retirement
(vii) Demotion
(viii) Dismissal

3. Devices for Effective Application of Disciplinary Action

Firstly, if the offence or misconduct committed is so grave that the internal disciplinary machinery or administrative sanctions are deemed inappropriate, collaboration with other appropriate government agencies must be sought. In the case of criminal offences noted, the law enforcement agency must immediately be provided with the necessary information on the nature of the offence. In this regard, an appropriate system or procedure should be established to facilitate the referral of cases of this nature.

Secondly, it is important to consider that sanctions imposed on any erring public officials, the nature of any cases and what the organization has done must be given according space in newsletters or news bulletins, to serve as a deterrent to would-be violators. To be clarified, naming the official will bring him/her disadvantages, but it will prevent vague rumors which may lead other officials to unrest.

IV. INTRODUCING AUDITING AND OMBUDSMAN SYSTEMS DISCOURAGE CORRUPTION; ACCESS TO INFORMATION; AND ACTIVITIES TO INCREASE PUBLIC AWARENESS

In this portion of the report, we shall look into three topics. First, we will discuss the audit system and ombudsman system as a means to reduce or discourage corruption in the public service. Secondly, we will discuss the means for the public to have access to government information. Finally, we will look into some measures in order to increase awareness regarding the ills of corruption, and how to prevent it.

A. Auditing System

We acknowledge that the purpose of an audit inspection is to ensure that there is transparency and accountability within the organization. In order to attain this, a body shall conduct an audit of accounts, revenue and expenditure of an organization. This is to ensure that expenditures have been recorded properly and within the scope, procedures and limitations established by law. Through an audit system, organizational funds are safeguarded against abuse and misuse. It also discourages would-be offenders in the organization from abusing their positions. So auditors here act as whistle-blowers. As we acknowledge the importance and the sensitivity of the work involved, we believe that the auditor must be given the necessary powers and independence to carry out their duties without fear or favor. Along this explanation, suggestions to improve the work of an auditor must be looked into. We, therefore, look at two models in this paper, the Bangladesh and Japan audit systems, as an example.

1. Bangladesh

Bangladesh has a Controller/Auditor General. Their independence is guaranteed by the Constitution (Art.127 of Constitution). The President appoints the head of the organization. He/she holds office up to the age of 60 years. Their main duty is to audit state organizations' accounts of expenditure and revenue, and to submit findings to the President, who then releases the report to parliament. The auditor has the power to access to all property that the government possesses. The main role is to audit the financial accounts of government agencies and submit a report to Parliament. There may be some variation in the methods used in carrying out the audit work. However, the work is to serve one purpose, that is, to audit the financial accounts of the government agency.

2. Japan

Japan has its Board of Audit. The body was established based on the provisions of Article 90 of the Japanese Constitution. This provides that the final accounts on the expenditure and revenue of the State shall be audited by a Board of Audit and submitted by Cabinet to the Diet, together with the statement of audit during the fiscal year.

The Board is comprised of the Audit Commission, which is the decision-making body, and the General Executive Bureau, which is the executive responsible for the operation. The Audit Commission consists of three (3) commissioners appointed by Cabinet with the consent of both houses of the Diet (upper and lower houses). The Emperor attests the appointment, which is for a period of seven years.

The General Executive Bureau is comprised of a secretariat and five bureaus. They are responsible for carrying out audit work under the direction and supervision of the Audit Commission. The jurisdiction of the Board of Audit extends to all state accounts and public corporations.

3. Recommendations

Participants from Indonesia, Papua New Guinea, Philippines, St. Vincent and Vietnam agreed that the nature of the auditors work in their countries is similar to that of the two countries mentioned above. This observation tends to confirm that the role and function of the auditor are similar in most ways in most countries, especially countries represented in this discussion. The current trend caused by the massive increase of corruption cases involving public officials, suggests the necessity to strengthen the workings of auditors. In making these recommendations, we are mindful of the laws and legislation varying from country to country concerning the auditors' role, their powers, and independence:

(a) *Appointment*

The President of the country, the Prime Minister or equivalent high ranking official/organ may appoint the auditor. The national auditor shall appoint field auditors.

(b) *Composition*

There shall be at least one auditor, who should be the head of the national audit bureau and assisted by deputies and audit inspectors. The appointment of these officers may be within the scope of responsibility of the auditor.

(c) *Independence*

The auditors' independence should be guaranteed by the constitution. That is to say, the office of the auditor should be prescribed by provision of the constitution so that it is not subject to direction or control by anyone.

(d) *Powers*

The auditor shall also be given powers to exercise in the performance of its functions. Thus, he/she is expected to conduct inspections of all records of the organization specifically on the use of government funds and resources. If anomalies are discovered during the course of audit work, the auditor shall refer the matter to the head of the organization and to other appropriate government agencies. The auditor shall summon anyone within and outside of the organizational to appear and produce evidence relating to the matters being looked into. He/she has the power to direct individuals and organizations to cease, withdraw or terminate any transaction considered disadvantageous to the government. He/she can also recommend disciplinary actions against public officials for breach of organizational rules and regulations, misuse of power and abuse of discretion.

(e) *Functions*

The primary function of the auditor is to carry out audit inspection of all government organizations, including its subsidiaries and statutory bodies. Findings with recommendations shall be reported to the government at the appropriate time.

B. Ombudsman System

The term "ombudsman" is a Swedish word for "attorney" or " representative", indicating their official role as a public protector. The institution was set up in the 17th century by the Swedish King, Charles XII with the official title of Hogsta Ombudsman (Supreme Royal Ombudsman). The job was to "Keep an eye on royal officials" and supervise the execution of the laws. Sometimes, the King would allow the Ombudsman to represent him/her in some official functions. To this day, a number of countries have adopted the Swedish ombudsman system and have

developed the institution. In some countries, the ombudsman has their independence guaranteed by the constitution. In this report, we introduce the current ombudsman system in Papua New Guinea and the Philippines. In addition, we likewise consider the system adopted in Vietnam, as that with a function similar to the ombudsman.

1. Papua New Guinea

The ombudsman in PNG has two main divisions: the Complaints Division, that receives normal complaints from the citizens; and the Leadership Division, that deals mainly with the high-ranking government officials. It does not cover the lower bracket of public service machinery. This is left for the police to handle.

The ombudsman has investigative powers but does not have prosecution powers such as in the Philippines. Rather it refers its investigation files to the public prosecutor who initiates prosecution before what we call a 'Leadership Tribunal'. The Tribunal is made up of a judge of the National Court who is the chairman, and two members from the Magisterial Service, all appointed by the Chief Justice. The ombudsman does not adjudicate on other organization's disciplinary matters. These are internal matters for the respective organizations to handle.

The functions of the ombudsman, among other things, include ensuring leaders do not place themselves in a position in which they could have a conflict of interest or might compromise their position when discharging their duties; to ensure they do not use their office for personal gain or favor for themselves or for other persons; and to examine the annual declaration of assets and liabilities, income, business connections, positions etc.

2. Philippines

The ombudsman is a constitutional body. Its independence is guaranteed in the Philippine Constitution and has the power of investigation and prosecution. It has broad and comprehensive powers to institute reforms in the bureaucracy and prosecute erring government officials. It has a Special Prosecutor's Office, which prosecutes cases brought before a special court known as the "*Sandiganbayan*" which is coined from the Filipino words "*sandigan*" meaning "something to lean" on and "*bayan*" meaning "country".

The President, on the recommendation of the Judicial Bar Council, appoints the ombudsman and the members of the *Sandiganbayan*. It is a fixed term of office of seven years without reappointment; removable from office only by impeachment. As the dispenser of justice, the ombudsman administratively sanctions erring government officials. It also criminally charges and prosecutes them, including private persons found to have conspired with them.

3. Vietnam

Vietnam operates on a system that is similar to that of an ombudsman. However, it comes under a ministry and is controlled by a cabinet minister. It has offices set up in the districts and receives complaints from the citizenry. Vietnam has a Civil Ordinance on Civil Complaints and Denunciation, which was endorsed by the President in May 1991. The purpose of the Ordinance is to "*ensure the civil right to complain, to strengthen the law, promote socialist democracy, defend the interest of the state, the lawful rights a group/ community and the interests of the citizen.*"

4. Recommendations

One of the major functions of an ombudsman is corruption prevention. It prevents the commission of an act by

ordering or stopping the implementation of government contracts that are found to be disadvantageous to the government. It likewise files charges and prosecutes cases in court against public officials or private persons found to have connived with him/her. It also holds disciplinary authority over all government functionaries, except the President of the Republic or the Prime Minister and other elective officials, or those officials removable only from office by impeachment. These broad powers are inherently provided for in the Philippine ombudsman. So, it is for these reasons that the creation of an ombudsman is favorably considered as an effective means of preventing corruption in government. The Papua New Guinean and the Philippine ombudsmen could be cited here as operating effectively in their respective countries.

C. Access to Government Information

People in many countries contend only accessing part of the government's information through publications such as annual reports. These publications are helpful for people to understand government activities. However, these publications only include limited information on the government. What citizens want to know may be excluded in these official reports.

Since the mission of government officials is for public service, disclosing information possessed by the government should be promoted for the public as a matter of obligation of the government and as of right to the citizen. In other words, citizen's rights to access government information should be guaranteed as a basic right. Without information as to the governments' activities, a person cannot make a meaningful contribution on matters of government, especially on government policies and programs. Therefore, the degree to which citizens are allowed access to the information of the government, is a manifestation of a truly democratic system of governance. However, in some countries of the world, this right is basically restricted, sanitized and regulated.

In most cases, the right to have access to government information may influence government officials to attend to their duties honestly and fairly. Conscious of people watching or monitoring government officials through this right, people in government become cautious, thus this indirectly contributes to avoiding the commission of irregularities or abuse of power. Similarly, the sense of accountability and responsibility of government officials is enhanced and improved.

Of course, not all government information can be made available to the people. The law must protect some information that is considered sensitive in nature. Examples of the type of information that a country may wish to consider non-disclosable are;

(i) Matters relating to national security, defence and internation al relations with the government of any other country or with an international organization.
(ii) Trade secrets and privileged or confidential commercial or financial information obtained from a person or body.
(iii) Matters to protect law enforcement interests, such as the ongoing investigation and prosecution of crimes.
(iv) Matters to maintain personal privacy and security of a person.

However, the wider the range of non-disclosable information becomes, the less the civilian's right to have access to

government information is guaranteed. It is interesting that law concerning the access to information held by administrative organs in Japan prescribes that even non-disclosable information stipulated under this law may be disclosed when it is deemed of public interest.

In addition, non-disclosable information should be prescribed and clarified in detail by the laws or regulations of the country. If we leave the range to someone's discretion, he/she may be pressured not to disclose the information by those who feel it is inconvenient to publicize that information. Furthermore, it is also important to establish an organization, such as an information disclosure review board, who would determine what other information could be disclosed to the public.

D. Measures to Increase Public Awareness

As government officials are considered public servants of the people, the public should monitor whether government officials perform their duties in pursuit of the public interest or not. Irresponsible activities by public officials may be unavoidable if the public has no interest in government activities, and leave public officials without the public's monitoring. In this instance, knowledge of how corruption works, the methods used in corruption, and areas where corruption tends to occur, may be useful for the public so as to detect corrupt activities amongst public officials.

It is said that Hong Kong has successfully recovered from the serious disease of corruption amongst public officials. The Independent Commission Against Corruption (ICAC), established to fight corruption, has contributed significantly to reducing corrupt activities by public officials in Hong Kong. It has regarded education on combating corruption as one of the secrets of their success. The ICAC is composed of three departments: the Operations Department, Corruption Prevention Department, and Community Relations Department. The Community Relations Department is in charge of public education efforts. The successful experience of Hong Kong may encourage us to educate people as a countermeasure for the corrupt activities of public officials.

While government needs to take responsibility to encourage public awareness, the body or unit in charge of this responsibility is not restricted only to the anti-corruption section of the organization. To promote public awareness, it is imperative that government take the initiative to encourage people to actively involve themselves in government affairs of public interest. The following means and activities are suggested in order to increase public awareness.

1. Educational Program in Schools

This program envisions stirring the consciousness of the youth and imbuing in them the profound sense of responsibility as dynamic participants of the society by encouraging them to undertake research and studies on prevention and control. The Ministry or Department of Education may develop instructional materials that will make the students aware of and understand the ills of corruption, and the means of deterring the same. Lectures and discussions inside classrooms may be supplemented with study-tours to government agencies, anti-corruption bodies, NGOs and other organizations, to further broaden the youths' knowledge of their functions and responsibilities.

2. Media

Media is a powerful tool for bringing news and information to the people. It takes the form of both written and audio-

visual media such as television, newspapers, radio, computer internet, and magazines of local, national, and international publications. As a tool or instrument for information dissemination, and as the source for such information, press freedom should not be abridged nor curtailed by government when used to expose anomalous activities or the ineptitude of government officials. As such, all media services available in the country may be fully utilized to bring a clear message to the public on the evils of corruption and its impact on good governance.

3. Posters

The use of posters can also be very effective in sending messages to the people. Illustrations in the posters can convey many messages. When posters are all over, the message will surely register in the minds of the people fast and easily. In addition, such posters reach out even to illiterates, so they can understand what the message is all about. Intricately designed posters with anti-corruption slogans are surely eye-catchers, and thus attract the interest and attention of the public. With this method, the people are made aware of whatever agenda the poster intends to convey. The public will either start to react or may remain unperturbed or passive.

4. Workshops, Seminars, and Public Forums/Dialogues

People can acquire knowledge and deepen their understanding on government activities by attending workshops, seminars, and public forums/dialogues. In this regard, the public are encouraged to attend. To do that, topics of interest affecting them and their government should be widely published or broadcast beforehand. Some prominent speakers of known probity from the public and private sectors, NGO's, labor unions, religious sects, the academe and other organizations, such as the ICAC, community leaders or business sector leaders, may be invited to be the resource persons. Active involvement of all sectors of the community in government affairs, especially in exposing or criticizing abuses in government by public officials, or discussing publicly contemplated government projects or programs they foresee to be disadvantageous, manifest awareness of the public in government operations.

5. Invitation to Join Prize Contests

This means that the public are enticed to join prize contests such as slogan making contests, essay contests, or poster-making contests, all with the central topic of the evils of corruption or preventive measures to stamp out corruption or any other related subjects. This is done to arouse interest, motivate, and encourage people to participate actively on the subject of corruption. This method may elicit suggestions, new ideas, concepts and opinions from the people. Thus, it could possibly aid legislators in making improvements to the existing laws or to creation of new laws or regulations that would improve efficiency in government service.

6. People's Day

This new approach called "People's Day" is actually practiced in the Philippines. It was purposely installed as a system for encouraging the public to be involved in government, and to consider public officials as public servants always ready to assist and provide efficient public service. This practice provides the general public with the opportunity of getting immediate assistance and action, directly from the head of the government agency or functionaries, on matters which were often not acted on by subordinates, or on complaints of wrongdoing against his/her own staff or personnel. Through this

system, government records, exclusive of those categorized as top-secret or strictly confidential and non-disclosable under the laws of the land, are made public and people can ask for information or records right there and then. In this way, the government can practice transparency.

Not only the government itself but also civilian organizations such as NGOs plan these activities. In this regard, the government should provide encouragement and extend utmost support to these activities. People in government should arrange for media interviews to allow free discussion of topics of public concern, and to let the people know what their government is doing.

V. CONCLUSION

Corruption is indeed endemic in most societies of the world. It knows no borders and spreads like a virus or illness. If its impact is so deep, a country is placed in a no-win situation and loses structurally, institutionally and economically. Along this line, this group endeavored to pinpoint and determine possible preventive measures that a country can adapt or implement to eventually eradicate the evils of corruption.

Management systems for personnel and establishing ethical standards for public officials has been given emphasis, along with the concepts involving activities at the recruitment stage of public officials, training, rotation of personnel and staff, promotion systems, improvement of work environments, limiting the discretionry power of officials, and the formulation of a Code of Ethics for each country. The existence of ethical standards for public officials is also a meaningful way of embodying better performance from public officials and regulating behavior in the public service. We opined that corruption in government should be addressed at the stage of inception, rather than simply apply reactive measures to prevent it.

Countermeasures to prevent corrupt activities can also be addressed through the conduct of internal inspections in government agencies and functionaries. As such, any instance of ensuing illegal activities or irregularities among public officials can easily be detected and prevented. Inspections could be done either on a scheduled basis or by random, as the need arises. These measures are sure ways of deterring the commission of irregularities. Officials found guilty of misbehavior can be immediately subject to disciplinary action by the respective heads of their organization. In addition, the sanctions to be imposed may range from mere reprimand to dismissal from government service.

Introducing an ombudsman system in each country is perhaps an act that needs political will if such a system is to have broad powers of investigating and prosecuting all government officials accused of misdemeanors in public service, such as the acts of corruption and bribery. In some countries like Papua New Guinea and the Philippines, their ombudsman system is so powerful that a number of public officials have been charged and punished accordingly, as provided for by law. Similarly, an auditing system can be a supplemental system to further check and correct inefficiencies by government officials.

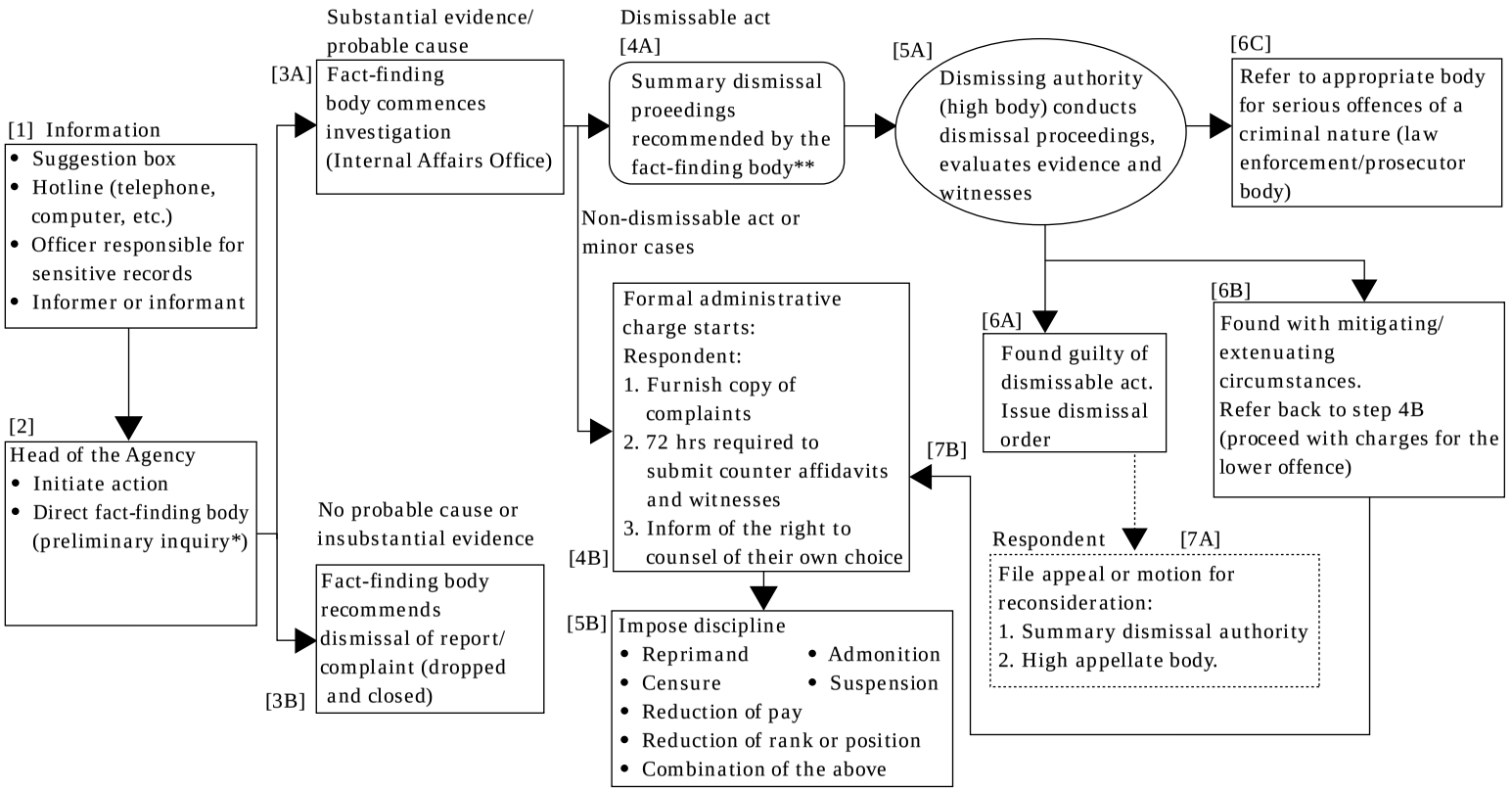
Finally, the freedom of the press and the people's right to have access to government information should not be abridged or curtailed by the government. Creating public awareness regarding corruption and irregularities in government is also one way of preventing the incidence of corruption. In this regard, the group

considers some measures to enhance public involvement in creating public awareness, such as educational programs in schools, use of the media and posters, conduct of workshops, dialogues or forums, the concept of a People's Day and others.

While we suggest countermeasures to prevent corrupt activities among public officials in this paper, how we can guarantee implementation of these countermeasures is important. The device to manage personnel and internal inspections may contribute to detering corrupt activities among middle and/or lower officials. However, to monitor corrupt activities among high-ranking officials within the government itself may be a rather difficult task.

Here, we suggest two methods to combat corrupt activities among high-ranking officials. One of them is to mobilize civilian pressure. Civilians need not be afraid of revenge for the result of their criticism of a high-ranking official's behavior. In this context, increased awareness of monitoring government activities among civilians is essential to deter corrupt activities. The other method is to utilize international conferences and international training on the topic of combating corruption. With rising global concern over the issue of the corrupt activities of public officials, there are various on-going efforts for preventing such activities through international organizations like the United Nations, OECD, Council of Europe etc. Attending these opportunities, high-ranking officials in each country would share ideas on the evil effects of corruption amongst public officials. Various recommendations and suggestions would help to facilitate the combat of corrupt activities. Some countries which have no or insufficient regulations and statutes on this subject may adopt these recommendations. The experiences of others would contribute very effectively to reform of their attitude towards corrupt activities.

ANNEXURE I
SCHEMATIC DIAGRAM
ADMINISTRATIVE DISCIPLINARY PROCEEDINGS



* Preliminary inquiry - a proceeding whereby the complainant and the respondent are given the opportunity to be heard and submit their affidavits and counter-affidavits. Purpose is to establish a *prima facie* case.

** Summary dismissal proceedings - an administrative process of determining whether a factual or legal basis exists to dismiss the respondent.

APPENDIX

COMMEMORATIVE PHOTOGRAPHS

- ***112th International Training Course***
- ***113th International Training Course***

UNAFEI

THE 112th International Training Course

Left to Right:
Above:
Siegismund (Germany), Cartwright (U.S.A), Zvekic (UNICRI)

4th Row:
Takeda (Staff), Yoshida (Staff), Imai (Staff), Tezuka (Staff), Takagi (Chef), Satou (Staff), Gouda (Staff), Kai (Staff), Jinbo (Staff), Souma (Staff)

3rd Row:
Matsushita (Staff), Hirata (Staff), Kubo (Staff), Ono (JICA), Komori (Japan), Genidy (Egypt), Yamada (Japan), Khosla (India), Alvaro (Colombia), Jallow (Gambia), Tirant (Seychelles), Himsa (P.N.G), Igeta (Japan)

2nd Row:
Nakamura (Japan), Aswar (Indonesia), Sugawara (Japan), Uruga (Japan), Ghazali (Malaysia), Young-Hoon (R.O.K), Odongo (Kenya), Nadeem (Pakistan), Nora (Thailand), Caparas (Philippines), Wang (China), Yoshida (Japan), Nakajima (Japan), Ram (Fiji), Tai (Hong Kong), Mukaigawa (Japan)

1st Row:
Chishima (Staff), Watanabe (Professor), Tsutomi (Professor), Aizawa (Professor), Iitsuka (Professor), Singh (Singapore), Griffin (Australia), Kitada (Director), Fattah (Canada), Tauchi (Dep. Director), Imafuku (Professor), Satou (Professor), Nosaka (Professor), Itou (Staff), Findlay-Debeck (L.A)

THE 113th International Training Course

Left to Right:
Above:
Matsui (Japan), Abdul Aziz (Malaysia), Chan (Hong Kong), Giovacchini (France), Piragoff (Canada)

5th Row:
Takagi (Chef), Kubo (Staff), Matsushita (Staff), Tezuka (Staff), Hirata (Staff), Satou (Staff), Kaneko (Staff), Jimbo (Staff), Okeya (Staff)

4rd Row:
Souma (Staff), Yoshida (Staff), Imai (Staff), Takeda (Staff), Chandra (India), Nihei (Japan), Li (China), Hai (Viet Nam), Kuramochi (JICA), Gouda (Staff)

3nd Row:
Yudi (Indonesia), Moratella (Philippines), Luis (Brazil), Hector (Venezuela), Hasegawa (Japan), Hinson (St. Vincent), Hatayama (Japan), Kamburi (P.N.G), Kitahara (Japan), Fujino (Japan), Pravit (Thailand), Okamura (Japan)

2th Row:
Maitland (Grenada), Bhuiyan (Bangladesh), Tanaka (Japan), Yamaji (Japan), Muraki (Japan), Onuoha (Nigeria), Asmadi (Malaysia), Sardar Raza (Pakistan), Zidan (Palestine), Nogoyev (Kyrgyz), Ujita (Japan), Suzuki (Japan), Rajapaksa (Sri Lanka)

1st Row:
Chishima (Staff), Watanabe (Professor), Nosaka (Professor), Satou (Professor), Iitsuka (Professor), Castberg (U.S.A), Kitada (Director), DeFeo (U.S.A), Tauchi (Dep. Director), Aizawa (Professor), Tsutomi (Professor), Imafuku (Professor), Itou (Staff), Findlay-Debeck (L.A)