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## REPORT OF THE GENERAL DISCUSSION

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### I. INTRODUCTION

The participants of the Sixth International Training Course on Corruption Control started the general discussion after having heard lectures from visiting experts, ad hoc lecturers and UNAFEI professors as well as individual presentations from each participant. They had before them various materials concerning corruption, including the text of the United Nations Convention against Corruption, which was adopted by the General Assembly on October 31st, 2003. The discussion of the participants focused on how to implement the provisions of this Convention, so that their countries could become parties to this instrument.

### II. POLITICAL WILL

In addition to legal and technical questions related to the implementation of the Convention, the group emphasized the necessity for political will on the part of government leaders, law makers and top officials, to actually fight corruption and become an effective party to this Convention. It is essential for this purpose to raise public and political awareness, and the existence itself of the UN Convention can be used for this campaign.

SIXTH SPECIAL TRAINING COURSE ON CORRUPTION CONTROL  
REPORT OF THE GENERAL DISCUSSION

The participants agreed that political will is the main ingredient necessary when dealing with corruption. It has been established that their legislation include several provisions to deal with this illness, but depicting them on paper is not enough. The political will has to be manifested with actions in order for it to be brought down from “Legal Heaven” into reality. However, political will is not present in most of our government’s underlying behaviour. It can easily be inferred from almost all the individual presentations of this Course, mentioning that it is necessary to obtain congressional approval in order to lift immunity for some politicians, or when anti-corruption institutions are forced to work with insufficient tools, technology and financial support.

### III. CRIMINALIZATION AND LAW ENFORCEMENT

The participants reviewed the provisions in the Convention related to the criminalization of certain conduct related to corruption. All countries have enacted laws against embezzlement, misappropriation or other diversions of property by public officials. Thus, the main issue seemed to be the criminalization of bribery of foreign public officials and officials of public international organizations. Many participants stated that their countries have to revise their domestic legislation to meet the requirements of Article 16 of the Convention. The criminalization of bribery of domestic officials does not pose any serious problems, since all countries have provisions to criminalize this conduct. However, some countries have to revise their laws because a simple offering of a bribe is not enough to constitute a crime. Many countries also need to revise their laws to criminalize the conduct of the obstruction of justice as required by Article 25. Although most countries include intimidation of witnesses as a criminal offence in their legislation, they lack provisions for paragraph (a) of this article on the influence to the witnesses. The main issue brought up by this article is the action of the briber in influencing the witness more than the reaction of the latter, because failure to testify by the witness has consequences but bribery of a witness to influence him/her goes unpunished. Although all countries have a law to punish money laundering, the meeting noted that in order to fulfil the obligations under the convention, there is a need to expand the scope of predicate offences. Most countries manifested that their legislation includes the laundering of proceeds of corruption crimes in some way or another. However, it is yet to be seen if their legislation covers all the offences established by this Convention.

While some articles were established as mandatory by the Convention, others were left to the discretion of the State Parties. To illustrate, paragraph two of Article 16, merely suggests the criminalization of solicitation or acceptance of bribery by a foreign public official, etc. However, the participants agreed on the advantages of making this provision mandatory. Regarding this matter, international mutual assistance becomes essential, because investigators have to gather evidence outside their own jurisdictions.

### IV. PREVENTIVE MEASURES

Preventive measures are even more necessary than repressive actions. The latter become redundant once the problem is treated from the root. The participants concluded that preventive measures and anti corruption policies are best conducted by an independent body. To complement such a body, there is a need for the legislation of free access to information to be enacted in all jurisdictions, in order to arm and empower all sectors of society in matters of transparency and good governance.

Out of several measures included in the Convention, the participants emphasized educational strategies targeting the youth, such as the inclusion of an ethics programme in school curricula and values formation in order to reshape the countries’ consciousness. For example, the Zambian Community Relations Department conducts annual youth festivals, where, among others, the youth are encouraged to

participate in essay competitions and theatre performances on the theme of corruption. Also, in Thailand, the NCCC publishes and distributes children's story books which depict honesty and integrity as noble values.

Awareness campaigns for the general public are instrumental. The public should be conscious of the evils of corruption, as well as their capacity to carry on the necessary actions to prevent, report and suppress it. A strong and educated media is essential for these purposes. Providing the press with reasonable access to governmental offices and documentation is a helpful tool for the civil society in the fight against corruption. It helps in maintaining constant public scrutiny over public officials, therefore making it more difficult to commit wrongdoing.

Involvement of Non-Governmental Organizations should be promoted, as it gives private citizens one of the last resorts against corrupt public officials belonging to government institutions perceived by them as insensitive to their concerns. Finally, the control of campaign contributions during election periods was discussed. The participants agreed that even if most of their countries have the legislation requiring the disclosure of the origin of such contributions, there is no real criminal sanction, or at least administrative sanction, for concealing or altering this information.

## **V. ASSET RECOVERY**

The participants noted that most jurisdictions have legislative provisions for asset recovery, however, in practice, these provisions have proven ineffective. Different procedures to obtain banking information are common to all the countries, but there are subsequent difficulties and delays to secure the documents needed for investigation.

The main problem revolves around the implementation or enforcement of the law, particularly when assets are deposited in foreign jurisdictions. Therefore, the participants believe once more that international mutual legal assistance should be encouraged. The participants also expressed concern with the fact that confiscated assets from corruption offences can seldom be returned to their origin, and possibly utilized by law enforcement institutions to continue with their efforts. On the other hand, most legislation obliges governments to maintain all income in one single account managed by the treasury, emphasizing the difficulty of the recovery. The only real mechanism established in most of their legislation for the recovery of proceeds of crime, is the interposal of civil actions, which has proven to be ineffective, as these assets are easily distracted.

Furthermore, the recovery of property acquired with proceeds of corruption offences in other jurisdictions is quite difficult when there are no international treaties that bind foreign governments to cooperate. The participants agreed that the UN Convention provides the basis to recover such property in a swifter manner.

## **VI. OTHER ISSUES**

Other issues discussed by the participants included the need for the establishment of a merit based civil service system, in which public officials would be selected and promoted according to their skills, knowledge and experience, rather than their political connections. This new system is required to provide public servants with an adequate work environment, in order to avoid the attraction of bribes. Measures such as the increase of salaries for public officials and security of tenure that prevent their removal after new elections are held are imperative to achieve this. It was noted that although this has financial implications on the national treasury of each country, governments should consider making this issue a priority, in light of the important role that public workers play in the delivery of social services, as well as attending to the high economic cost that corrupt officials represent year after year.

SIXTH SPECIAL TRAINING COURSE ON CORRUPTION CONTROL  
REPORT OF THE GENERAL DISCUSSION

The participants also manifested concern in regard to the issue of immunity and concurred that each country's law should be revised to limit the extent of the immunity granted to politicians, so that it does not hinder the investigation and subsequent prosecution of these people.

The importance of human resource development through training activities in the general field of corruption was also considered by the participants and it is recommended that governments invest in this. It was underscored that certain provisions in the convention had financial implications, such as the call for a witness protection programme. However, this poses an enormous difficulty for most of their countries, due to their small populations and the lack of financial resources to provide the required protection and benefits for witnesses. Thus, international cooperation, as stipulated in paragraph 3 of article 32 of the Convention, particularly in the area of witness relocation, is essential to achieve this.

But international cooperation should go beyond this matter. Chapter VI of the Convention deals with international technological and training assistance. This subject was introduced when discussing the lack of technology and modern surveillance equipment in most of their countries, which contributes to the rate of failure of detection and investigation of these offences. It has become clear that white collar criminality is transcending the borders, and this means that law enforcement agencies must transcend these borders themselves, through international cooperation.

## VII. RECOMMENDATIONS

At the end of the discussion, the participants agreed to adopt the following recommendations:

1. Countries should seriously consider signing and ratifying the UN Convention Against Corruption without any reservations.
2. Countries should implement in full the mandatory provisions of the Convention by enacting necessary legislation and taking other measures.
3. For that purpose, countries should examine their domestic legislation and their practices in corruption counter fields vis-a-vis every provision of the Convention.
4. Subject to the basic principles of their domestic legal systems, countries are encouraged to implement the optional provisions of the Convention.
5. Countries are also encouraged to adopt, as appropriate, more strict or severe measures than those provided by the Convention for preventing and combating corruption, in accordance with article 65 of the Convention.
6. Countries should enhance international cooperation, including extradition, mutual legal assistance and law enforcement cooperation, to effectively cope with corruption.
7. United Nations and other organizations, as well as countries, should play an active role in facilitating the signing and ratification of the Convention through technical assistance and technical cooperation.