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INTRODUCTORY NOTE

It is with pride that the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) offers to the international community the Resource Material Series No. 98.

Part One of this volume contains the work product of the 161st International Training Course, conducted from 19 August to 17 September 2015. The main theme of the 161st Course was *Staff Training for Correctional Leadership*. Part Two contains the work product of the 18th UNAFEI UNCAC Training Programme, conducted from 14 October to 18 November 2015. The main theme of the 18th UNCAC Programme was *Effective Anti-Corruption Enforcement and Public-Private and International Cooperation*.

The 161st Course offered participants an opportunity to deepen their understanding of relevant United Nations standards and norms on offender treatment and introduced practices and measures for the capacity building of correctional personnel. Standards and norms such as the Standard Minimum Rules for the Treatment of Prisoners (1955) and the Standard Minimum Rules for Non-custodial Treatment (1990) (“The Tokyo Rules”) encourage UN member states to implement policies and practices that protect the dignity and human rights of offenders and correctional staff, as well as policies and practices that seek to reduce recidivism by promoting offender rehabilitation and social reintegration. A common theme of these instruments is recognition that full implementation of such policies and practices cannot succeed without proper training of correctional leaders and staff.

The 18th UNCAC Programme addressed challenges facing anti-corruption officials and encouraged the exchange of best practices to prevent and combat corruption. Corruption is a secret crime, which makes it very difficult for criminal justice authorities to obtain effective leads and to fully develop and investigate them. The participants considered measures to address these problems, such as witness protection, protection of reporting persons, mitigating punishment or providing immunity to cooperative persons, special investigative techniques (controlled delivery, electronic surveillance, and undercover operations), criminalization of illicit enrichment and obstruction of justice, and so on. The programme also stressed the importance of international cooperation and cooperation between the public and private sectors for effective anti-corruption enforcement.

UNAFEI, as one of the institutes of the United Nations Crime Prevention and Criminal Justice Programme Network, held these training programmes to offer participants opportunities to share experiences, gain knowledge, and examine crime prevention measures in their related fields, as well as to build a human network of counterparts to further international cooperation, which is vital to addressing these issues.

In this issue, in regard to both the 161st International Training Course and the 18th UNAFEI UNCAC Training Programme, papers contributed by visiting experts, selected individual presentation papers from among the participants, and the reports of each programme are published. I regret that not all the papers submitted by the participants of each programme could be published.

I would like to pay tribute to the contributions of the Government of Japan, particularly the Ministry of Justice, the Japan International Cooperation Agency, and the Asia Crime Prevention Foundation for providing indispensable and unwavering support to UNAFEI’s international training programmes. Finally, I would like to express my heartfelt gratitude to all who so unselfishly assisted in the publication of this series.

March 2016



YAMASHITA Terutoshi
Director of UNAFEI

PART ONE

RESOURCE MATERIAL SERIES

No. 98

Work Product of the 161st International Training Course

“Staff Training for Correctional Leadership”

UNAFEI

EFFECTIVE TRAINING FOR THE PREVENTION OF MISCONDUCT AND CORRUPTION IN DETENTION AND CORRECTIONS[†]

Gary Hill*



I. CORRUPTION AND MISCONDUCT

Within the criminal justice system, incarceration is the one element that has the single duty of restricting a person's freedom. In spite of discussions attempting to massage the purposes of incarceration between retribution, deterrence or rehabilitation, its sole responsibility is incapacitation. Pre-trial detention or remand has only one purpose – to hold an individual in a secure setting to insure that person is available for trial. A prison sentence, whether in a relatively open community setting or in a highly secure facility, is instituted to regulate the movement of an individual and to moderate that person's contact with others. The provision of programs or “rehabilitation” is hoped for, but not the reason people are locked up.

As such, detention and imprisonment provide other areas of the criminal justice system (police, prosecution, courts) with a powerful, coercive tool. Thus, when looking at the potential for corruption within the criminal justice system, the inter-relationship of all elements tend to intersect with the detention/prison component. Police can decide to ticket or arrest and in most jurisdictions have between 24 hours and two weeks in which they must bring the person before a judge or release that person. As fears of terrorism, gang violence and organized crime increase, the use of preventive detention can make incarceration without judicial oversight a multi-year reality. Courts, most often, are given the responsibility of deciding on the length of incarceration as well as the type of facility to which a person is sent. In some cases the court can have a person placed in “house arrest,” staying in their own home with or without having to wear an electronic bracelet. The court can assign a person to an open, modern, relatively pleasant facility or can have them placed in solitary confinement with little contact with the outside world. Thus, the use of detention, if used inappropriately, can be a tool police, prosecutors and judges can use to conduct corrupt practices with or without collusion of detention/prison authorities. However, in this paper we will look more closely at the potential for corruption within the detention/prison community.

Slogans like, “Power corrupts and absolute power corrupts absolutely,” when incorporated into a discussion of prisons, tends to confirm a feeling that prisons breed corruption. However, current research indicates that the issue is not that simple. Individuals with strong moral awareness are less likely to use their authority for self-gain and most often use it to expand their good behavior, while those with a weak moral identity are more likely to misuse their power. (DeCelles, 2012)¹. That corruption exists in detention facilities and prisons is not surprising. Corrections, after all, is a microcosm of the greater society. However, identifying signs of potential corruption within a prison environment, its causes and how to reduce it are currently part of well-run correction/detention operations. For purposes of this paper, corruption refers to the misuse of one's position or authority for personal gain.

The subservient position of prisoners, the amount of discretion given to correctional officers, the anxiety of inmate family and friends, coupled with a lack of transparency with which many prisons operate allows for the possibility of a number of corrupt practices:

[†]The word *correction* and *prison* are used interchangeably in this article and mean the same thing and refers to convicted and sentenced individuals. *Detention*, called *remand* in some jurisdictions, refers to pre-trial or pre-sentenced individuals.

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¹DeCelles, K.A., D.S. DeRue, J.D. Margolis, and T.L. Ceranic. *Does Power Corrupt or Enable: When and Why Power Facilitates Self-interested Behavior*. *Journal of Applied Psychology* 97, no. 3 (May 2012): 681–689.

- Allowing inmates to conduct criminal activities and administer criminal organizations from within the prison.
- Providing inmate labor to private business or individuals for a profit.
- Lying in a report or during an inmate's disciplinary hearing to insure a finding of guilt.
- Using excessive force either on purpose or upon losing control of one's emotions.
- Using one's position to elicit sexual favors from an inmate or a family member or friend of the inmate.
- Leaking confidential information to embarrass an inmate or to appear more important to others.
- Smuggling unauthorized communications out or contraband items into an institution for personal gain.
- Stealing items of value from an inmate or visitor during a search.
- Not reporting the misconduct of a fellow officer as a show of loyalty.
- Having what the officer considers *consensual* sex with a current or former inmate when prison rules prohibit it.
- Threatening an inmate with loss of privileges, discipline or violence for personal gain.
- Accepting something from an inmate or family member to insure good reports and special favors and treatment, such as increased visits.
- Verbally harassing and intimidating inmates for personal aggrandizement.

Corruption from the top describes a facility or system where the top administration, possibly in collusion with political and/or other criminal justice agencies operates in a corrupt manner. Payoffs, kickbacks, favoritism, graft, bribes by those in control of a political system, administration, facility, or particular shift establishes a tone and methods of operation that makes corruption at a lower level both acceptable and expected. If the prison administration provides inmates as non-paid labor to friends or colleagues, the message that exploitation of inmates for personal gain is acceptable becomes clear to all staff. Examples of system-wide corruption include:

- Bolivia's San Pedro Prison which had a thriving cocaine production and distribution operation (Gilbert, 2014)²
- Philippines Bilbid Prison - in exchange for bribes provides inmates with drugs, sex and privileges (IANS, 2014)³
- "Indonesian prisons operate like a complex business ecosystem sustained by corruption, overcrowding, mismanagement and poor resources." (VOA, 2013)⁴
- Haiti where due to bribes or lack thereof prisoners can wait years for trials. (O'Brien, 2014)⁵

II. CONDITIONS THAT CAN LEAD TO CORRUPTION IN DETENTION FACILITIES AND PRISONS

A. Conditions That Can Lead to Corruption Due to a Lack of Resources

1. Staff Shortages and Overcrowded facilities

Staff shortages and overcrowded can create opportunities for corruption by reducing both inmate and staff supervision and increasing an officer's state of chronic stress. Not all stress is bad. Good stress, called *eustress* by psychologists, helps people feel alive and excited about life or their current activity. But *chronic stress* can lead to personality disorders⁶ in correctional officers. Among those disorders are:

²Gilbert, Jack. *Meet the Man Who Thrived in Bolivia's Cocaine Prison*. VICE UK, <<https://news.vice.com/article/meet-the-man-who-thrived-in-bolivas-cocaine-prison>>.

³Gulfnews.com, *Drugs, sex and corruption in Philippines'* June 7, 2014, <<http://gulfnews.com/news/world/philippines/drugs-sex-and-corruption-in-philippines-largest-prison-1.1344100>>.

⁴Voice of America, *Drugs, Corruption Rampant in Indonesian Prisons*, July 31, 2013. <<http://www.voanews.com/content/drug-use-corruption-rampant-in-indonesian-prisons/1713589.html>>.

⁵O'Brien, James. *Haiti special report: Corruption means many prisoners wait years for trials*. *Irish Independent*, February 2, 2014, Dublin, Ireland

⁶McCafferty, Francis L. MD, and McCafferty, Margaret, RN. *Corruption in Law Enforcement: A Paradigm of Occupational Stress and Deviancy*. *Journal of the American Academy of Psychiatry and the Law*, Vol. 26, No. 1 (1998): 61-62.

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- *Borderline Personality Disorder* which can exhibit itself in intense anger or lack of control, promiscuous sexual activity, substance abuse, extreme loyalty to fellow officers combined with a devaluation of inmates or citizens.
- *Narcissistic Personality Disorder* which is characterized by lack of empathy, exploitation of others, arrogance, a sense of entitlement, and a belief that one has special powers or abilities.
- *Antisocial Personality* describes people who lack a conscience and have no sense of right and wrong.
- *Passive-Dependent Personality* sees others getting away with dishonest activities and uses that as a reason to engage in corrupt behavior.

2. Low Staff Pay and/or Inadequate Benefits

Low staff pay and/or inadequate benefits put officers in a position where supporting themselves or their families without finding extra income is virtually impossible. Throughout the world many jurisdictions which provide food, housing, medical care, education and recreation to prisoners do not provide the staff with the ability to acquire comparable benefits. Beside the financial burden, psychologically the officers can begin to compare themselves with the inmates, which fosters animosity toward the prisoners or the prison administration.

B. Conditions That Can Lead to Corruption Due to Poor Management

1. Lack of Direction

Lack of direction describes an agency that has no written operational policies defining appropriate behaviors and rules in the treatment of prisoners. In the Lewis Carroll story, *Alice in Wonderland*, the Cat asked Alice, "Where are you going?" When she responded, "I don't know," the Cat said, "If you don't know where you are going, any road will get you there." For the corrections officer that is too often a familiar scenario. Many times the public, politicians and correctional agencies are not precise in deciding why people are sent to prison or held in detention. Officers do not always understand that detention is to insure that people will show up for their trial. Detainees, by legal definition, are not guilty of any crime and are to be treated as much like normal citizens as security allows. Prisons, in most jurisdictions in modern times, follow the axiom that individuals are sent to prison **as** punishment and not **for** punishment. When staff does not understand the legal, philosophical, and operational constraints of their work, then what some of them might consider appropriate action could actually fall into the category of corrupt practice.

2. Lack of Transparency

Lack of transparency exists for several well-intentioned reasons. Detention prisoners, like all non-convicted citizens in most nations, have some right to the privacy of their personal information, so sharing it with the public is restricted. Prisons, especially in an age of expanding concern over terrorist and gang-related activities, exacerbates the reluctance of prison authorities to disclose techniques, reports of investigations and security procedures. These concerns produce an atmosphere where the prison walls, in addition to keeping the inmates in, tend to keep the public out. Controlling the lives of individuals without transparency increases the chance of corruption.

3. Lack of Training

Lack of training places officers in a position of feeling alone and vulnerable as well as not knowing what is right or wrong in the context of prison work. Learning *how* to use force is not particularly difficult, but learning *when* to use force and how much to use takes great skill and requires enough practice to make the appropriate reaction second nature. Inappropriate use of force is a relatively consistent concern within a prison/detention context. Searching an individual in a manner that does not lend itself to inappropriate physical contact yet is thorough enough to discover contraband is a skill acquired through training. Controlling inmate behavior without resorting to humiliating, demeaning or physically harmful techniques is trained behavior. *Acceptable* behavior is defined by laws, procedures, institutional values and a *Code of Conduct*. An officer's knowledge and understanding of those are also a matter of training.

4. Acceptance of Excessive Use of Force

Acceptance of excessive use of force by an administration and the public can contribute to the acceptance of corrupt practices by setting a tone that whatever happens to the prisoners is because they deserve it or asked for it. Law enforcement and military heroes on television and in the movies are more often than not those who use excessive force and are rewarded for it by solving the crime or stopping the

fictional calamity. Correction officers see the same media and cheer for the same heroes and tell their own stories with similar themes.

5. Lack of Monitoring, Investigating or Reporting Systems

Lack of monitoring, investigation or reporting systems within a detention/correction facility creates both the impression and reality that unethical practice by staff will go unnoticed and/or unpunished. A system without checks and balances from within the organization or from outside sources is a system vulnerable to corrupt practices. If inmates do not have a way to safely report abuse or if officers are not protected by some type of whistle-blower legislation, then they are likely to remain victims of or unwilling participants in corrupt activities.

C. Conditions That Can Lead to Corruption Due to an Absence of Leadership and/or Supervision

1. Addictive Behaviors

Addictive behaviors of staff can impact on behavior, self-esteem and depending upon the addiction, quickly soak up personal resources. Addictions include drugs and alcohol but also gambling, sex, shopping, games and eating among others. “A power trip can be just as addictive as a cocaine-induced high. . . . Power changes the brain triggering increased testosterone in both men and women. . . . Testosterone and one of its by-products called 3-androstanediol, are addictive, largely because they increase dopamine in a part of the brain’s reward system called the nucleus accumbens . . . too much power - and hence too much dopamine, can disrupt normal cognition and emotion, leading to gross errors of judgment and imperviousness to risk, not to mention huge egocentricity and lack of empathy for others.” (Robertson, 2012)⁷

2. Informal Inmate Reward System

An informal inmate reward system is where an inmate who acts as spy for a correctional officer is rewarded with better living conditions, work or privileges. The inmate “snitch” may also be exempted from punishment for participating in criminal activities.

3. Institutional Codes of Silence

An institutional code of silence is an *unwritten rule* which some officers use to protect fellow officers and at times themselves from the consequences of misconduct. Much like the Mafia system of “Omerta,” it means that an officer will not report a fellow officer for unethical behavior nor testify against a fellow officer. Such a *Code* both allows for and encourages corruption among staff.

4. Familiarity with an Inmate

Familiarity with an inmate to the point that the inmate knows the officer’s personal and family business and the officer’s likes or dislikes or conflicts with other staff or policies. This can lead to blackmail or manipulation by the inmate. It can also lead to favoritism or an officer not reporting an inmate’s improper behavior.

III. SIGNS THAT CORRUPTION MIGHT EXIST WITHIN THE DETENTION OR CORRECTION FACILITY

A. Formal Corruption Assessment

Assessment tools to help detect corruption are relatively rare in corrections. Those that do exist seem aimed primarily at identifying if the particular facility has the tools in place to help prevent corruption rather than to identify individuals who may be susceptible to or actively involved in corrupt practices.

- The Development Academy of the Philippines, in 2007, produced for the office of the Ombudsman of the Philippines, with support from the European Commission, a report on its extensive study and assessment of corruption vulnerability within the Philippine correctional system⁸. The Integrity Development Review (Baliton, 2008)⁹ is a compendium of diagnostic tools – self-assess-

⁷Robertson, Ian H. “The Winner Effect: The Neuroscience of Success and Failure. Thomas Dunne Books (October 2012), New York, USA.

⁸The report can be found at: <http://www.ombudsman.gov.ph/docs/statistics/2007_bucor.pdf>.

⁹Baliton, Evelyn A. *Understanding the Integrity Development Review (IDR) Project, Prospects and Challenges*, January 29, 2008. <[http://www.pdf.ph/downloads/governance/Understanding%20the%20IDR%20\(PDF\).pdf](http://www.pdf.ph/downloads/governance/Understanding%20the%20IDR%20(PDF).pdf)>.

ment scorecards for managers, feedback, survey of employees and corruption vulnerability assessment – for assessing the robustness of corruption resistance mechanisms, and for identifying the vulnerabilities of government agencies to corruption.

- The report identified vulnerability points in areas such as financial management, business activities conducted by corrections especially in the agricultural-related programs of the corrections service. In terms of staff–inmate corruption, the main point of concern was the potential of staff familiarity and unsupervised contact with prisoners.
 - Apart from management procedures which should apply to all government and private business, the majority of the recommendations were in line with other findings within this paper in terms of emphasizing the need for correction leadership to proactively discourage corruption, establish and promote a Code of Conduct, establish policies for officers to follow when offered gifts and establish procedures on internal reporting for protecting whistle-blowers. Procedures to help counter staff potential for abusing their positions for personal gain while working with inmates included establishing staff rotation schemes and eliminating inmates from positions of power or control over other inmates. Part of the study included a look at prisons in other nations, but apparently little of a practical nature was found that could be helpful in the Philippines Corrections service.
- A dedicated London Prisons Anti-Corruption Team (LPACT) is based at New Scotland Yard to combat staff corruption in London Prisons. It is jointly staffed by Prison Service representatives and police officers and is managed within the London Region. The unit focuses on the key individuals allegedly involved in corrupt activity and links to criminal associates in the community, and across similar organizations such as SERCO (court staff who have been successfully prosecuted).
- A report by Lukas Muntingh¹⁰ for the South African Civil Society Prison Reform Initiative provides a detailed examination of corruption in South Africa's prisons according to the different relationships operating in a prison environment. It also categorizes different types of corrupt activities found in these prisons. Similar to observations at the beginning of this paper, the report identifies areas that make corruption in the prison system different from that in other sectors of public service. Of most importance is the very close relationship that often develops between staff and prisoners caused by the organization and functions of the prison. As the report points out: First, the all-encompassing nature of imprisonment regulates every aspect of prisoners' daily lives from having the most basic necessities to having access to luxury items, or even illegal items and activities. This unavoidably creates a situation where some goods are scarce, and demand and reward exists for their supply. Second, the state as the controller, establishes a highly unequal power relationship between the prison bureaucracy (represented by the warder) and the prison population. Third, the closed nature of prisons and their general marginalization from the public eye and political discourse do not assist in making prisons more transparent. Against this backdrop, poor management, weak leadership or organized crime can have a devastating impact on the overall operation of a prison system and, ultimately, on the human rights of prisoners.

B. Detecting Signs of Potential Corruption

The prison community in individual institutions is relatively small and close-knit. Prison staff are generally trained in observing inmates and detecting changes in behavior or signs of potential problems. These skills are further honed through experience. These same skills are also available to help identify staff who may be moving toward, or engaged in, inappropriate behaviors. Items supervisory staff may see as warning signs include:

- Drinking or use of drugs on or off duty
- Increased use of profanity during the course of work and displays of uncontrollable anger
- Constant complaints about the stress of the job or the unfairness of management

¹⁰ Muntingh, Lukas, Investigating Prison Corruption in South Africa, Civil Society Prison Reform Initiative, 2006, <<http://cspri.org.za/publications/research-reports/Investigating%20prison%20corruption.pdf>>.

- Over emphasis on the need for officers to stick together and back each other up when dealing with inmate complaints or with management
- Having gang-related tattoos or use of gang signs
- Exhibiting special protection or interest in particular inmates
- Changes in income and/or lifestyle
- Casual touching of particular inmates or allowing inmates to use suggestive or personal references
- Significant increase or decrease in the filing of disciplinary or incident reports
- Increase in violence or contraband during a particular officer's shift

IV. WAYS TO MINIMIZE CORRUPTION IN DETENTION/CORRECTIONS

A. Clear Definitions of What Is Expected of Correctional Personnel

- Development of a mission statement, core values, and a *Code of Ethics*. These and related documents should be widely circulated to staff and the public.
- Development and wide circulation of written definitions of graft and corruption within the corrections context and what sanctions can be imposed.
- Development of clear policies on personal contact with inmates and their families, acceptance of gratuities or gifts, confidentiality, use of force, and inmate discipline.
- Written policy and procedures indicating how inmates and staff can appeal decisions or actions that negatively impact on them.

B. Training

- Inclusion in basic staff training and annual/periodic training of the laws, procedures and policies impacting on corrections and especially the duties of staff. The increase in the use of technology in training, including e-learning, training videos, and distance learning reduces the cost involved in keeping staff updated and allows them to train during their own time and even at home. All training, including computer-based training should include testing mechanisms to insure staff is taking advantage of it and understanding what is being presented.
- Inclusion of training on the *Code of Conduct* in basic training and annual training. Such training should include self-assessment techniques to measure oneself and one's actions in terms of the *Code of Conduct*.
- Exposing staff to the United Nations, Council of Europe and related international documents such as the *Standard Minimum Rules for the Treatment of Offenders*, *Protocols Against Torture*, and *Basic Principles on the Use of Force and Firearms by Law Enforcement Officers*, indicating how they relate to their own national laws and procedures.
- Training on staff and inmate complaint mechanisms and the Employee Assistance Program.

C. Transparency Mechanisms

- Creation of an independent Ombudsman available to inmates, staff and the public.
- Creation of an independent inspection process. It can be totally apart from the prison services such as the UK's HM Inspectorate of Prisons or industry-wide such as the American Correctional Association Commission on Accreditation.
- Facilitate open access to prisons by the International Committee of the Red Cross, Amnesty International, Human Rights Watch and national human rights agencies.
- The Scottish Prison Service Management and Information Department conducts an annual inmate survey in all prisons. The survey forms are given to each inmate who fills it out in private, places the completed survey in an envelope, seals it and personally hands it to a member of the survey team. The comprehensive survey covers all aspects of prison life, including treatment by staff and other inmates. The entire survey is given to management within 20 working days and key results are posted in the main inmate living areas.
- South Africa, in 2006, under the Civil Society Prison Reform Initiative instituted a comprehensive study on *Corruption in the Prison Context*. The full report was made public and used as the basis for investigations and public debate.
- Jurisdictions in Australia, Canada and other nations have *Independent Prison Visitors* who regularly visit the prisons and talk to prisoners, staff and visitors. They provide recommendations to the Minister of Corrections.

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- Private and uncensored mail, visits and telephone communications between prisoners, their attorneys and judicial authorities provide inmates with access to ways to report corruption or inhumane practices.
- Access to independent Employee Assistance Programs provide avenues for correctional personnel to obtain help prior to falling into corrupt practice as well as having a way to indicate potential institutional weaknesses that could facilitate corruption.

V. A FINAL THOUGHT

This paper began with the premise that the absolute power given to detention and prison personnel does not necessarily lead to corruption. United States moral and social philosopher Eric Hoffer summed it up this way, "It has often been said that power corrupts. But it is perhaps equally important to realize that weakness, too, corrupts. Power corrupts the few, while weakness corrupts the many. Hatred, malice, rudeness, intolerance, and suspicion are the faults of weakness. The resentment of the weak does not spring from any injustice done to them but from their sense of inadequacy and impotence."¹¹ Four centuries earlier, English writer, poet, dramatist, playwright, and politician John Lyly could have been talking about those who work with "undesirables" when he said, "The sun shineth upon the dunghill, and is not corrupted."¹²

(The author would like to thank members of the International Corrections and Prisons Association Staff Training and Development Committee who provided him with information, insight and suggestions for this brief.)

¹¹ Hoffer, Eric. *The Passionate State of Mind: And Other Aphorisms*, Page 41 (1955). Harper & Row, New York.

¹² Lyly, John. *Euphues: The Anatomy of Wit*, page 43 (1579).

APPENDIX A: SAMPLE LESSON PLAN FOR TEACHING THE CODE OF CONDUCT FOR CORRECTION WORKERS

OBJECTIVE	CONTENT	EVALUATION
<p>By the end of the session, the participants will be able to:</p> <p>Explain ethics and professionalism.</p>	<p>Definition of Ethics and Professionalism</p> <p>Ethics is making choices between right and wrong ... doing what is right. Generally, the conscience is the guide.</p> <ul style="list-style-type: none"> ➤ Avoid ethical problems by: <ul style="list-style-type: none"> Using good reasoning Acting in good faith Doing job fairly & honestly Respecting rights of others Following rules & regulations <p>Ethics and Action:</p> <p>Ethics is about putting principles into action. Consistency between what we say we value and what our actions say we value is a matter of integrity.</p> <p>It is also about self – restraint:</p> <ul style="list-style-type: none"> ➤ <u>Not doing what you have the power to do.</u> An act isn't proper simply because it is permissible or you can get away with it. ➤ <u>Not doing what you have the right to do.</u> There is a big difference between what you have the right to do and what is right to. ➤ <u>Not doing what you want to do.</u> In the well-worn turn of phrase, an ethical person often chooses to do more than the law requires and less than the law allows. <p>Professionalism is an act of participating in an occupation that requires significant education, training or experience, and involves specialized skills and requires the highest degree of commitment and dedication</p> <ul style="list-style-type: none"> ➤ Professionalism carries PRIVILEGES of: <ul style="list-style-type: none"> Camaraderie Job security Opportunity for advancement Respect of the public Knowing YOU make a difference ➤ Professionalism carries RESPONSIBILITIES: <ul style="list-style-type: none"> Continual training Fairness Honesty Highest standard of ethical conduct <p>Basic Social Ethics Concepts</p> <ul style="list-style-type: none"> ➤ Ethics are among other things, a set of rules and standards which govern individual conduct. ➤ Every aspect of human behavior is influenced by personal values, but values are not easily defined or achieved. 	<p>What is ethics and professionalism?</p>

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<p>Explain the basic social ethics concepts.</p>	<ul style="list-style-type: none"> ➤ As public servants, we are expected to abide by standards of conduct established. The public has entrusted us with a large responsibility, it demands that we abide by the highest ethical standards and is quick to criticize when we fail to live up to those standards. <p>Misconceptions About Ethics</p> <ul style="list-style-type: none"> ➤ Ethics is not something that good people need to worry too much about. ➤ Idealism is incompatible with realism. ➤ People concerned about ethics dismiss every pleasure and are just holier-than-thou. ➤ Principle subject matter of ethics is moral problems as opposed to the formation of habits of good character. ➤ If other officers are not concerned, then it is acceptable. <p>People have lots of reasons for being ethical:</p> <ul style="list-style-type: none"> ➤ There is inner benefit. ➤ There is personal advantage. ➤ There is approval. ➤ There is religion. ➤ There is habit. 	<p>What are the social ethics concepts?</p>
<p>List the typical misconceptions about ethics.</p>	<p>Major Points Contained in the Code of Ethics</p> <ul style="list-style-type: none"> ➤ Fundamental Duty ➤ Safeguard lives and properties ➤ Constitutional rights ➤ An example to all ➤ Courageous calm ➤ Self - restraint ➤ Honest in thought and deed ➤ Confidential ➤ Personal feelings ➤ Fear or Favor, Malice of Ill Will, and with Dignity ➤ Unnecessary force ➤ Gratuities <p>Ethical Decision-Making Tools</p> <p>1. Six Pillars of Character</p> <ul style="list-style-type: none"> ➤ Trustworthiness ➤ Respect ➤ Responsibility ➤ Fairness ➤ Caring ➤ Citizenship 	<p>What are the misconceptions about ethics?</p>
<p>Explain why the need to be ethical?</p>	<p>Groundwork for Making Ethical Decisions</p> <ul style="list-style-type: none"> ➤ Taking choices seriously ➤ Recognizing important decisions ➤ Good decisions are both ethical and effective ➤ Discernment and discipline ➤ Stakeholders 	<p>What are the reasons for a Corrections Officer to be ethical?</p>
<p>Enumerate and explain the major points contained in the Code of Ethics.</p>	<p>Seven Steps to Better Decisions</p> <ul style="list-style-type: none"> ➤ Stop and think ➤ Clarify goals ➤ Determine facts ➤ Develop options 	<p>What are the major points contained in the Code of Ethics?</p>

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<p>Apply the Ethical Decision-Making Tools.</p>	<ul style="list-style-type: none"> ➤ Consider consequences ➤ Choose ➤ Monitor and modify <p>Rationalization in Making Decisions</p> <ul style="list-style-type: none"> ➤ If it's necessary, it's ethical ➤ The false necessity trap ➤ If it's legal and permissible, it's proper ➤ It's just part of the job ➤ It's all for a good cause ➤ I was just doing it for you ➤ I'm just fighting fire with fire ➤ It doesn't hurt anyone ➤ Everyone's doing it ➤ It's OK if I don't gain personally ➤ I've got it coming ➤ I can still be objective 	<p>What are the ethical decision-making tools? What is the procedure in making ethical and better decisions?</p>
<p>Differentiate ethical & legal behaviour. Apply ethical and legal behaviour in Corrections work.</p>	<p>Ethical & Legal Behaviour</p> <ul style="list-style-type: none"> ➤ Is what's legal always right? ➤ Is the law THE source for judging ethical or moral behaviour? ➤ "Ethical" and "legal" are not the same. ➤ You can follow the law to the letter... and still violate professional ethics. 	<p>What is ethical and legal behaviour. Give examples in Corrections work?</p>

APPENDIX B: A SAMPLE CODE OF CONDUCT (from Canada)

STANDARDS of PROFESSIONAL CONDUCT IN THE CORRECTIONAL SERVICE OF CANADA

DECLARATION

To the employee:

You are expected to read and familiarize yourself with the Standards of Professional Conduct. It is your responsibility to seek guidance from your supervisor on any areas that you feel require explanation or clarification.

Acknowledgement and undertaking by the employee:

I have received the Standards of Professional Conduct and the Code of Discipline, and undertake to maintain, in the course of my employment, the standards of professionalism and integrity that are therein set forth.

Print your name

Signature of Employee

Title

Date

A copy of this signed declaration must be returned to Personnel Services Division for placement on your personal file.

COMMISSIONER'S INTRODUCTION

The Correctional Service of Canada's Mission, with its Core Values, Guiding Principles and Strategic Objectives, challenges staff to pursue a goal of excellence in corrections.

As public servants, we are accountable to our Minister and to Parliament, and, through them, to the Canadian people as a whole. Our behavior must, at all times, show that we are worthy of their trust and confidence to carry out the responsibilities of our agency. As employees in the field of corrections, we have a special obligation to make sure that everything we do in our work- whether it is administrative or involves direct contact with offenders- ultimately contributes to the protection of society. This is a vital obligation that is both demanding and exciting. It calls upon each of us to meet high standards of honesty and integrity, and to approach our work in a spirit of openness, compassion and co-operation. These are indeed the hallmarks of professionalism.

Core Value Three of our Mission Document states: "We believe that our strength and our major resource in achieving our objectives is our staff and that human relationships are the cornerstone of our endeavour." The guiding principles of Core Value Three reflect the Service's focus on the importance of its employees. These principles form the basis of the Standards of Professional Conduct.

The primary emphasis of the Standards of Professional Conduct is on promoting ethical behaviour consistent with the Mission. It recognizes that corrections is a complex field, which frequently presents an employee with difficult practical and ethical decisions. The principles set out in the Standards of Professional Conduct are intended to guide staff in situations where the right course of action may not always be clear.

The Standards of Professional Conduct is a guide for all staff at all levels of the organization. Managers and supervisors, however, have special obligations. As leaders in the Service, they are expected to set an example by demonstrating high ethical and professional standards in their own conduct. They must also be sensitive to conditions of working environment, and actively concern themselves with assisting, advising and motivating their staff.

When, on occasion, an employee flagrantly or persistently falls short of acceptable standards of conduct, the disciplinary part of the Standards may come into play. Then it is the job of the supervisor to take prompt action to correct the problem. Such action must be fair and must respect the employee's rights. The Standards of Professional Conduct tries to give supervisors benchmarks to help meet these often difficult responsibilities.

Our Mission should inspire us all to be the best we can be and to build humane and helping relationships with both our fellow employees and the offenders in our care. I hope that these Standards of Professional Conduct will guide us towards making the closing words of the Mission Document a reality: "to pursue our Mission in a way that exemplifies at all times our values and guiding principles so that our integrity is never compromised."

DEFINITIONS

Employees, staff

For the purpose of this document, these terms mean all persons employed full-time or part-time by the Correctional Service of Canada, whether they have indeterminate or term status.

Public

For the purpose of this document, the public means all persons other than employees of the Correctional Service of Canada, and includes offenders.

Workplace, place of work

These terms mean administrative and operational facilities of CSC and also any other location in which work for CSC is carried out by a CSC member.

LEGISLATIVE AND OTHER AUTHORITIES

The following documents are the principal authorities governing CSC members' responsibilities and duties, and are readily available, upon request, to members at their workplaces:

Overall Correctional Responsibilities: the Corrections and Conditional Release Act and regulations; Commissioner's Directives, Regional Instructions and local Standing Orders.

Conflict of Interest: the Conflict of Interest and Post Employment Code for the Public Service, the Criminal Code.

Disclosure of Information: the Oath of Office and Secrecy; the Canadian Charter of Rights and Freedoms; the Access to Information Act; the Privacy Act; the Criminal Code; the Security Policy of the Government of Canada.

Political Activity: the Public Service Employment Act (section 32).

Discrimination: the Canadian Human Rights Act; the Public Service Employment Act; the Official Languages Act.

Employee Organization Activities: the Public Service Staff Relations Act.

PROFESSIONAL STANDARDS

1. STANDARD ONE

RESPONSIBLE DISCHARGE OF DUTIES

Staff shall conduct themselves in a manner which reflects positively on the Public Service of Canada, by working co-operatively to achieve the objectives of the Correctional Service of Canada. Staff shall fulfil their duties in a diligent and competent manner with due regard for the values and principles contained in the Mission Document, as well as in accordance with policies and procedures laid out in legislation, directives, manuals and other official documents.

Employees have an obligation to follow the instructions of supervisors or any member in charge of the workplace and are required to serve the public in a professional manner, with courtesy and promptness.

Discussion and Relevance

Responsible discharge of duties means employees perform their work accurately, completely and within the time frames allotted for the task.

Staff are encouraged to be innovative and to participate in decision making through positive and constructive means. Statements that criticize other employees or the Service are to be made only if they are verifiable and constructive. Disagreement with a policy does not mean that staff members can neglect their duties. They are free to question policies, procedures or instructions but are expected to do so within appropriate channels. In particular, employees must not be critical of policy or operations in front of offenders or the public; to do so is to encourage a lack of respect for the Correctional Service of Canada and its staff.

2. STANDARD TWO

CONDUCT AND APPEARANCE

Behaviour, both on and off duty, shall reflect positively on the Correctional Service of Canada and the Public Service generally. All staff are expected to present themselves in a manner that promotes a professional image, both in their words and in their actions. Employee dress and appearance while on duty must similarly convey professionalism, and must be consistent with employee health and safety.

Discussion and Relevance

The way in which employees speak and present themselves is an important part of a professional Correctional Service. We lead by example. As role models for offenders, staff are responsible for setting high standards which offenders can respect and emulate. The use of abusive language, showing discour-

teousness towards other people and disrespect for their views, or other such behaviour will encourage offenders to act in the same manner, and so create an environment that is unfavourable to healthy interaction. Staff must take care, both on and off duty, to present themselves as responsible law-abiding citizens.

Employees who commit criminal acts or other violations of the law, particularly if the offences are repeated or serious enough to result in imprisonment, do not demonstrate the type of personal and ethical behaviour considered necessary in the Service. Accordingly, any employee who is charged with an offence against the Criminal Code or against other federal, provincial or territorial statutes must advise his or her supervisor before resumption of duties.

At times, an employee may experience personal problems which may affect his or her job performance. The Service has a responsibility to offer assistance to members facing such difficulties. Notwithstanding this offer of assistance, personal problems are not considered a reason to ignore or fail to take action on poor employee performance or behaviour.

3. STANDARD THREE RELATIONSHIPS WITH OTHER STAFF MEMBERS

Relationships with other staff members must promote mutual respect within the Correctional Service of Canada and improve the quality of service. Staff are expected to contribute to a safe, healthy and secure work environment, free of harassment and discrimination.

Discussion and Relevance

It is the responsibility of all staff to work towards improving the health and safety of the workplace. Staff shall comply with all legislation and policies relating to occupational health and safety, within their intended purposes.

Staff shall not inhibit the work of fellow employees or coerce members to participate in illegal activity or misconduct.

Staff shall respect the rights of all fellow workers, regardless of race, national or ethnic origin, color, language, religion, gender, age, sexual orientation, or mental or physical disability. Staff shall not participate in, or condone, any form of harassment or discrimination. Staff are expected to be co-operative and civil in their dealings with each other.

Work in corrections represents a co-operative effort, drawing upon a wide range of expertise and knowledge from within the Service and from other agencies and organizations in the criminal justice system. Employees have a responsibility to work as part of a team to meet correctional objectives.

Supervisors are expected to demonstrate high personal standards. They must take prompt action when they become aware of discrimination, harassment or disrespectful treatment of any staff member by other employees. Failure to act will be considered a serious infraction.

4. STANDARD FOUR RELATIONSHIPS WITH OFFENDERS

Staff must actively encourage and assist offenders to become law-abiding citizens. This includes establishing constructive relationships with offenders to encourage their successful reintegration into the community. Relationships shall demonstrate honesty, fairness and integrity. Staff shall promote a safe and secure workplace and respect an offender's cultural, racial, religious and ethnic background, and his or her civil and legal rights. Staff shall avoid conflicts of interest with offenders and their families.

Discussion and Relevance

All interactions with offenders are to be fair, honest and open, and members shall actively involve themselves in the offender's treatment plan. Staff are expected to be active participants in the reintegration process and to work towards reducing the risk which the offender presents to society. The objective of all staff must be to contribute to the safe reintegration of offenders into the community.

Staff must be aware of all matters affecting offenders for whom they are responsible by referring to

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their files and any other relevant source of information. They must be informed of the correctional plan and the offender's progress towards the achievement of that plan.

Staff must be diligent in their responsibility to record and make available for review all offender information which could contribute to sound decisions affecting the offender or public safety. In addition, staff must give offenders ongoing documented feedback about their behaviour. Staff must respect the race, national or ethnic origin, color, religion, sex, age, language and/or mental or physical disabilities of offenders and be responsive to the various needs of different cultural groups in our society. Ensuring that relationships with offenders remain constructive and professional is a difficult and sensitive task, but it is necessary for a professional service. It requires that staff maintain a delicate balance between personal and professional interest in the offender.

Inappropriate relationships include, but are not limited to, concealing an offender's illegal activity, using inmate services for personal gain, and entering into business or sexual relationships with offenders, their families, or their associates. Supervisors are expected to take prompt action when they see signs that an inappropriate relationship between an employee and an offender exists or could develop.

The general rule is that staff do not accept gifts from offenders and their families or friends. In exceptional circumstances, it may be permissible to accept a gift of purely token value from an offender, providing it is clear that doing so will not create any obligation on the staff member.

Any doubts or concerns staff have involving relationships with offenders should be discussed with the supervisor. Staff should always inform the supervisor of any token value gift offered or received.

Remember that a professional relationship means loyalty to the values, ethics and standards of the Correctional Service of Canada.

5. STANDARD FIVE CONFLICT OF INTEREST

Staff shall perform their duties on behalf of the Government of Canada with honesty and integrity. Staff must not enter into business or private ventures which may be, or appear to be, in conflict with their duties as correctional employees and their overall responsibilities as public servants.

Discussion and Relevance

Employees of the Government of Canada are governed by the Conflict of Interest and Post Employment Code for the Public Service, as well as the Criminal Code of Canada.

Staff cannot use or appear to use their position for personal gain or advantage. This usually means receipt of financial benefits, gifts or favours from persons conducting, or who are intending to conduct, business with the Government or the Department.

Staff should, for their own protection, seek clarification and advice on any potential conflict of interest.

6. STANDARD SIX PROTECTION AND SHARING OF INFORMATION

Staff shall treat information acquired through their employment in a manner consistent with the Access to Information Act, the Privacy Act, the Security Policy of the Government of Canada, and the Oath of Secrecy taken by all employees of the Public Service of Canada. They shall ensure that appropriate information is shared in a timely manner with offenders, with other criminal justice agencies and with the public, including victims, as required by legislation and policy.

The Correctional Service of Canada recognizes and respects the confidentiality requirements of particular professional groups such as chaplains and medical staff.

Supervisors are responsible for providing their employees with direction and guidance concerning the protection and release of information.

Discussion and Relevance

In the course of their employment, staff are exposed to a wide range of information about offenders,

employees, and the operations of the Service.

All staff must respect offenders' and employees' right to privacy and this means not talking about offenders and staff members to the public, the media, family or friends. The Privacy Act and the Access to Information Act both outline information, which can be disclosed to third parties, and staff should be aware of their responsibilities in this regard.

Staff have an obligation to protect the sensitive information and assets to which they have access. The manner in which information is created, transmitted, stored and destroyed is governed by the Security Policy of the Government of Canada.

There are certain situations in which staff are expected to share information about offenders. Staff and the parties concerned should be made aware of these situations. Such disclosures must be made with great care and, whenever possible, with the interested parties' knowledge, unless this would impede necessary decision-making or prejudice the interests or safety of others.

Staff Relations (613) 996-2127

ANALYSIS OF CURRENT TRAINING SYSTEMS, THE DEVELOPMENT AND USE OF TRAINING NEEDS ANALYSIS AND TRAINING EFFECTIVENESS

Gary Hill*



I. CORRECTIONAL¹ OFFICER TRAITS AND SKILLS

The following was compiled by the U.S. Department of Justice, National Institute of Corrections. It is the result of the work of a panel of correctional officers.

The material is included in this paper as a sample of what an individual institution or corrections academy might want to develop for its own officers. It is good to let staff, political leaders, media and the general public understand the importance and complexity of skills of corrections officers.

CORRECTIONAL OFFICER SKILLS COMPETENCY PROFILE OF CORRECTIONAL OFFICER

CORRECTIONAL OFFICER . . . ensures the public safety by providing for the care, custody, control and maintenance of inmates.

DUTIES:

Manage and Communicate with Inmates

- Orient new arrivals on rules, procedures, and general information of facility/unit.
- Enforce rules and regulations.
- Conduct cell inspections (for contraband, obstructions, sanitation, jammed locks, etc.).
- Establish rapport (introduce self, use good body language, listen, etc.).
- Provide verbal and written counseling (i.e. disciplinary behavior, information, confidential).
- Write disciplinary and incident reports.
- Intervene in crises: manage conflicts.
- Use of force continuum (minimum, less-than-lethal, lethal).
- Direct Inmate Movement
- Observe monitor and supervise movement of inmates/inmate property.
- Properly identify and escort inmates individually or in groups.
- Implement schedules for controlled movement of inmates at specified times.
- Restrict movement during scheduled physical counts of inmates.
- Receive/issue inmates passes/appointment slips.
- Implement emergency operating plans.
- Enforce custody/privilege/disciplinary restrictions.
- Receive/recommend inmate request for bed, cell, or unit move.
- Maintain Key, Tool, and Equipment Control
- Inspect keys, equipment, tools, and keepers.
- Report broken/missing keys, equipment, and tools.
- Inventory keys, equipment, and tools at beginning and end of shift.
- Maintain physical control of keys, equipment, and tools.
- Log keys, equipment and tools in the work area.
- Maintain Health, Safety, and Sanitation

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¹“Correction Officer” is the preferred term in many jurisdictions. Other terms used throughout the world include *prison officer, guard, warder, turnkey, and jailor*.

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- Report changes in behavior.
- Search persons, personal property, and units.
- Report security violations.
- Submit health, safety, and sanitation recommendations to appropriate departments.
- Implement proper health procedures for inmates with infectious diseases.
- Implement health/safety memos and posters.
- Develop cleaning schedule.
- Supervise cleaning schedule.
- Ensure proper handling/labeling of hazardous materials.
- Supervise hygiene habits of inmates.
- Communicate with Staff
- Establish positive rapport with other staff.
- Maintain constant communication/vigilance of other staff.
- Operate communication equipment per established guidelines.
- Document incidents, write reports, write recommendations via chain-of-command.
- Brief oncoming staff for next shift.
- Explain unusual procedures to staff.
- Participate in staff meetings.
- Participate in Training
- Participate in mandatory/elective training.
- Read daily log book and other information.
- Review new/updated post orders, administrative regulations and memos.
- Participate in cross-training.
- Review simulate emergency procedures (fire drills).
- Participate in continuing education.
- Seek additional training opportunities.
- Distribute Authorized Items to Inmates
- Order/request authorized items.
- Inventory and distribute authorized items.
- Document the distribution of authorized items.

<p>CORRECTIONAL OFFICER TRAITS & ATTITUDES</p> <p>Professional Dependable Consistent Fair Emotionally stable Empathic Ethical Flexible Punctual Self-motivated Cooperative Sincere Sense of humor Optimistic Perceptive Adaptable/change oriented Neat Compassionate Analytical Positive role model Credible Leader Assertive</p>	<p>KNOWLEDGE & SKILLS</p> <p><i>Knowledge of:</i></p> <p>Laws of jurisdiction Policies & procedures Force/use of Agency mission/purpose Ethnic differences Equipment/tools Available training Stress management</p> <p><i>Skills in:</i></p> <p>Written communication Non-verbal communication All equipment/tools Search CPR/First Aid Leadership Public relations Management Interpersonal communication</p>	<p>TOOLS & EQUIPMENT</p> <p>Radios Mechanical restraints (cuffs/waist chains/leg irons/flex-cuffs/soft restraints) Badge Whistle Leather duty belts with accessories Personal alarm devices/TAC alarms Keys Flashlight Electronic control devices (Taser/stun gun) Batons (straight/PR-24/riot baton) Gloves (protective/leather/duty) Uniforms/footwear Helmets (riot/protective) Polycaptor/riot shields Stun shields body armor (vests, etc.) Protective CPR/First Aid masks Weapons: Rifle/shotgun/handgun/37/38 mm gas gun Chemical agents: CN/CS/mace</p>
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		Gas masks Dispersal grenade/rubber bullets Generators Light stands Computers Telephone/paging systems Airpacks/SCBA Binoculars Audio/visual aids Equipment for opening/closing cell doors Sallyports, entry gates, corridor grills I.D. cards
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Looked at another way, the following list provides some situations or questions that a correction officer could face in the course of his/her job:

1. Gay inmate asks for protection — you have only dorms and 5 single punishment cells. Do you move the inmate into a punishment cell or leave him in the general population?
2. Volunteer offers to teach a class and you have no rooms except offices and cells (at capacity). Do you accept the offer or wait until you have more room?
3. Female comes into detention suspected of having a knife and you have no female staff and only 2 of you on duty – how do you search her to find out if she has a knife (and possibly drugs).
4. Inmates refuse to come out of their cells in one cell block. They demand more pay for their work. How do you react?
5. Inmate's mother comes 800 miles and arrives on a day when visiting is not allowed due to prison policy – the next visit is a day later and she must return home today to take care of her grandchildren.
6. Inmate and staff both killed in a fight — what do you do for inmates and what for staff?
7. You find out a female staff member has been talking privately with a male inmate — not sure if there is a relationship. Do you take any action or wait to see if she does something inappropriate with the prisoner.
8. Inmates are allowed to heat tea or coffee in their cells. An inmate throws hot water on a passing officer. Do you take the water heaters away from all inmates to insure officer (and other inmate) safety?
9. Program funds are cut 50% and you lose half your teachers, 2/3 of your activity coordinators, your outreach social worker (person responsible to help inmates with release planning) — what do you do, if anything?
10. You are told to establish a pre-release program. What would you include and who would you have teach it?
11. You are a short term detention facility where accused inmates stay an average of less than a week, though some will be held awaiting trial for as long as a year. Do you have any programs and if so what would you include?
12. Your detention facility is in a rural area with only one small medical clinic. The clinic does not provide service to your inmates (you have between 1 and 5 at a time) or your staff (5). How do you get their help to provide medical services?
13. An inmate might be suicidal. What steps do you take?

14. A national legislator tells you to treat a particular inmate better (or worse) than other inmates. The legislator is head of the legislative prison committee. Do you abide by his wishes?
15. How do you let officer's families, friends and the community know their work is important?
16. What can a warden do to reduce the impact of overcrowding?
17. An inmate is particularly helpful to staff in reporting illegal activities of other inmates. How do you reward him or her?
18. Inmates are allowed food such as eggs, fruit, bread, meat in their cells. How do you make sure it does not get contaminated and make inmates ill?
19. HIV/Aids is a concern in your prison — what steps do you take to keep it from spreading?
20. Your best friend's father is a long-time prison sergeant and you know he is abusing inmates. Do you report him and if so how do you keep from losing a friend and incurring the wrath of fellow officers?

II. TRAINING PROGRAMS

Prison systems are often poorly resourced, staff have generally received little training and are likely to be poorly remunerated compared with police and other uniformed services. Prisoners are drawn from across the nation and increasingly across the world. While the majority are poor and without access to financial and/or community resources, an increasing number are involved in organized crime syndicates and have access to significant financial and other resources. Some have been involved in protracted conflicts for many years and some have been gang members or even child soldiers. Substantial numbers come to prison with mental and emotional disorders. These factors combine to create an increasingly complex and difficult prisoner population in particularly challenging circumstances. It is therefore critical that national staff are afforded extensive training to enable them to develop and manage the challenges which they will confront.

A strategic approach to training should be adopted. The training strategy should take a long-term view of the skills, knowledge and competencies prison staff need. The training philosophy should emphasize that training and development must be an integral part of the management process and that learning is a continuous process. Training should be specifically designed to meet identified performance-related needs, planned and provided by competent trainers in a cost effective manner.

When developing a training strategy, prison components should incorporate processes that facilitate the development of:

- Governmental commitment to provide and maintain training resources on a continuous basis including funding and human resources, and
- Stability in staff appointments for a sufficient time to allow learning to be integrated into the work processes.

A. Developing a National Training Framework

Steps in developing a training framework include but are not limited to:

- Conducting a training needs analysis to define training needs
- Developing curricula and program information based on the training needs analysis
- Developing an evaluation framework to measure learning outcomes
- Developing policy guidelines related to the provision of training including recruitment, mid- and senior-management training, specialist training and donor-sponsored external training, both in and out of country.
- Establishing a "training policy committee" or similar mechanism which is nationally led and consists of prison leadership, staff and trainers.

B. Training Needs Analysis

A Training Needs Analysis (TNA) should be conducted as a first step in the process of developing a training framework.² The circumstances at the commencement of the process and immediate demands of the situation may result in the initial TNA being very rudimentary and a more comprehensive TNA being undertaken at a later time. TNAs should focus on identifying and solving performance issues. Part of this process includes identifying knowledge and competency gaps and determining whether training is an appropriate remedial response. This determination is a key aspect of a training needs analysis since training when used to address issues which cannot be resolved by a training response is both wasteful of resources and damaging to the credibility and integrity of the broader training program. It is important to note that in the context of a TNA “need” is the gap between “what is” and “what ought to be” rather than a “want” or a “desire.” The learning required, i.e. the skills and knowledge to be learned, competencies needed and attitude change desired, should be clearly specified.

The purpose of a Training Needs Analysis is:

- To determine training relevant to prison staff jobs
- To determine training that will improve performance
- To determine whether training will make a difference
- To distinguish training needs from organizational problems
- To link improved job performance with the organization's goals, and
- To determine what, if any, training has already been given, when and to whom.

A TNA may be conducted as a written survey or audit completed by individual staff. It may be conducted or supplemented by individual interviews or focus groups. National prison staff should be involved in both developing the questionnaires and conducting the analysis.

C. Collect Training Needs Analysis Data³

The process of gaining the data for the TNA can be as simple as asking the employee questions or as sophisticated as questionnaires and surveys. Here are approaches most commonly used to collect data for a TNA.

- **Group Interviews:** Group interviews can save time and are especially good when multiple perspectives are important. However, the interviewer must be a skilled facilitator to bring out all issues. Do not allow the discussion to be dominated by a few or an individual with status or position.
- **Documentation:** Performance records, evaluations, training records and other documentation can be of tremendous value in determining training needs. Be careful that the data collected is accurate and objective. Subjective performance reviews may be of limited value.
- **Performance Tests:** While tests can be difficult to design and often expensive, certain skills can be tested using standardized tests and metrics can be measured to provide quantitative data (multiple choice, fill in the blank etc.) of performance levels.

There is no best method of gathering Training Needs Analysis data. A combination of methods is most often the best approach.

The Training Needs Analysis is a critical activity for the training and development function. A thorough TNA identifies what specific performance areas require training, who will benefit from training and how the training should be designed. Effective TNA maximizes the return on your training investment.

A sample Training Needs Analysis template is attached as Appendix A.

²*Conducting a Training Needs Assessment*, Jeannette Swist, 2001. Explanation of the process can be found at: <http://www.amxi.com/amx_mi30.htm>.

³From SETTEC <www.settec.org>.

D. Initiating a Training Support Program

Initiating a training program in a resource poor environment where there are too few staff to allow lengthy release from duty to attend training, means it is necessary that trainers be creative and innovative in addressing the many challenges of this environment. In environments in which the prison system has collapsed, it is typical that a series of short, basic security and prisoner management programs are developed based on rudimentary training needs analyses. These are then conducted in the early phase prior to a broader training policy and framework being developed. These programs afford the opportunity for development of a body of common knowledge and understanding between the facility prison staff and each other and the national administrative staff. They also serve to identify and develop greater understanding of staff attitudes, knowledge, and approaches to imprisonment and enable the establishment of a common framework which shapes the working relationship between the national prison staff and the staff in individual facilities.

In terms of capacity building, it is preferable to develop management training as a first priority so that senior national prison experts can then contribute in a comprehensive manner to the overall development process. The Training Needs Analysis might indicate compelling reasons as to why a bottom-up approach of training junior staff in the first instance should be adopted. The course chosen should be responsive to the exigencies of the situation and the combined judgment of the senior national prison managers. If a bottom up approach is adopted, effective strategies to facilitate national staff access may include developing short modules that can be delivered within a prison, locking down parts of a prison for short periods to reduce the number of supervisory staff required, and seeking police support for maintenance of external security while short training modules are delivered.

E. Curriculum Development and Program Structure

It is generally accepted that a competency-based training approach is current best practice and as such should be the approach adopted. Curriculum design seeks to address two major training objectives: first, to enable participants to experience in depth learning; and second, to facilitate the development of transferable skills. In depth learning goes beyond short-term rote memorization to enable the assimilation of new knowledge in a way that allows re-application to novel situations.⁴ Strategies to develop transferable skills in areas such as thinking and learning, self-management, communication, group work and information management, are intended to prepare participants for work outside of the training context. A structured mentoring or coaching program (see Annex 2) may support the application of these learnings in the workplace.

As part of the strategy to develop national training capacity, national staff identified as having the potential to become effective trainers, should be involved in the development of the training curriculum since it is the process of developing a curriculum which is as important as knowledge about program content. It also ensures that the curriculum is culturally appropriate. Organizations such as the International Corrections and Prisons Association (ICPA)⁵ have access to training materials from multiple jurisdictions and, as a result, access to a wide range of program content applicable in a variety of environments. Reviewing training programs and lesson plans assists national staff, developing the necessary content knowledge. Guidelines for curricula development include:

- Development should be undertaken by professional prisons training personnel in conjunction with national staff
- Curricula should be based on existing international standards and norms
- Curricula content should reflect the realities of the host-country prison system
- Curricula should be tailored to the educational and literacy levels of the trainees
- Curricula should be designed keeping in mind participatory methodologies and techniques to be used in training delivery
- Training programs should be translated into the relevant local languages to maximize the training program's effectiveness
- Partnership with a local training center *e.g.* police academy, may be a viable option

⁴Entwhistle, N.J. (1988) *Styles of Learning and Teaching: An Integrated Outline of Educational Psychology*. David Fulton: London.

⁵International Corrections and Prisons Association Staff Training Website can be accessed at: <www.icpa-training.com>.

- Curricula should be developed with the expectation that ongoing modification of the program will be necessary
- A *Train the Trainer* course(s) should be part of any program curricula
- Training design should be reviewed regularly and be informed by feedback from national staff, facility prison staff, NGOs supporting the prison system and other donors and intergovernmental organizations in a position to comment on training outcomes

F. On-the-Job Training

Participants of most prison training programs will generally benefit from on-the-job training since no training program can completely prepare a person for all aspects of a job. Classroom work and skills practice should be supplemented with support from senior national staff and facility mentoring/coaching staff. On-the-job training should be specific rather than general. On-the-job training enables:

- Supported implementation and follow-up of classroom training at the workplace
- Ongoing assessment or evaluation of classroom training and an opportunity for immediate remedial training if required. (Formal assessment and remedial action should be recorded for use in evaluating the curriculum and training design)
- Another training option when classroom training is not an option e.g. learning would be less effective or facilities and transport are not available
- Increased ownership and accountability at the operational level

Out-of-Country Study Tours

Prison managers may benefit from a structured and focused study visit of other prison systems. Pre-visit preparation should take into consideration:

- Comparability of the donor country prison system
- Linguistic compatibility
- Planning to ensure that the elements of the visit are relevant to the counterpart's work role
- Appropriate staff selection to ensure that the objectives of the visit are directly relevant to participants' roles
- Briefings that clarify the structure and content of the visit, donor expectations, national authorities' expectations, any reporting or other requirements upon return
- Learning expectations by providers and recipients including development of an action plan
- Funding and logistics arrangements, and
- Any ongoing support commitments between the respective countries after the study visits

It should be noted that unstructured and unfocused study tours to jurisdictions in which the resourcing and circumstances are not in any way commensurate with that of the host-country or its cultural values, can be counterproductive. It is also necessary to balance the loss of in-country learning time with potential gain.

G. Evaluation and Review Mechanisms

Implementing a multi-level training evaluation and review program for prison staff training has many benefits including:

- Provision of data about the effectiveness of training at several levels so that the overall question about the effectiveness of training can be better addressed
- Data about training effectiveness is based on rigorous evaluation designs
- Curriculum developers and trainers being provided with data focused on specific areas of training allowing for targeted revision of material and methods of delivery

Aspects of training that may be evaluated include:

- Training methods, the learning environment, program content, training aids, facilities, schedules, and competency of instructors
- Appropriateness for target audience

The effectiveness of the training delivered can be evaluated through class participation and testing. An

evaluation of the participant's performance at the work site should be ongoing.

H. Developing a National Training Capacity

When commencing the development of a prison support training program, prison components are often confronted with lack of national training institutions and training unit personnel and insufficient national staff to safely provide twenty-four-hour coverage of each prison. In these circumstances national authorities may be reluctant to identify national staff who can form the nucleus of a national training capacity. As a result, the conclusion may be drawn that current national staff are both unavailable for training or to develop a national training capacity.

Heads of prison components should take up the issue of developing national training capacity with the relevant minister and head of department from the outset because of the importance of the training legacy to the longer-term development of the national prison system. Management may also encourage the national government to give priority to the development of national training capacity.

Prison management and training staff should attempt to identify potential training personnel either from within the current staff or from among new recruits. The opportunity can then be afforded to potential trainers for their direct involvement in all aspects of the development of training policy and framework, curriculum development, and delivery. Those selected should be afforded a *train the trainers* course of instruction. Topic areas for such a course may include:

Principles of adult learning

- Identifying the adult learning cycle
- Discovering how adults learn including the impact of culture
- Understanding preferred learning styles
- Creating an environment that motivates and enables adults to learn
- Applying the learning cycle to all aspects of training design and delivery

Designing training courses

- Conducting training needs analyses
- Developing lesson plans
- Developing measurable, observable, outcome-oriented training objectives

Training strategies and techniques

- Selecting appropriate training media and materials
- Opening and closing activities
- Accommodating participants' preferred learning styles
- Maximizing retention of training programme content
- Using interactive and participatory methodologies (group discussions, role playing, etc.)

Platform skills

- Developing and employing effective public speaking skills
- Projecting confidence and enthusiasm
- Overcoming common problems of new instructors
- Developing your own natural style through practice
- Managing instruction time effectively

Evaluating learning

- Understanding evaluation
- Developing and/or adapting evaluation tools
- Using evaluation outcomes and feedback to improve future training

I. Training Infrastructure and Facilities

Where a dedicated prison training facility is not available it may be necessary to:

- Negotiate access to another department or agency training facility
- Undertake training within a working prison

- Establish a *mobile training team* which attends prison facilities, or
- Access existing classrooms in the local community.

As a medium- to long-term solution, donors may respond positively to project proposals for the establishment of a dedicated prison training facility, equipment and materials.

III. CONCLUDING THOUGHTS

Unfortunately, many jurisdictions consider training — especially its cost in staff time and financial resources — as an “extra” expense whose purposes can be met in other ways. Thus, new officers without training are put to work under the “watchful eye” of more experienced staff. New prison procedures and laws are not passed on to staff in a coordinated manner, and their impact on the treatment of inmates and facility security are left to chance. An example of experience-only learning: A cat who jumps on a hot stove will never do so again. However, that same cat will also never jump on a cold stove.

Sometimes, when training does occur in an organized manner, the individuals providing the training are selected because of their practical experience and their ability as teachers is not verified. They bring their good and their bad habits with them — to pass on to others.

The prisons of today and those who serve as inmates change constantly due to new political, technological, cultural and economic realities. The job of the correction officer is more complicated than ever before and continues to grow in complexity. It is true that experience, without formal training, can help a person grow into an effective officer — over time. However, it is also true that learning only from experience does not provide full competencies and often can enhance bad habits.

Formal training before beginning work is necessary to protect the inmates, staff and public. Continuous training to hone skills and learn new ones is essential in the changing world of working with individuals who often come to prison due to personal problems and inadequacies. New technologies such as ever smaller and more powerful mobile phones, drones, use of material that evades the detection of metal detectors create security risks. The large number of mentally ill inmates brings new challenges into the prison. Increased oversight by national and international human rights organizations puts the prison staff under scrutiny similar to that inmates face from prison security staff.

Skills once needed by correctional staff are no longer valid as prison design and procedures change — but are often kept in a training regime. The need to constantly review what is being taught and how it is taught is critical to the operation of an efficient and effective prison system.

Aristotle reminded us that, “Excellence is an art won by training and habituation. We do not act rightly because we have virtue or excellence, but we rather have those because we have acted rightly. We are what we repeatedly do. Excellence, then, is not an act but a habit.”⁶

⁶ Aristotle's *Nicomachean Ethics*, 350 B.C.

APPENDIX A: SAMPLE TRAINING NEEDS ANALYSIS TEMPLATE (Liberia)

Liberia Prisons Department

Correctional Officer: Training Needs Analysis Form

Name: Rank:

Date of Birth:

Prisons Experience (In years):

Positions held within the Prisons Department (Correctional Officer, Supervisor):

1:

2:

List other experience: (Positions held outside the Prisons Department)

Organization	Years Service	Duties

Education Level:

If previously serving in the Prisons Department list training received:

1:

2:

3:

4:

List training you believe you need or should receive:

1:

2:

3:

4:

Sign:

Date:

This table is to be completed by each person. Honest answers are required to enable a training programme to be developed. Tick the box which best describes your knowledge, experience and confidence with each subject.

Subject	Very Good	Good	Average	Need Help
Admitting a prisoner to the institution				
Communicable Disease Awareness				
Discharging a prisoner				
Emergency Procedures				
Escorts: External				
Escorts: Internal				
Firearms Procedures				
First Aid				
Handcuffs				

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Human Rights, minimum standards.				
Liberia Legislation				
Prison Routine				
Prisoner Property				
Prisoner Supervision				
Report writing				
Searching: Body Search				
Searching: Cell and Area				
Security: General				
Structure of the Prisons Department				
The Court System				
Visit Procedures				
Warrants				

APPENDIX B: SAMPLE COACHING/MENTORING LESSON PLAN

COACHING/MENTORING

No training program can adequately prepare a person for everything they will find when they actually begin the job. Class work, skills practice are excellent and necessary, but must be supplemented with help from senior staff. One of the worst things that can happen to a new officer is for an experienced staff to tell him or her, as they begin their job, "Forget what you heard in training, just listen to me." Often senior staff has, for a variety of reasons, forgotten some of what they learned or become sloppy in the application. Thus, in order to get the proper benefit of experienced staff and in order to make experienced staff feel a part of the training program, formal coaching training should be given to them. What follows is a lesson plan on coaching for experienced staff who will be paired with new personnel.

Lesson Title: Coaching Skills

Method of Instruction: Lecture, discussion, demonstration, structured role play

Time Frame: 2 Hours

Performance Objectives: At the end of this session with-out the aid of instructional materials, the participants will:

1. Define the term or concept of coaching, relevant to the relationship
2. Describe the techniques of conducting a coaching interview according to guidelines developed by Morey Stettner
3. Describe the purpose of demonstrations.
4. Identify six basic steps in structuring the process of developing and conducting demonstrations according to
5. Conduct a coaching interview, according to the coaching interview checklist.

DISCUSSION GUIDE:

Pair the group off --the entire lesson is conducted as a combination of open discussion and role playing

INTRODUCTION

In approximately two weeks, a probationary correction officer will be assigned to work with you. Let's consider that first meeting. Each of you have been paired off with a partner. For the next 6 minutes, I want you to meet each other.

- 1) greet each other as if you are meeting for the very first time
- 2) one person interviews the other for the first 3 minutes. You will then switch interview should be personal; get to know your partner, ie: special interests, special talents; family; etc.
- 3) each of you will then present (introduce) your partner to the group.

DISCUSSION GUIDE:

Ask the group the following

- How did you feel when you were being introduced to the group?
- Do you feel that your interviewer has a good grasp of you?
- Do you feel that, based on your interview, you have a good grasp of your partner?
- What dynamics are involved during a first meeting? What are examples of some of the things that you do? What is the first overall picture that you pay attention to?
- What is the non-verbal communication?
 - a) clothing b) posture c) overall hygiene
- What about the handshake? ie. limp vs. firm; partial vs. full
- What about eye-contact? ie. direct, indirect, not at all.
- Other considerations
 - a) posture, b) space (positioning), c) listening (active/non-active), d) language (slang vs. standard)

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As you can see from this brief exercise, there are numerous interactive cues that impact a first meeting (first impression). These are just a few considerations for you to bear in mind, as you meet the probationary officer assigned to you for the first time.

Several times during this training program, experienced officer, such as yourselves, have been referred to as coaches. What is coaching?

It is: Assisting, training someone on "how to improve", "how to do".

In order to do this effectively, what kind of relationship will the coach need to have with the probationary correctional officer? (ie. respectful, accepting; positive, etc.). Remember, your goal is to coach individuals through positive people management. Dealing effectively with the probationary officer means helping them to strive for excellence. This can be achieved through a positive tone in all interactions, particularly when related to job appraisals and corrections for improvement. During this session, we are going to look at descriptions of techniques for making the coaching process a success for both you and the probationary officer.

In the Field of Management, often times analogies are drawn between how a supervisor treats his/her staff and how he/she would treat his/her car. For example: What do you do when you notice something unusual with your car? Do you get it checked out immediately or ignore it until something definite happens; fix the problem immediately before it gets expensive, or wait and see how long it will last; get a new car.

Some supervisors see something wrong, but they ignore it. At some point this "minor" problem becomes worse. There are other supervisors that will move-in on the problem when it is first observed. This type of supervisor will always provide on-going training and guidance to avoid problems.

Oftentimes, something may appear as minor, but it really isn't because it is fundamental to an overall process.

DISCUSSION GUIDE:

Ask the class to provide examples

An example is timely tours: an officer may decide to do a tour of his/her area later or miss one. This is dangerous because it can create a lackadaisical attitude and result in the officer missing the opportunity to prevent a serious incident or suicide. Hence, alert and active coaching is critical.

Let's look at some recommended coaching techniques.

- 1) Define the problem
- 2) Analyze the causes
- 3) Decide on corrective action
- 4) Think through (rehearse) your approach
- 5) Initiate the coaching session

STEPS & CONSIDERATIONS IN CONDUCTING THE COACHING SESSION:

1. PREPARE -
 - a) check your observation to ensure clear communication -BE SURE ABOUT YOUR OBSERVATION.
 - b) Make certain that it is well timed. Feedback after delay will cause for the problem to be attributed to lack of motivation or ability, rather than the actual observed behavior.
 - c) Think (rehearse) what you are going to say and how - Think about the last big mistake you made and how you felt.
2. SET TONE
Let the probationary officer know immediately that the purpose of the conference is to work out a way to improve future performance and not to criticize negatively.
3. GET FACTS ON THE TABLE:
 - a) Be specific, rather than general
 - b) Be descriptive, rather than evaluative
 - c) Direct observations toward the behavior not perception

d) Offer corrections to improve performance, not to blame or demeanor.

4. MAINTAIN PARTNERSHIP TRAINING

- a) Encourage PROBATIONARY OFFICER to evaluate his/her performance. You should share your past performance -"no one is perfect"
- b) Defuse negative emotions - respond to skills. Always try to focus on positive attitudes. Listen carefully but get the probationary officer refocused on the skills.
- c) Many probationary officers will criticize themselves; Summarize by reviewing when things go wrong. Try to minimize self-criticism and get on with improving the performance.

IMPLEMENTING TRAINING (THE CORRECTIVE ACTION)

Coaching is about helping an individual to improve his/her performance. a job performance is demonstrated by the application of specific knowledge, skills, abilities, and attitudes to the duties and responsibilities of a specific job.

Earlier in this session we established that coaching is the act of helping someone to improve -- "How to do". The primary manner in which we achieve this is through demonstrations. All of us have seen demonstrations in one form or another. The thing to keep in mind when using demonstrations is that they can serve as a very powerful instructional technique that can help to promote learning and long term retention.

What are the purposes of demonstrations

DISCUSSION GUIDE:

Have the class give ideas

THE PURPOSES _ DEMONSTRATIONS

- 1. Show a procedure
- 2. Show how to perform an act ~ (psychomotor skill)
- 3. Show the results
- 4. Show the consequences of failure to perform properly
- 5. Uses more than one sense (vision and hearing)
- 6. provides an opportunity to learn by doing

Remember that retention is a primary concern.

The following are steps to help structure the process of developing and conducting demonstrations and improve the likelihood that they will be effective.

- 1. Know what behaviors, skills, techniques, or results are to be demonstrated.
- 2. Identify the material, supplies, or equipment needed.
- 3. Try the demonstration out in advance to be sure that it does what you want it to.
- 4. Tell the probationary officer. what you are going to do; prepare them to observe critically.
- 5. Show the probationary officer how to do it, discuss the subskills involved in the task simultaneously.
- 6. Maximize the learning. Have the probationary officer practice the procedures, skills, or techniques and evaluate their performance (give feedback immediately).

In order to go from paramilitary to human services - the development must take a different role of instruction. The instructor must not be an authoritarian, but more of a facilitator of the learning experience.

Carl Rogers in his book A Freedom To Learn, emphasizes the establishment of a good relationship between teacher and learner as primary to the learning process. The facilitator's role has five basic characteristics, these are:

- 1. Effective Listening
- 2. Genuineness
- 3. Understanding/Empathizing
- 4. Respect
- 5. interpersonal Communication

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These characteristics must be developed in all instructors who are working with adults.

1. Effective Listening - when listening to your probationary employee you must listen carefully, accurately, and sensitively. Any individual who speaks is worthwhile, worth understanding, consequently he/she is worthwhile for having expressed something.
2. Genuineness - "Managing Feelings" When we talk about "managing feelings" we are referring to the ownership of one's feelings.

Such concepts as:

- a. Self (Who Am I)
- b. Self-Determination
- c. Commitment
- d. Inner-direction
- e. Self-Acceptance
- f. Self-Esteem.
- g. Self-Confidence

If you have each of the concepts above the you will have a better attitude towards yourself and if you have a good attitude towards self, you will have a greater attitude towards others. You as the facilitator will be able to:

- a. Decrease in authoritarianism.
- b. Have a greater acceptance to others.
3. Understanding - listen to the meaning and the feelings the probationary officer is experiencing. It is to these meanings and feelings that you will respond to.
4. Respect - you want the probationary officer to be safe, you want him/her to feel, from the beginning of the interaction, that if he/she risks saying something personal, absurd, or cynical, there will be at least one person who respects him/her enough to hear him/her clearly and listen to that statement as expression of himself/herself.

The facilitator must be well aware that one cannot make the experience safe from pain from the rest of the environment. However, the facilitator would like to make the individual feel that whatever happens he is available and supportive.

To Summarize On Criticism - keep in mind that recipients prefer feedback that is specific and is delivered promptly. Those of you who give feedback that is general and is delivered only after a delay often fall into another, more serious trap: You attribute poor performance to internal causes (such as lack of motivation or ability), rather than observable behavior.

III. APPLICATION

At this point I'm going to give you an opportunity to practice the steps and techniques in conducting a coaching interview.

DISCUSSION GUIDE:

Have the students count off from 1 to 5. Have all of the 1's form a group, the 2's another group, etc. Designate an area for each group to cluster.

I'm now going to distribute to you 5 Coaching Interview Checklists, together with a background scenario about a probationary correction officer. You are to review the information and have a small group discussion on the case before you. Decide what behavior is of specific concern and how the coaching interview should be approached. Once you have accomplished this task, chose one person from your group who will conduct the interview with the probationary correctional officer. Someone from a group other than your own, will play the role of the probationary officer.

INSTRUCTOR'S NOTE: Each group has a different probationary officer case. You will have 15 minutes for this exercise. Now, while each of the coaching interviews are taking place, I want everyone else to use the checklist to assess each of the sessions. Each of you have 5 checklists, one for each scenario. At the end get group feedback

CONCLUSION

As the coach, your primary goal is to help the probationary correctional officer strive for excellence. It can best be done by setting a positive tone in all interactions with workers. When performance problems or questions arise, you need to examine the situation closely, first by describing the problem and deciding if it is important. Then the causes of the deficiency are analyzed and corrective action chosen. Once a course of action has been determined, it needs to be implemented and followed up. Finally, you have to evaluate whether the problem has been solved.

NOTE: One corrective action that improves job performance is coaching. Coaching provides a positive approach for both the experienced officer (the Coach) and new person (the probationary officer) to analyze a problem and work to eliminate it. Coaching also builds from the employee's strengths and minimizes blame.

EVALUATION

You have had an opportunity to practice some of the coaching techniques and considerations presented in this session as well as to assess that performance. Now I will ask you to complete a brief quiz.

COACHING SKILLS QUIZ

INSTRUCTIONS: Read each item carefully and circle the letter of the answer that best completes the statement.

1. Coaching is best defined as:
 - a) Keeping someone in check.
 - b) Guiding someone to stay out of trouble.
 - c) Training someone to improve.
 - d) Supervising someone.
2. The first thing that you as a coach should do in preparing for a coaching interview is to:
 - a) Check your observation to ensure clear communications.
 - b) Rehearse what you are going to say.
 - c) Make sure it is a positive observation.
 - d) Minimize self-criticism.
3. In the coaching process, "set the tone" means:
 - a) Speak loudly.
 - b) Speak softly and deliberately.
 - c) Be stern.
 - d) Let the probationary officer know immediately that the purpose of the conference is to work out a way to improve.
4. In order to get the facts on the table, the Coach should-
 - a) Be specific, firm, and evaluative.
 - b) Immediately talk to the captain about the problem.
 - c) Be specific; descriptive; discuss the behavior; and offer corrections to improve.
 - d) Ignore his/her observations and wait for the Coach to initiate the discussion.
5. To maintain Partnership in Training, the Coach should:
 - a) Constantly remind the probationary officer that the Coach is the experienced senior over him or her.
 - b) Threatened the probationary officer with going to the captain.
 - c) Keep the probationary officer dependent on the more experienced, senior officer
 - d) Encourage the probationary officer to evaluate his/her performance, diffuse negative emotions, and minimize the probationary officer's self-criticism.
6. The purpose of demonstrations is to:
 - a) Show how to perform an act, show the consequences of failure to perform, and provide an opportunity to learn by doing.
 - b) Make the probationary officer look bad.

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- c) Show how easy a task actually is.
 - d) To impress the Housing Area Captain.
7. In preparing for a demonstration, the Coach should:
- a) Inform the captain of his/her intentions.
 - b) Make sure that no one is around, besides the probationary officer
 - c) Know what is going to be demonstrated; identify materials needed; and try the demonstration out in advance.
 - d) Minimize the learning.
8. In conducting a demonstration, the Coach should:
- a) Tell the probationary officer what he is going to do.
 - b) Use inmates to make his/her point more clear.
 - c) Catch the probationary officer by surprise.
 - d) Conduct demonstration away from the facility.
9. To maximize the learning means:
- a) Give the probationary officer a lot of work.
 - b) Give the probationary officer an opportunity to practice the procedures, skills, or techniques and give him/her immediate feedback.
 - c) Give the probationary officer high praise.
 - d) Award the probationary officer for doing the right thing.
10. When conducting the coaching interview, the Coach should:
- a) Speak to the probationary officer in private.
 - b) Be harsh.
 - c) Share criticism only.
 - d) Immediately report the outcome to the captain.

PEER COACHING SKILLS CHECKLIST
FACILITY TRAINING OFFICER PROGRAM

INSTRUCTIONS: Please check the box that best represents your observations.

- 1. NOT OBSERVED
 - 2. FAIR
 - 3. GOOD
 - 4. EXCELLENT
-
- 1. Set Tone
 - 2. Get Facts On Table:
 - a) Be Specific
 - b) Be Descriptive
 - c) Observations Directed To Behavior
 - d) Corrections To Improve
 - 3. Maintain Partnership In Training:
 - a) Encourage Evaluation
 - b) Diffuse Negative
 - c) Minimize Self-Criticism

INSTRUCTOR'S NOTES: The instructor should develop the five background scenarios about a probationary correction officer to distribute for the exercise. Make each on fairly simple, but consistent with the various types of people who apply for corrections jobs in your area

TRAINING MANUALS AND LESSON PLANS FOR CORRECTIONAL STAFF INCLUDING PRACTICAL APPLICATION OF THE UN STANDARDS AND NORMS

Gary Hill*



I. THE DEVELOPMENT OF A TRAINING MANUAL

Staff training and career development are very vital in any correction organization that aims at progressing. Training simply refers to the process of acquiring the essential skills required for a certain job. It targets specific goals, for instance understanding a process and operating a certain piece of equipment or system. Career development, on the other side, puts emphasis on broader skills, which are applicable in a wide range of situations. This includes decision making, thinking creatively and managing people.¹

An important tool in facilitating both staff training and career development is a well-constructed staff training manual. Such a manual enables consistency in training and helps insure that all personnel hear the same information and philosophy in the way it is intended by the prison administration. The manual serves to codify workplace rules and guidelines. It helps enable departmental functions in the absence of key employees. It helps keep instructors on track and within the timeframe allotted to teach particular subjects. It helps insure that all intended subjects are covered in the course of a designed training program. It provides the students with reference information that can be used both for the immediate class and later for refreshing the information and providing remedial help.

A. Needs Analysis

The process begins with a needs analysis — some refer to this as *front-end analysis*. It is an ongoing process of gathering data to determine what training needs exist to help the correction system develop the training required so it can meet its objectives. The training of correction officers is not an activity independent of the mission, objectives and core values of the corrections system. Rather, the training is a tool to help the prisons system meet its goals in an effective, efficient and humane manner.

The following, from www.hr-survey.com/TrainingNeeds.htm, provides an excellent view of the training needs assessment process:

1. Gathering Employee Opinions for Training Needs

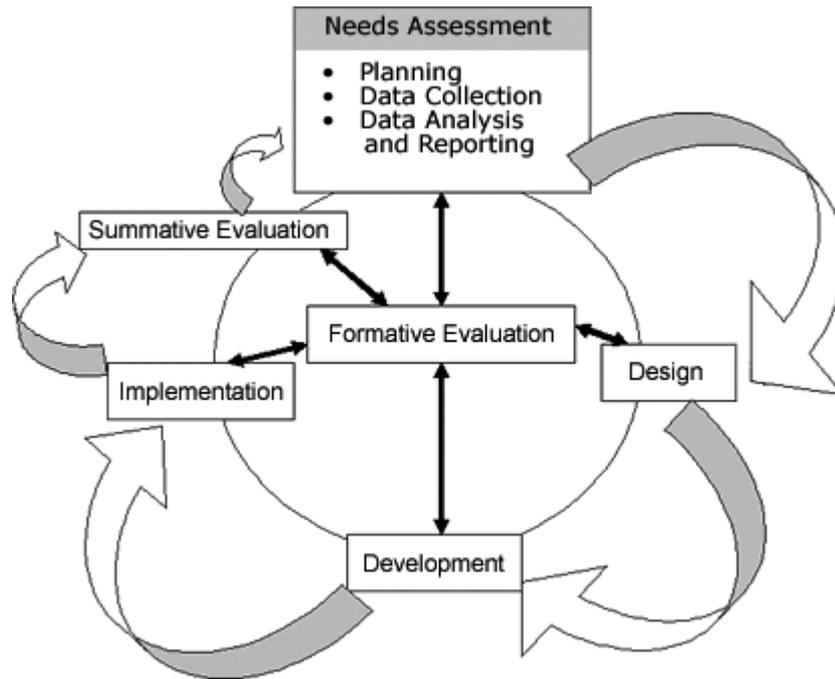
Schedule a meeting with employees in a particular department or job classification. During the meeting, gather ideas from the employees about their needs and areas for professional development. Determine common themes and topics. Ask the employees to review the information gathered and determine which areas/needs are most important to receive training. Then determine the desired outcomes from the training to address these needs. These outcomes could serve as measures of success (validation) of the training.

2. The Steps in a Training Needs Assessment

1. Needs Assessment (collecting and analyzing data)
2. Design (program objectives, plan, measures of success)
3. Testing (prototype the instrument and process)
4. Implementation (collection measures and update as needed)
5. Analysis & Evaluation (review feedback and data collected)

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¹<www.artofthestart.com>, November 2014.



3. Assessment Methods: Advantages and Disadvantages²

a. Workplace observation	
<p>Advantages Assurance that evidence is authentic, valid and current Applicant need not leave workplace Can illustrate competence through reference to/use of workplace facilities and resources Necessary method for some high risk activities and roles</p>	<p>Disadvantages Applicant may feel pressured, affecting performance Assessor needs access to workplace</p> <p>Mitigation Ensure that the applicant is fully informed Allow more than one attempt and inform the applicant that they are eligible for a second attempt. Negotiate with the employer to allow workplace access</p>
b. Simulation	
<p>Advantages Enables assessment under simulated degraded or emergency conditions Enables assessment of infrequent events that have not otherwise occurred during workplace assessment</p>	<p>Disadvantages In the case of safety critical roles in rail, requires access to simulator</p>
c. Third party report	
<p>Advantages Can provide useful backup Process need not be complicated. e.g. Third party completes form or checklist</p>	<p>Disadvantages Need to confirm that information is authentic and current Third party must be informed and credible</p> <p>Mitigation Request a statutory declaration, signed and witnessed appropriately</p>

²Skills Recognition, <<http://www.skillsrecognition.net.au/the-advantages-and-disadvantages-of-various-assessment-methods>>.

<p>d. Questioning in the form of a competency conversation, professional conversation, learning conversation, interview</p>	
<p>Advantages Provides immediate feedback Provides opportunity to explore skills and experience in greater depth Does not disadvantage applicants with limited reading and writing skills</p>	<p>Disadvantages Requires a skilled assessor Applicant performance may be influenced by assessor's style</p>
<p>e. Projects/assignments</p>	
<p>Advantages Can provide extensive information on applicant skills, knowledge and experience May be used in both group and individual assessment Familiar assessment method for some applicants Allows for differences in learning styles</p>	<p>Disadvantages Requires writing and presentation skills May ask for skills that are not required of the unit of competency May not be a good indication of workplace competence May be judged on presentation rather than content Difficult to confirm validity</p>
	<p>Mitigation Cross check validity with a peer or colleague</p>
<p>f. Print portfolio hard-copy documentary evidence compiled by applicant</p>	
<p>Advantages May include various forms of evidence of informal, non-formal and formal experience Applicants are likely to be familiar with this approach</p>	<p>Disadvantages May be difficult to confirm authenticity May be judged on presentation rather than content</p>
	<p>Mitigation Check certifications, qualifications, third party reports and referees re: authenticity</p>
<p>g. e-Portfolio electronic documentary evidence compiled by applicant</p>	
<p>Advantages May include various forms of evidence of informal, non-formal and formal experience Suits applicants who are comfortable working with computers and online environment Can be streamlined through use of templates or ePortfolio software Information can be electronically shared and stored Minimizes paper-based evidence collection</p>	<p>Disadvantages Requires computer literacy May be difficult to confirm authenticity/validity May be judged on presentation rather than content</p>
	<p>Mitigation Check documents for authenticity where possible Allow for a paper-based portfolio</p>
<p>h. Point of view glasses Video camera worn by an individual to take live audio-visual footage from the perspective of that person.</p>	
<p>Advantages When worn by applicant or a colleague, provides audio-visual evidence of the applicant performing a work activity Particularly useful in assessing the skills of workers who are geographically remote from the assessor</p>	<p>Disadvantages Requires access to the technology</p>

i. Challenge Test also called skills test	
Advantages Can include practical, written and/or oral elements Provides opportunity for targeted testing of safety critical activities and roles Can test understanding and recall	Disadvantages May not adequately assess skills requiring synthesis and analysis Stress may influence applicant performance
	Mitigation: Ensure the applicant is fully informed about the nature of the exercise Allow for a second opportunity and inform the applicant of this opportunity prior to taking the challenge.

Other ways of identifying potential training needs include:

- Review of incident reports (accidents, escapes, confrontations, contraband)
- Staff and inmate suggestions, complaints, requests
- News articles concerning the prison operation
- Input from visitors, inmate family members, clergy, NGOs

With each identified training need, establish a list of tasks needed to be accomplish it, along with performance objectives and how the accomplishment of the objective can be measured. The list of training needs and performance objectives must then become part of a full training curriculum (see sample in Appendix A) and converted into lesson plans or modules.

B. Lesson Plans

A lesson plan is a detailed guide for teaching a lesson.³ It's a step-by-step guide that outlines the instructor's objectives for what the students will accomplish during the lesson. It is the planning needed to insure the appropriate information is taught in the most effective manner. The United States President, Abraham Lincoln⁴ said, "If I had eight hours to chop down a tree, I'd spend six hours sharpening the axe." Creating a lesson plan involves setting goals (objectives), developing activities, and determining the materials that will be used.

A lesson plan is not for the student — rather it is for the instructor and training administrators. The lesson plan consists of several item⁵:

Normal parts of a lesson plan:

- Aims and Objectives – what you wish to teach
 - No more than 1 to 2 aims for a 2-hour lesson
 - Objectives indicate what the student will be able to do as a result of the lesson (e.g. *At the conclusion of this block of instruction:*
 1. *The student will correctly name the major components of the nation's justice system.*
 2. *The student will correctly identify the nation's Prison Law and the legislative source of the Prison rules.*)
- Methods/Type of Instruction – how you will teach the subject matter
 - In developing this section, the instructor should take into consideration:
 - What the students should already know
 - What the instructor should know about the students
 - Methods – some examples include:
 - Lecture
 - Discussion
 - Question/answer sessions

³Cox, Janelle, *What is a Lesson Plan*, K6educators.about.com

⁴American 16th President, 1861-65.

⁵Much of the material explaining what a lesson plan should contain comes from *Slideshare* – <www.slideshare.net>.

- Demonstrations
 - Role playing
 - Tabletop exercises – group discussion of a simulated emergency situation. Students, in groups, discuss the actions they would take in a particular emergency, testing their emergency plan in an informal, low-stress environment
 - Computer simulations
 - Interactive video or computer-based programs
 - Simulations
 - Case studies
 - Planned reading
 - Practice
 - Resources – what materials you will need to teach the subject (and to help the instructor)
 - Normal items can include: student’s workbook, pens, paper
 - Special items could be: posters, charts, maps, worksheets, projector, PowerPoint, videos, security equipment
 - Assessment – how you will check that the students have learned what you have attempted to teach
 - My personal belief is that if you do not have a test at the end of the lesson you should not teach it. The test can be oral or written or even part of the on-the-job training with a coach or mentor. Testing for competency can be an on-going process with tests immediately after the subject is taught and then periodically throughout the individual’s career.
 - Test results should be recorded and part of the student’s file.
 - Evaluation – how you will check your performance as an instructor
 - Student feedback forms
 - Observation by other instructors
 - Contingency – what preparations you will do in case things do not go as planned
 - What could go wrong?
 - Guest lecturer does not show up
 - Projector does not work
 - Lesson proves too difficult for the majority of the class
 - Lesson proves too easy for the majority of the class
 - Subject matter covered in much less time than was planned – students have nothing to do
 - Class time over before all the material has been covered
 - A student, or several, become disruptive
 - Class is interrupted by higher officials or visitors
 - The above and others are samples – plan for each of them and more BEFORE they happen
- Parts of the lesson plan added for correction trainers:
- References to applicable laws, prison policy, international and national standards
 - Use, where applicable, of actual equipment used by the correction service
 - Examples from within the correction system – both current and historic (for example using actual cases of escape, finding contraband, staff/inmate interaction)

A lesson plan also serves to maintain consistency in how a subject is taught and helps keep both the instructor and the class on target and within allowed training times. In addition, if the original instructor cannot give the lesson, it allows the substitute instructor to maintain the integrity of the lesson. Most often, the individual lessons in a correction-based curriculum are part of a series building from basic to advanced knowledge and tied to practical application. Without common lesson plans, changes in instructors can break that chain of advancing the student’s knowledge and competency.

Sample lesson plan format (this is an example that can be modified):

LESSON PLAN 19 – Controlling Inmate Behavior

Method of Instruction: Lecture, Discussion, Question and Answer

Time Frame: 2 Hours

Performance Objectives: At the conclusion of this block of instruction the student will:

1. Be able to define what “control” means when used in the context of “controlling inmates”
2. Learn the steps to follow in handling inmate requests
3. Learn how to reinforce behavior using both verbal and non-verbal techniques

Training Aides Required: Blackboard or flip chart

INTRODUCTION

Controlling behavior simply means taking charge. This is what it's all about in an institution. Without the ability to control behavior, all the other efforts are wasted. An officer has to do everything he can to ensure appropriate behavior: first in the interest of the institution and himself, then in the interest of the inmate. The same holds true for the inmate. Learning to control his own behavior is in his own interest. Control of inmate behavior leads to a secure institution. Inmate self-control leads the inmate to success. Without control, nothing productive can occur.

Controlling inmate behavior is an applied activity, not a philosophical exercise. In this lesson we will concentrate on three specific application skills:

1. Handling inmate requests
2. Making requests of inmates
3. Reinforcing behavior

DISCUSSION GUIDE:

Pick two students, one to play the part of the inmate, the other the part of the officer.

The instructor should describe a scene in which an inmate requests something that will be difficult to grant -- examples might be an extra visit or to be allowed to work an easier job or to have some items not allowed other prisoners.

Have the class analyze the way the officer handled the situation and ask them to explain why control is important for inmate management. Then ask them to discuss what the inmate gains when he learns to control his own behavior. Help them end with an appropriate resolution and then point out the following:

In the case above, the officer exerted control through skill, not force. He didn't demean or put down, he didn't use sarcasm. You will note, however, that included in his skills were firmness and reasons for his actions. There was no weakness. The inmate now knows what he is expected to do and why. The officer was even able to continue to be responsive to the inmate when the inmate became irritated. The use of skill gets that job done and increases the probability that the inmate will feel he has been treated fairly even if he has to have his routine interrupted.

II. PRACTICAL APPLICATION OF INTERNATIONAL UN STANDARDS AND NORMS

A. International Standards Impacting Corrections: List of Relevant Human Rights Instruments

All of the instruments listed below are potentially of relevance to anyone wishing to submit allegations of ill-treatment to international bodies, or indeed within the national system. They have been arranged thematically in order to make it easier to pick out all instruments relevant to a specific topic. Within the thematic divisions, they have then been subdivided according to their origin, i.e. the international organization which created them.

1. General Human Rights Instruments

United Nations:

- Universal Declaration of Human Rights
- International Covenant on Civil and Political Rights
- Optional Protocol to the International Covenant on Civil and Political Rights

Council of Europe:

- European Convention on Human Rights

Organization of American States:

- American Declaration on the Rights and Duties of Man
- American Convention on Human Rights

Organisation of African Unity:

- African Charter on Human and Peoples' Rights

2. Torture-Specific Human Rights Instruments

United Nations:

- Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Council of Europe:

- European Convention on the Prevention of Torture

Organisation of American States:

- Inter-American Convention to Prevent and Punish Torture

3. General Standards for the Treatment of Persons in Official Custody

United Nations:

- Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules)
- Basic Principles for the Treatment of Prisoners
- Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules")
- United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)

Council of Europe:

- European Prison Rules

4. Professional Standards

United Nations:

- Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Model Autopsy Rules
- Code of Conduct for Law Enforcement Officials
- Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
- Basic Principles on the Role of Lawyers
- Guidelines on the Role of Prosecutors
- Basic Principles on the Independence of the Judiciary

Council of Europe:

- Declaration on the Police

5. Instruments Relating to Women

United Nations:

- Declaration on the Elimination of All Forms of Discrimination against Women
- Convention on the Elimination of All Forms of Discrimination against Women
- Declaration on the Elimination of Violence against Women

Organisation of American States:

- Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women

6. Instruments Relating to Children

United Nations:

- Declaration on the Rights of the Child
- Convention on the Rights of the Child
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”)

Organization of African Unity:

- African Charter on the Rights and Welfare of the Child

7. Instruments Relating to Persons Detained on Mental Health Grounds

United Nations:

- Principles for the Protection of Persons with Mental Illnesses and the Improvement of Mental Health Care

8. Instruments Relating to Racial Discrimination, Apartheid and Genocide

United Nations:

- United Nations Declaration on the Elimination of All Forms of Racial Discrimination
- International Convention on the Elimination of All Forms of Racial Discrimination
- Convention on the Prevention and Punishment of the Crime of Genocide
- International Convention on the Suppression and Punishment of the Crime of Apartheid

9. Instruments Relating to Disappearances and Extra-Judicial Executions

United Nations:

- Declaration on the Protection of All Persons from Enforced Disappearances
- Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions

Organization of American States:

- Inter-American Convention on the Forced Disappearance of Persons

10. Humanitarian Law Instruments

- Geneva Convention I for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field
- Geneva Convention II for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea
- Geneva Convention III relative to the Treatment of Prisoners of War
- Geneva Convention IV relative to the Protection of Civilian Persons in Time of War
- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)
- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)

11. Other Relevant Instruments

United Nations:

- Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms (“Declaration on Human Rights Defenders”)
- Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty
- Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power
- Statute of the International Criminal Court
- United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules)

B. Incorporating Standards and Norms in Lesson Plans and Training Material

Often times United Nations and International Standards are taught apart from the other lesson plans. The attached sample curriculum does have a separate lesson plan on international standards. However, the standards that impact on all the individual lesson plans should also be identified in each lesson plan, along with national laws and organizational policy and procedures. My practice has been to identify them at the end of each lesson plan and to provide that information to the students. The intent is to have the students understand that everything we teach in corrections is tied to acceptable human rights standards and norms. Below is an example from the Table of Contents in *Basic Training Manual for Correctional Workers*⁶.

LESSON PLAN 14 - Introduction to Searching Techniques 244
 Supplement to LESSON PLAN 14 251
 Human Rights Instruments Related to LESSON PLAN 14 272
 Sample Procedural Assessment Template for LESSON PLAN 14 274

In the above example, the Supplement to LESSON PLAN 14 provides additional ways to teach the subject. The Human Rights Instruments are presented in the following format:

International Covenant on Civil and Political Rights
 Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976, in accordance with Article 49

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
 Adopted by General Assembly resolution 43/173 of 9 December 1988

Principle 1
All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.

Principle 3
 There shall be no restriction upon or derogation from any of the human rights of persons under any form of detention or imprisonment recognized or existing in any State pursuant to law, conventions, regulations or custom on the pretext that this Body of Principles does not recognize such rights or that it recognizes them to a lesser extent.

Basic Principles for the Treatment of Prisoners
 Adopted and proclaimed by General Assembly resolution 45/111 of 14 December 1990

1. All prisoners shall be treated with the respect due to their inherent dignity and value as human beings.

Code of Conduct for Law Enforcement Officials
 Adopted by General Assembly resolution 34/169 of 17 December 1979

Article 2
 In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.

World Medical Association Statement on Body Searches of Prisoners

⁶*Instructor's Manual*, June 2006, International Corrections and Prisons Association and the International Scientific and Professional Advisory Council of the United Nations Crime Prevention and Criminal Justice Programme, CECA Services/Contact Center, Lincoln, NE USA.

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Adopted by the 45th World Medical Assembly Budapest, Hungary, October 1993

The prison systems in many countries mandate body cavity searches of prisoners. Such searches, which include rectal and pelvic examination, may be performed when an individual enters the prison population and thereafter whenever the individual is permitted to have personal contact with someone outside the prison population, or when there is a reason to believe a breach of security or of prison regulations has occurred. For example, when a prisoner is taken to Court for a hearing, or to the hospital for treatment, or to work outside the prison, the prisoner, upon returning to the institution, may be subjected to a body cavity search which will include all body orifices. The purpose of the search is primarily security and/or to prevent contraband, such as weapons or drugs, from entering the prison.

These searches are performed for security reasons and not for medical reasons. Nevertheless, they should not be done by anyone other than a competent person with some medical training. This non-medical act may be performed by a physician to protect the prisoner from the harm that might result from a search by a non-medically trained examiner. The physician should explain this to the prisoner and should furthermore explain to the prisoner that the usual conditions of medical confidentiality do not apply during this imposed procedure and that the results of the search will be revealed to the authorities. If a physician is duly mandated by an authority and agrees to perform a body cavity search on a prisoner, the authority should be duly informed of the necessity for this procedure to be done in a humane manner.

The search should be conducted by a physician other than the physician who will provide medical care to the prisoner.

The physician's obligation to provide medical care to the prisoner should not be compromised by an obligation to participate in the prison's security system.

The World Medical Association urges all governments and public officials with responsibility for public safety to recognize that such invasive search procedures are a serious assault on a person's privacy and dignity, and also carry some risk of physical and psychological injury. Therefore, the World Medical Association exhorts that, to the extent feasible without compromising public security,

- alternate methods be used for routine screening of prisoners, and body cavity searches be resorted to only as a last resort;
- If a body cavity search must be conducted, the responsible public official ensure that the search is conducted by personnel with sufficient medical knowledge and skills to perform the search safely;
- the same responsible authority ensure that due regard for the individual's privacy and dignity be guaranteed.

Finally, the World Medical Association urges all governments and responsible public officials to provide for such searches by a physician whenever warranted by the individual's physical condition. A specific request by a prisoner for a physician shall be respected, so far as possible.

COUNCIL OF EUROPE. COMMITTEE OF MINISTERS. RECOMMENDATION No. R (98) 7-OF THE COMMITTEE OF MINISTERS TO MEMBER STATES CONCERNING THE ETHICAL AND ORGANISATIONAL ASPECTS OF HEALTH CARE IN PRISON

Adopted by the Committee of Ministers on 8 April 1998, at the 627th meeting of the Ministers' Deputies.

H. Body searches, medical reports, medical research.

72. Body searches are a matter for the administrative authorities and prison doctors should not become involved in such procedures. However, an intimate medical examination should be conducted by a doctor when there is an objective medical reason requiring his/her involvement.

The Sample Procedural Assessment Template is a form for the instructor or, later, the Mentor/Coach to use to evaluate the student's performance:

PROCEDURE ASSESSMENT: BODY SEARCHES

Corrections Officer Name (please print): _____

Introduction

Read through the following security skill. Place a check (✓) under **Yes or No** in the column stating whether or not the officer performed this part of the task, they must perform this skill twice (on different days) and be graded both times.

RESOURCE MATERIAL SERIES No. 98

Body Searches	1st Practice		2nd Practice	
1. Knowledge of Institutional Policies and/or Post Orders	Yes	No	Yes	No
● able to reference and state the reference numbers of the Policy and/or Post Order				
● demonstrates understanding when a body search can be conducted				
● demonstrates understanding that all searches must be carried out by a person of the same sex				
2. Prepares self				
● knows the reason for the search				
● acquires any equipment such as a bag (for contraband)				
● has another officer as a back-up				
3. Procedures	Yes	No	Yes	No
● informs the prisoner that they are going to be searched				
● watches the prisoner for signs of aggression, once the prisoner has been told they are to be searched				
● has prisoner remove any excess clothing, shoes, jacket, etc.				
● has prisoner empty all of their pockets and pull them inside out				
● tells prisoner to stand approximately three feet from the wall facing the officer				
● has the prisoner spread their legs and stretch their arms to their sides				
● has the prisoner wiggle their fingers and checks their mouths for any hidden contraband				
● has the prisoner turn around and places their hands spread out against the wall, their feet should be approximately three feet wide apart and three feet from the wall				
● place their hand in the middle of the prisoners back (to detect any sudden movement)				
4. Conducting the Search (Thoroughly and Systematically)				
● searches the head and neck area (ears, hair and mouth if not previously done so)				
● searches the upper body – back – shoulders – arms – rib cage – front and back				
● searches the lower body – waist – butt – crotch – legs – feet				
● searches excess clothing and personal articles				
● searches shoes / or sandals				
● returns items to prisoner				
5. Administration	Yes	No	Yes	No
documents the search in the log book and includes all staff names who were involved				
places contraband into envelope and informs the supervisor immediately				
submits written reports of any unusual findings to the superintendent				
Overall Rating	Pass	Fail	Pass	Fail

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Mentor's comments and training needs identified

Mentor's Signature: _____ Date: ____/____/____

Officer's comments (optional):

Officer's Signature: _____ Date: ____/____/____

(This does not state agreement; it only states this has been reviewed with the mentor)

III. CONCLUDING THOUGHTS

In 1973, William Nagel, a renowned Australian criminologist wrote a book called, *The New Red Barn: A critical look at the modern American Prison*, in which he argued that an efficient, humane and effective prison could be operated anywhere (even a new red barn) with good staff, properly trained. This paper is an attempt to show some of what will help create that well trained staff. Good training does not happen by accident nor is it totally dependent upon a knowledgeable and dedicated instructor. It happens due to research, planning, implementing and evaluating. Training, to be effective, cannot happen in a vacuum — it must be based in principles and conform to accepted standards, laws and procedures. Students, in corrections, must understand both the extent and the limits of the power they hold over the lives of others. The correction officer must also be able to react appropriately in a variety of situations and under many levels of stress. Using minimum force and appropriate communication skills comes with training, practice, re-training and more practice.

APPENDIX A: A SAMPLE PRISON OFFICER TRAINING COURSE

The material used here has been gathered by a review of more than 100 training programs conducted in individual Correctional Staff institutions, training academies and educational institutions around the world. Conferences with prison practitioners were held in North America, South America, Europe, Eastern Europe, Africa, Asia and the Middle East to go over the material in detail. More than 30 manuals were prepared with the laws of specific nations included for the general review and recommendations of prison personnel. The material in this section is what was found to be an almost universally agreed upon set of the basic and minimum information people working in a prison should have included in their initial training. The times suggested here for each course is, again, a compilation of what was gathered from the material reviewed and would most likely be used as a guide in individual institutions doing their own initial or refresher training. Training in a school or academy will undoubtedly be longer and more detailed.

Before working in a detention facility, prison or other type of correctional facility, it is important that certain basic elements are taught to each new employee. This is especially true for personnel who will be working directly with inmates. Following is an outline of what those basic elements should be. The individual institution may wish to change the order suggested for some of the training modules, or may wish to add to or modify some of the topics

The amount of time suggested for each module is based on the experience of similar training modules as operated in several prisons in different parts of the world. The time is the **minimum** needed to cover the subject and is meant as a guide to help you develop your own module. If desired, sample lesson plans can be provided to serve as an example as individual institutions develop their own. The following is for a correctional system where officers may use firearms. If a system does not use firearms, the lesson plans included below should be eliminated. Also initial training, and refresher training, should include ethics.

Though physical fitness training is important, it is not mentioned in this manual. Many prison systems bring their recruits into an academy and provide them with as much as six months to a year of basic training which has many additional elements not included here. Those who do more are to be commended and, if possible, copied by others. However, this manual is intended to present the minimum subject matter necessary for the efficient, effective and humane performance of duties. It goes without saying that without proper supervision and constant reinforcement of both the philosophy of the prison system and the appropriate behavior of the staff, the training is of little value.

Finally, what is presented here is the minimum classroom material. It is strongly suggested that the training include several practical sessions where the recruits spend time with experienced officers inside of prisons. After the initial orientation, a visit to one or more prisons is an important way to help the recruit to better understand what he or she will be exposed to during the individual lessons. It is also recommended that experienced officers be trained as "coaches" so when they are working with recruits, they can help reinforce and enhance the basic training.

THE FIRST WEEK — AN OVERVIEW OF CORRECTIONS AND WORKING IN IT

I. ORIENTATION

This is the student's introduction to the corrections system. It begins with an overview of the nation's criminal justice system and moves to the specifics of the laws covering the prison system. It ends by covering the general duties and expected behavior of prison personnel. Minimum time that should be allocated to this subject is 2 hours.

II. OVERVIEW OF THE PRISON SYSTEM

This module looks at the purpose of prison within the nation. Emphasis is given to the legal difference of the status of a confinee in pre-trial detention and an offender imprisoned as a condition of the court-imposed sentence. It will also cover the different classifications of inmates which must, by law, be kept separate from each other. The final section will list and define the various prisons within the nation and describe their general purpose, population capacities and security levels. Minimum time that should be allocated to this subject is 2 hours.

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III. WHO IS IN OUR PRISONS AND WHY?

This module provides information on the race, sex, age, offense, and average term served by the nation's inmates. It also covers the types and numbers of inmates from foreign nations. The lesson ends with a discussion among the students to help identify any false stereotypes and prejudices they might have concerning inmates in general. It will include a discussion on the causes of crime, especially violent crime, within the nation. Minimum time that should be allocated to this subject is 2 hours.

IV. INTERNATIONAL STANDARDS AND NORMS IMPACTING ON PRISON WORK AND INMATES

This module provides an in-depth introduction of the United Nations and other appropriate Standards and Norms defining the minimum standards of treatment required for detained and sentenced individuals. It covers inmate rights and staff responsibilities. Minimum time that should be allocated to this subject is 4 hours.

V. PRISON POLICIES AND PROCEDURES

This module identifies the authority under which the prison system works and provides an overview of the policies. Sample policies and procedures are presented. Group discussions and exercises are conducted to enable participants to find solutions to policy questions they might encounter. Minimum time that should be allocated to this subject is 6 hours.

VI. CROSS-CULTURAL AWARENESS

The purpose of this module is to provide participants with the knowledge and skills necessary to supervise and effectively communicate with all members of today's culturally diverse prison community, thereby improving the overall effectiveness of prison operations and avoiding culturally related supervision problems. Minimum time that should be allocated to this subject is 2 hours.

VII. INMATE DISCIPLINE

This module presents an introduction to the discipline process by reviewing the established rules for inmate behavior. The concept of due process in the discipline program is explained as well as punishment options. Minimum time that should be allocated to this subject is 3 hours.

VIII. INMATES AND THE PRISON ENVIRONMENT

This module begins with a brief discussion of the impact of prison and confinement on both inmates and staff. It covers the various stages inmates go through from reception to discharge from the system. This is followed by discussions of the subtle, destructive manipulation by some inmates that can lead staff into criminal activity while working in a prison. The manipulation techniques of the criminal personality are explored as a way of developing insights to protect against the "games" that some inmates play. Minimum time that should be allocated to this subject is 4 hours.

IX. VIOLENCE IN PRISON

This module looks at the issue of inmate violence from the point of view of controls available in prison settings. An analysis of previous disturbances or violent incidence is presented. Discussion of inmate needs and the physical conditions helping lead to prison disturbances is also provided. Minimum time that should be allocated to this subject is 1 hour.

X. A BRIEF OVERVIEW OF PRISONS AND TREATMENT PHILOSOPHIES

The previous lessons have laid the legal, operational and philosophical base of the prisons and the prison environment. This module looks at the history of how prisons developed into their current method of operating. Information is provided on the theory of re-socialization and rehabilitation and what role the prison officer plays. Current re-socialization programs operating within the prison are explained. Minimum time that should be allocated to this subject is 4 hours.

XI. HOSTAGE SURVIVAL

This module answers the question, "What should I do if I were taken hostage?" Mental and emotional preparedness is stressed along with a discussion of the emergency planning that is part of the institutional response to hostage situations. Minimum time that should be allocated to this subject is 2 hours.

XII. FIRE SAFETY

Fires in a prison are especially dangerous due to the security arrangements of prisons. All staff are expected to respond to fire emergencies as well as be aware of their role in fire prevention. Minimum time that should be allocated to this subject is 1 hour.

XIII. SUPERVISION OF INMATES

This module looks at the duties, responsibilities and techniques of inmate supervision. It provides some specific supervision activities when dealing with inmates who are members of organized gangs. Minimum time that should be allocated to this subject is 1.5 hours.

THE SECOND WEEK — MANAGING PROBLEMS IN A PRISON SETTING

XIV. INTRODUCTION TO SEARCHING TECHNIQUES

This program is divided into sub-sections that deal with techniques for clothed body searches, unclothed body searches and cell or area searches. A consistent “head to toe” approach to the frisk search is demonstrated as one of the security skills that will be tested at the end of the week. Minimum time that should be allocated to this subject is 4 hours.

XV. DRUG AWARENESS

This module introduces the drugs commonly found in prisons. It provides information on the use, effect and identification of chemicals and substances abused by inmates. It provides information concerning safety issues for staff who may come into contact with these substances. Minimum time that should be allocated to this subject is 2 hours.

XVI. SUICIDE PREVENTION

This module helps the staff identify the warning signs that people contemplating suicide often exhibit. Correctional Staff need to be aware of their role in identifying and preventing inmate suicide. Minimum time that should be allocated to this subject is 1 hour.

XVII. SIZING UP THE SITUATION

This module helps the staff know what is happening in any situation. Sizing up helps avoid costly mistakes and maximizes the chances that decisions will be effective and accurate. Minimum time that should be allocated to this subject is 2 hours.

XVIII. COMMUNICATING WITH INMATES

This module provides the skills to help staff open up communications with inmates. It provides staff with the ability to get another person to tell them more about what he or she knows or thinks. Minimum time that should be allocated to this subject is 2 hours.

XIX. CONTROLLING INMATE BEHAVIOR

Besides the need to protect the due process rights of inmates, there is a need to effectively deal with inmate behavior on an on-going basis that requires good management and communication skills on the part of prison workers. This module focuses on various proven ways to effectively correct behavior. Minimum time that should be allocated to this subject is 2 hours.

XX. FIRST AID AND HEALTH PROMOTION

This program includes an introduction to Emergency Action Principles as well as correct procedures for patient assessment prior to rendering or summoning aid. Techniques for rescue breathing, clearing an obstructed airway, and CPR are taught as well as other procedures for emergency conditions that, if not treated, can become life threatening very quickly. The session ends with a discussion of health and disease issues, such as TB, AIDS and other communicable diseases. It also covers information on what officers can do to help promote general health and sanitary conditions within the facility. Minimum time that should be allocated to this subject is 8 hours.

XXI. NON-VIOLENT CRISIS INTERVENTION

This module exposes the participants to recognition of the stages of crisis development in individuals as well as effective staff responses to each phase of this development. A series of exercises are provided to

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assist staff in experiencing what it is like to work with someone going through these phases. Participants are given exposure to non-violent defense techniques as well as a non-violent team control technique. Minimum time that should be allocated to this subject is 4 hours.

XXII. PERSONNEL PROTECTION TECHNIQUES

This module introduces some fundamental principles of personal protection. A variety of defensive release techniques are demonstrated and practiced. The course concludes with several practical control techniques. Minimum time that should be allocated to this subject is 2 hours.

XXIII. KEY AND TOOL CONTROL

The secure use of tools and keys is an important aspect of every institutional operation. Basic ideas on acquisition and control of these devices is explored and discussed. Minimum time that should be allocated to this subject is 4 hours.

XXIV. INMATE COUNTS

This module introduces important security supervision techniques that are required in inmate management. The focus is on developing good observation skills along with procedures for conducting various types of inmate counts. An exercise in counting is a concluding activity for this module. Minimum time that should be allocated to this subject is 1 hour.

XXV. REPORT WRITING

This module provides an introduction to basic report writing skills as a background to the legal and administrative requirements for reports of the Prison system. The program is divided into two sessions and concludes with a Practicum where each participant will complete several reports that are reviewed under the supervision of the instructor. Minimum time that should be allocated to this subject is 2 hours.

XXVI. STRESS MANAGEMENT

This module demonstrates stress management techniques and has participants practice some of them. Minimum time that should be allocated to this subject is 2 hours.

THE THIRD WEEK — SECURITY PROCEDURE AND FIREARMS

XXVII. USE OF FORCE

This module investigates the types of force to use in controlling inmates, always keeping it to the least amount of force necessary. Practice in identifying potentially dangerous situations and how to handle them in as non-combative a manner as possible is given each participant. Minimum time that should be allocated to this subject is 2 hours.

XXVIII. FIREARM SAFETY

This module prepares the trainees for the specific weapons they will use in corrections. The basics of weapon and range safety are carefully presented as the most important aspect of weapons handling. Minimum time that should be allocated to this subject is 1 hour.

XXIX. INTRODUCTION TO WEAPONS

This module prepares the staff for the potentiality of carrying firearms and chemical agents as a job responsibility related to the authority granted them by the State. This course presents basic introductory skills and a familiarization with the handling characteristics and functional operation of each of the weapons they will use in their job. Classroom demonstration is provided for each weapon. Minimum time that should be allocated to this subject is 2 hours.

XXX. WEAPONS - CLASSROOM PRACTICE

Each trainee is given ample time to become physically acquainted with the operation of each weapon as a prelude to range practice and qualification. A series of drills and simulations are used to develop and enhance good shooting skills prior to range use of these weapons. Special training on the handling and use of chemical agents will be covered. Minimum time that should be allocated to this subject is 2 hours.

XXXI. RANGE PRACTICE AND QUALIFICATION

Each trainee will have an opportunity to practice with each weapon and then demonstrate a minimum of 70% proficiency with each weapon that they may be authorized to use in the course of their working duties. The courses of fire are designed to demonstrate accuracy and timeliness in weapon use. Minimum time that should be allocated to this subject is 2 hours.

XXXII. LOW-LIGHT AND NIGHT FIRING COURSES

Firing at Dusk and during night conditions provides an important familiarization with the limitations of using a weapon in these conditions. The course of fire includes the use of all basic weapons under both low-light and full night darkness conditions. Minimum time that should be allocated to this subject is 2 hours.

XXXIII. USING RESTRAINING DEVICES

The skills needed to safely and securely apply restraining devices are demonstrated in this module. The participants will learn the functional capability of restraints along with special skills used in the preparation for the transportation of prisoners. A safe transportation method is demonstrated. This is one of the security skills that will be tested at the end of the week. Minimum time that should be allocated to this subject is 3 hours.

XXXIV. TRANSPORTATION OF PRISONERS

This module introduces the security problems involved in motorized transportation of prisoners. A review of common problems is presented. A variety of seating arrangement scenarios are analyzed in preparation for this portion of the security skills evaluation at the end of the week. Minimum time that should be allocated to this subject is 2 hours.

XXXV. USE OF RADIO/TELEPHONES

This module demonstrates the different types of radio and telephone equipment used in corrections. Each trainee will be given an opportunity to practice with each type of radio. Communication security and methods of clear and concise communications are covered. Minimum time that should be allocated to this subject is 2 hours.

XXXVI. SPECIAL SECURITY ISSUES

This module will cover specialized areas of concern to prison personnel. Those issues include:

- Forced Cell Moves
- Riots
- Crime Scene Protection
- Internal Investigations
- Escapes
- Attacks on the Institution by Bandits

Minimum time that should be allocated to this subject is 4 hours.

XXXVII. SECURITY SKILLS PRACTICE

This module allows time for controlled practice of the skills required for frisk search, restraint application and transport in one of several situations. Each trainee will work with a partner to simulate real-life situations in the use of these skills. Minimum time that should be allocated to this subject is 4 hours.

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ANNUAL AND ON-GOING TRAINING

The material in this chapter has been gathered by a review of more than 100 training programs conducted in individual prisons, training academies and educational institutions. In some cases, where no formal written material was available individuals responsible for training were interviewed or material was gleaned from articles. The material in this section is what was found to be an almost universally agreed upon set of the basic and minimum information people working in a prison should have included in their annual and refresher training. The times suggested here for each course is, again, a compilation of what was gathered from the material reviewed and is considered the minimum necessary to cover the subject.

REQUIRED CURRICULUM

Course Title	Minimum	Hours
Prison Policies and Procedures		2
Self Defense		3
Firearms		5
Hostage Situations		1
Suicide Prevention		1
Safety, to include		4
Fire Protection		
Safety		
Emergency Procedures		
Environmental Issues		
Verbal/Written Communication Skills to include		2
Effective Listening		
Communication		
Report Writing		
Staff Conduct, to include		2
Code of Conduct		
Ethics		
Cultural Diversity		1
Security Issues, to include		6
Tool and Key Control		
Supervision of Inmates		
Escape Procedures		
Escort Procedures		
Search and Contraband		
Use of Force, to include		2
Personal Protection Techniques		
Medical Issues, to include		4
First Aid		
Medical Emergencies		
Health Promotion/Disease		
Working with new officers, on-the-job training and coaching techniques		1
Inmate Information, to include		6
Inmate Rights		
International Standards		
Re-socialization, rehabilitation Programs		
Inmate Rules and Regulations		

INTERNATIONAL STANDARDS AND NORMS AS GUIDANCE IN THE CRIMINAL JUSTICE SYSTEM

*Matti Joutsen**



I. WHY INTERNATIONAL STANDARDS AND NORMS?

Criminal justice has traditionally been regarded as a sovereign matter. Each country has decided on its own what conduct it regards as criminal, and on how it should respond to criminal acts. After all, for centuries few people travelled further than the neighbouring village, and few crimes affected anyone but those who were directly involved. Those responsible for public order and the administration of justice had little reason to be concerned with what happened elsewhere. As a result, criminal justice was almost entirely territorial, in the sense that it was concerned only with acts or omissions committed in the country in question.

This way of thinking, when combined with the considerable cultural, economic, legal, political and social differences between countries, helps to explain why the structure and operation of criminal justice systems around the world seem to have evolved in quite different directions, and why there are considerable differences even within such individual legal traditions as common law, Continental law and Islamic law.

At the time the United Nations was established some seventy years ago, the prevailing view was that this new organization may not intervene in the domestic affairs of sovereign countries. This point was regarded as so fundamental that it was enshrined as one of the first provisions of the UN Charter, in article 2(7). When the United Nations then began to follow in the footsteps of the League of Nations, by taking up issues related to crime prevention and criminal justice, several countries (in particular the Soviet Union) objected. In their view, how countries respond to crime is very much a domestic matter.¹

However, following the Second World War (and thus during the seventy years that the United Nations has been in existence), three factors in particular have largely reversed the direction of the evolution of criminal justice systems around the world, from increasing divergence to closer convergence of criminal justice systems: the growing need for a common approach to crime, the realization of the value of sharing experiences, and the growing respect for human rights.

First, the increasingly transnational nature of some forms of crime (in particular organised crime) has led various groups of countries to seek agreement on common definitions of crime and on procedural measures, in order to facilitate international legal co-operation. For example, new offences have been “invented” (such as money laundering, or terrorism), and wide international agreement has been reached on the minimum elements of several other offences (such as bribery, trafficking in persons and participation in an organized criminal group). Wide international agreement has also been reached on the conditions for and forms of mutual legal assistance, and on the conditions for extradition.

Second, policy-makers and practitioners around the world have recognized the value of studying how crime and criminal justice issues have been dealt with in other countries. This process has resulted in attempts to identify internationally what is known as “good practice” in crime prevention and criminal justice. Examples of areas in which good practice has been identified include ways of dealing with juvenile offenders, the use of restorative justice, modern investigative means in policing, the exercise of prosecutorial discretion, and the use of community service or electronic monitoring as sanctions.

Third, the respect that is now accorded to human rights has resulted in the adoption of certain

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¹Clark 1994, p. 15, and Redo 2012, p. 110.

minimum legal safeguards and of certain mechanisms in those criminal justice systems where they had been absent or inconsistently recognized. Respect for human rights has also been recognized as promoting effective crime prevention and control, nationally and internationally.² In particular the 1948 Universal Declaration of Human Rights and the 1966 Covenant on Civil and Political Rights have direct implications for the operation of the criminal justice system.

Common definitions and procedures, good practice and human rights: these three factors have mixed in different ways, at different times and in respect of different issues. One key way in which they have been brought together is in the form of “international standards and norms” — a concept that would seem to be at odds with that of national sovereignty. And yet, despite the initial doubts of some, this concept has found a welcoming home in the United Nations crime prevention and criminal justice programme.

II. THE EMERGENCE OF INTERNATIONAL STANDARDS AND NORMS

A. United Nations Standards and Norms

The body of United Nations standards and norms that has emerged over the years is a central feature of the United Nations crime prevention and criminal justice programme. These standards and norms now deal with a wide range of issues in crime prevention and criminal justice, from juvenile justice to the treatment of prisoners, from restorative justice to the enforcement of the death penalty.³ The most recently adopted standard and norm, finalized in 2010, was the United Nations Rules for the Treatment of Women Prisoners (the “Bangkok Rules”). In addition, the very first UN standard and norm, on the treatment of prisoners in general, has now been revised, with the United Nations Commission on Crime Prevention and Criminal Justice recommending in 2015 that the Economic and Social Council (ECOSOC) approve the “Mandela Rules” for adoption by the General Assembly; this will most likely happen during the autumn of 2015.⁴

The idea of developing international standards and norms has long roots, considerably predating the work of the United Nations. Almost 150 years ago, the First International Congress on Crime Prevention and the Suppression of Crime (London, 1872) brought together practitioners from many countries interested in learning from one another about “what works”. It was at this major international meeting on crime prevention and criminal justice that some practitioners submitted a draft for international rules on how to deal with prisoners. The draft went through a lengthy process, with work continuing on the document within the framework of the International Penal and Penitentiary Commission (IPPC), which itself was established following the First International Congress. A formal draft was produced in 1926, and revised in 1933. It was submitted to the League of Nations, which “took note” of the rules in 1934. After the establishment of the United Nations, the IPPC revised it again and submitted it to the UN. The resulting Standard Minimum Rules for the Treatment of Prisoners (SMR) were adopted by the First United Nations Crime Congress in 1955, and approved by the Economic and Social Council in 1957.⁵

There was a pleasing symmetry in this evolution of the first United Nations standard and norm on crime prevention and criminal justice, the Standard Minimum Rules for the Treatment of Prisoners. As noted, the First International Congress, where the SMR began the long road to approval, also led to the establishment of the International Penal and Penitentiary Commission (IPPC). The IPPC began a practice of organizing international congresses every five years on correctional treatment. Following the creation of the United Nations, the functions of the IPPC were formally transferred to the United Nations in 1950. One outcome was the establishment of an Ad Hoc Advisory Committee of Experts; this was the forerunner of today’s United Nations Commission on Crime Prevention and Criminal Justice. A second outcome was that the UN took over the organization of the “Crime Congresses”, and their scope was widened to

²E/CN.15/1997/14, para 41. It may be noted that the UN Charter includes an obligation to promote universal respect and observance for human rights.

³See the *Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice*, United Nations publication, Sales no. 92.IV.1 and corr.1.

⁴United Nations Standard Minimum Rules for the Treatment of Prisoners (the “Mandela Rules”). See Report of the Commission, E/2015/30 and E/CN.15/201, pp. 20-26 and the annex.

ECOSOC is one of the six main organs of the UN, and is the principal UN body for the coordination of work on economic, social and environmental issues.

⁵Clark 1994, pp. 98-99 and Redo 2012, p. 143.

include crime prevention and the treatment of offenders in general — and it was at the first such Crime Congress that the SMR were adopted.⁶

After the Standard Minimum Rules were adopted by the Economic and Social Council in 1957, there was a pause in the drafting of UN standards and norms.⁷ The next instrument, a General Assembly resolution briefly titled “Capital punishment”, did not emerge until 1971.⁸ This was followed five years later by the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in 1976.

The pace began to increase during the 1980s, with the adoption of the Code of Conduct for Law Enforcement Officials in 1980. The next instrument was adopted in 1982, two more in 1984, and (in the aftermath of the Seventh UN Crime Congress) four in 1986. Yet another instrument saw light in 1988, and five in 1989. The record year, however, was in 1991 (in the aftermath of the Eighth UN Crime Congress), when the General Assembly adopted eight separate standards and norms, and “welcomed” *en bloc* other resolutions emerging from the Crime Congress, among them four other instruments which have been added to the United Nations Compendium.⁹

It was in part a reaction to such “mass production” of resolutions — including resolutions incorporating new standards and norms — that the United Nations crime prevention and criminal justice programme was restructured in 1991.¹⁰ This, however, did not stop continued work on UN standards and norms. In fact, following the spurt in the year 1991, the pace became a more or less steady trot, with at least one new UN standard and norm emerging every single year until the beginning of the 2000s. For a variety of reasons¹¹ there has been a sharp drop in the number of new instruments over the past ten years. With the exception of the Congress Declarations adopted at the Salvador (2010) and the Doha (2015) Congress (which in structure and content are arguably quite different from other UN standards and norms in crime prevention and criminal justice), the only new instruments since 2005 have been the Bangkok Rules in 2010 and now the revision of the SMR (the Mandela Rules) in 2015.

B. Other International Standards and Norms on Crime Prevention and Criminal Justice

The United Nations does not have a monopoly on international standards and norms on crime prevention and criminal justice. Such instruments have also been developed by regional bodies as well as by many international professional bodies.¹²

Perhaps the most prolific regional body in the production of international standards and norms on crime prevention and criminal justice is the Council of Europe, which has issued recommendations, resolutions, guidelines and other standards and norms. The number of Council of Europe “recommendations” alone is over one hundred, dealing with different aspects of the criminal justice system, from partnerships in crime prevention to the treatment of dangerous offenders, from assistance to crime victims to a code of ethics for prison staff.¹³

Examples of international standards and norms developed by international professional bodies include

- the Law Enforcement Code of Ethics prepared by the International Association of Chiefs of Police;

⁶See Clark 1994, p. 19, Redo 2012, pp. 108-111.

⁷See the annex for a timeline of adoption of the UN standards and norms.

⁸The brief title of the GA resolution was in keeping with the briefness of the resolution itself; one page in length.

⁹See section 4 below regarding the significance of “adoption” and “welcome”.

¹⁰See for example Clark 1994 p. 117 ff and p. 126 ff. Clark notes that a total of 45 separate resolutions were adopted at the Eighth United Nations Crime Congress. Many delegations were small and “a long way from home with less than perfect communications” (Clark, pp. 128-129). For understandable reasons, Clark questions whether so many draft resolutions could be given the rigorous examination that they deserved.

¹¹See section 5 below regarding criticism of work on drafting UN standards and norms.

¹²In addition to international standards and norms, many examples exist of national standards and norms on crime prevention and criminal justice.

¹³The Council of Europe has 47 member states, and covers almost all of Europe. (It should not be confused with the European Union, which has 28 member states, primarily from Western and Central Europe.)

A list of Council of Europe recommendations on crime prevention and criminal justice is available at <<http://www.coe.int/t/dghl/standardsetting/cdpc/2Recommendations.asp>>.

- the Code of Ethical Conduct prepared by the International Corrections and Prisons Association; and
- the Bangalore Draft Code of Judicial Conduct 2001 (the Bangalore Principles) adopted by the Judicial Group on Strengthening Judicial Integrity.

In addition, various international courts have adopted codes of ethics:

- the Code of Judicial Conduct of the Caribbean Court of Justice;
- the Code of Conduct of the Court of Justice of the European Communities;
- the Resolution on Judicial Ethics of the European Court of Human Rights; and
- the Code of Judicial Ethics of the International Criminal Court.

III. WHAT IS AN INTERNATIONAL STANDARD AND NORM, AND WHAT IS ITS LEGAL STATUS?

A “standard and norm” is a document that contains normative elements. It defines how members of the target audience — individuals, members of a certain profession, public officials and so on — should conduct themselves. An “international standard and norm”, accordingly, is a document that is intended to apply to more than one country, for example to all members of a global or regional body (such as the United Nations, the Association of South-East Asian Countries, or the Council of Europe), or to all members of an international professional body (such as the International Corrections and Prisons Association).

International standards and norms come in a huge variety of packages. They may appear as resolutions, recommendations, declarations, standard minimum rules, basic principles, proclamations, statements, guidelines, codes of conduct, codes of ethics and so on.

Are international standards and norms legally binding? The simplest, and perhaps least helpful, answer is based on circular reasoning: all instruments (both national and international) can be divided into two categories, “hard law,” which is legally binding, and “soft law”, which is not. “Standards and norms” are part of soft law, and therefore are not legally binding. States are free to ignore or apply soft law, just as they wish.

A somewhat more complex version of this answer focuses on the distinction between sovereign states and all other bodies, whether intergovernmental or nongovernmental. Only a state can adopt legally binding instruments — Acts of Parliament, laws, decrees and so on. A state may also decide to ratify or accede to an international agreement, as a result of which the provisions of that agreement may become legally binding (depending on how they are formulated, and on the constitutional law of the country in question). Thus, this version of the answer defines “hard law” broadly to encompass legislation enacted by sovereign states, and international agreements which have been ratified or acceded to by states.¹⁴ No one else (so the answer runs) can decide on instruments that would be binding on the state — not an intergovernmental body, such as the United Nations, and much less a professional or other non-governmental organization, such as the International Corrections and Prisons Association. And also this answer concludes that standards and norms are not legally binding.

Even this somewhat more nuanced answer, however, has been questioned. Some have argued that member states have approved the goals of intergovernmental organizations when they applied for membership, and are thus bound to observe the resolutions and recommendations adopted. Others, however, have responded to this by pointing out that although the goals of such intergovernmental organizations may meet with the general approval of the member states, there may well be disagreement over the proper method of achieving these goals.

It would indeed be difficult to conceive of the willingness of political decision-makers of most (if not all) states to surrender their sovereignty in such internal matters as criminal justice to the extent that they

¹⁴ This distinction can be made somewhat more confusing by noting that an instrument — whether a law, an international agreement or a standard and norm — may contain both normative and non-normative elements. A normative element expresses an obligation to act or refrain from acting (“we will criminalize money-laundering”), while a non-normative element for example expresses an aspiration (“we will promote cooperation”).

would bind themselves in advance to following any and all resolutions that may even be passed by majority vote.

Even assuming the willingness of member states to be bound by resolutions and recommendations relating to crime and criminal policy, there would be considerable difficulties in drafting a recommendation that would take sufficient account of the different legal systems, ideologies in criminal policy, and criminal justice practice, so that it could be accepted as legally binding by a large number of member states.

The dominant view is thus that international standards and norms, as part of “soft law”, are not legally binding. They only embody an earnest request to their addressees (member states, members of a criminal justice profession) to apply the contents, and not an absolute obligation to undertake a certain course of action.¹⁵ One practical implication of this is that if a public official (or an entire state) acts contrary to an international standard and norm (but not contrary to “hard law”), then the person subjected to such action has no legal recourse. He or she cannot complain to a superior, or turn to court in order to have the decision overturned.

This does not mean that standards and norms, as “soft law”, are meaningless, and have no practical effect. The significance of soft law, including standards and norms, does not lie in any assumed legal binding effect. The significance lies elsewhere, on both the international and the national level. On the international level, “soft law” may be seen as an intermediate stage in the formulation of ideas and concepts that may in time emerge as “hard law”, in the form of international agreements. A clear example is provided by the various resolutions, declarations and statements regarding international organized crime which contributed to the drafting of the United Nations Convention against Transnational Organized Crime.¹⁶

When ideas are embodied in standards and norms, the recognition and declaration of certain principles and even detailed rules may be intended to have a direct influence on the practice of states. If this happens, they contribute to the creation of customary international law, which is widely recognized as binding on states.¹⁷ Standards and norms, even if they are not in themselves binding, may thus become a source of international law, in particular if they are drafted in the form of an obligation (e.g. “States *shall*” do something, as opposed to “States *may consider*” doing something, or “States *are invited*” to do something).¹⁸

Two examples can be provided of this process, both taken from the work of international tribunals. First, the Preparatory Committee on the Establishment of an International Criminal Court (ICC) made specific reference to the need for the rules of procedure to include provisions that give effect to the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.¹⁹ As a result, victims have standing before the ICC, and considerable attention has been paid to providing victim services. A second example is that the Standard Minimum Rules for the Treatment of Prisoners have provided the basis for the development of the European Prison Rules, which have been used by the European Court of Human Rights in its jurisprudence, which in turn has had a direct impact on prison conditions throughout the member countries of the Council of Europe.²⁰ Soft law gradually becomes hard law.

On the national level, international standards and norms may have an instrumental value in guiding national development.²¹ They may be used as clinching arguments by decision-makers in individual jurisdictions when these decision-makers seek to justify certain courses of action that they would have

¹⁵ Castaneda 1969, pp. 7-8 and 193-195.

It may be noted that some authorities in international law deny the entire existence of “soft law”. See in particular Klabbbers 1996. Essentially, he argues that either something is law, or it is not; there is no intervening category of “soft law”, nor is there a need for such a concept.

¹⁶ Among these are the 1994 Naples Political Declaration and Global Action Plan against Organized Transnational Crime, but also a large number of UN Commission and General Assembly resolutions during the 1990s.

¹⁷ Castaneda 1969, pp. 19 and 168-169.

¹⁸ Charlesworth 1994, p. 2.

¹⁹ For examples of how the Victim Declaration actually impacted on the ICC, see Ingadottir.

²⁰ See in particular Sillaste.

preferred even if the standard or norm did not exist. When selecting from among various alternative approaches to achieving a certain end, the decision-makers may thus defend their choice by referring to the United Nations Victim Declaration or to the Tokyo Rules.

Similarly, international standards and norms can also be used by citizens, non-governmental organizations and other stakeholders in trying to influence their government to change laws and policy in a certain direction.

Analysis of the actual impact of international standards and norms on the domestic level is difficult, due to a number of factors: the absence of an obligation to report, the heterogeneity of the criminal justice systems of different States, the possibility of different interpretations of the same text, and the difficulty in determining if a specific change in national law, policy or practice was due to the influence of a United Nations standard and norm, or to other factors.

Nonetheless, many reports from States to the United Nations cite examples of the impact, and the literature shows several further examples of impact. In many States, the standards and norms are becoming part of the national discourse on crime prevention and criminal justice.

IV. HOW UNITED NATIONS STANDARDS AND NORMS ARE DRAFTED AND APPROVED

The process that eventually led to the adoption of the Standard Minimum Rules on the Treatment of Prisoners was unusually complex and long, involving as it did various experts, drafts, international conferences and governmental input over a period of almost 80 years. Nonetheless, in broad terms it set the pattern for the adoption of most subsequent standards and norms:

- the initiative generally comes from individual experts or organizations;
- a draft is prepared;
- the draft is discussed at several international meetings;
- the draft is discussed at the United Nations Commission (or earlier, the United Nations Committee), which may decide to recommend it for adoption by the Economic and Social Council and/or the General Assembly.

The restructuring of the United Nations Crime Programme in 1992 served in several respects as a watershed in how UN standards and norms were drafted and adopted. The main differences have been in how the initiative was made, and in what format the subsequent draft was discussed.

During the existence of the United Nations Committee (up to 1992), the initiatives for standards and norms came from a variety of sources. One or more of the experts on the Committee would take it up in the Committee which, if it decided that further action was merited, would decide on the organization of one or more expert meeting(s) to examine the draft in greater detail. These expert meetings (almost always held in English only, and on the basis of extra-budgetary funding) usually brought together a mix of representatives of interested governments, intergovernmental organizations and non-governmental organizations, as well as individual experts and UN Secretariat members. The result would then go to the Committee for further action. Often, but not always, the draft would be circulated through one of the United Nations Crime Congresses, allowing for comments from a larger audience.

Following the establishment of the United Nations Commission in 1992, the member states have assumed a far more active role in the drafting of standards and norms, and the process has become more formalized. The initiative has to go through one (or more) of the forty member states of the Commission. If the Commission decides that further action is merited, this generally takes the form of an open-ended in-

²¹ The most noted example of a standard and norm guiding national development is the Standard Minimum Rules for the Treatment of Prisoners. It has clearly guided national practice in corrections and, in several cases, helped bring about legal reform.

Various reports of the Secretary-General cite examples provided by Member States of how the standards and norms have influenced domestic law, policy and practice. See, for example, E/CN.15/1996/16, E/CN.15/1997/14, E/CN.15/1997/13, E/CN.15/1998/8, E/CN.15/1999/7, E/CN.15/2001/9 and E/CN.15/2002/3.

tergovernmental expert group. This, in turn, has several implications. There is in effect a higher bar for taking an initiative further. The states seek to ensure that their representatives have tighter control over the drafting process, and correspondingly the input in particular from non-governmental organizations and individual experts has decreased. There is more insistence on multilingualism, which places greater strains on the budget; it has become more difficult to identify host governments who are prepared to pay for such meetings.

As for adoption, most of the United Nations standards and norms included in the Compendium have been adopted by consensus by the General Assembly or the Economic and Social Council.²²

There is, however, no hard and fast rule on adoption. The standards and norms contained in the “Compendium” have almost all been adopted by ECOSOC or the General Assembly.²³ However, a resolution that contains “standards and norms language” can also be “endorsed” by the General Assembly (as had often been done regarding various resolutions adopted at UN Crime Congresses up to the year 2000). It is in this way, for example, that the Model Agreement on the Transfer of Foreign Prisoners came into being. The status of the Basic Principles on the Independence of the Judiciary is even stranger: it was first “endorsed” by the General Assembly, but a few weeks later it was “welcomed” by the same General Assembly.²⁴

V. CRITICISM OF STANDARDS AND NORMS AND OF THE COLLECTION OF INFORMATION ON THEIR USE AND APPLICATION

The United Nations standards and norms have been developed in the conviction that not only is there a shared understanding about the minimum standards of human rights that should be upheld when preventing and controlling crime, but also that such standards contribute to improved professionalism and to the strengthening of the criminal justice system.

Over fifty standards and norms relating to crime prevention and criminal justice have been adopted and included in the Compendium published by the United Nations Office on Drugs and Crime. As was noted in section 2 above, the pace of adoption began slowly, but then increased quite rapidly at the end of the 1980s, with twelve new standards and norms adopted in just one year, 1991.

At that time, work had already begun on the restructuring of the United Nations crime prevention and criminal justice programme.²⁵ One of the main concerns underlying the work that was being carried out within the framework of the United Nations “crime programme” at that time was that it was inefficient, and was not responding to the needs and priorities of member states.

²² A separate question is, what constitutes a United Nations standard and norm, which should therefore merit publication in the Compendium? The Compendium contains a mixture of different documents. Some are clearly drafted as norms to guide the conduct of criminal justice agencies or the members of a criminal justice profession; examples include the SMR, the Tokyo Rules and the Code of Conduct for Law Enforcement Officials. A second set consists of instruments that are intended to guide the general policy of Governments and other stakeholders; examples include the Crime Congress Declarations from 2000, 2005, 2010 and 2015. A third set consists of the various “Model Treaties”; one could perhaps argue that these are “standards and norms” designed to guide the work of officials who are negotiating treaties.

A large number of resolutions adopted within the framework of the UN Crime Programme contain extensive elements very similar to those mentioned above, but for a variety of reasons, have not been included in the Compendium. The Economic and Social Council and the General Assembly have at times specified in a resolution that the Secretariat should ensure broad dissemination of the new instrument. This could be understood as a suggestion that it should be published in the Compendium. This, however, has not been a consistent practice. It would therefore appear that the Secretariat has almost always decided on publication on a case-by-case basis.

²³ Of the 56 standards and norms contained in the Compendium, 23 were adopted by ECOSOC and the rest adopted (or “endorsed” or “welcomed”) by the General Assembly. Of the standards and norms adopted before the 1992 restructuring of the UN Crime Programme, eight were adopted by ECOSOC and 21 by the GA; after the restructuring, the corresponding figures were 15 by ECOSOC and 12 by the GA. It would thus seem that, after the restructuring, proportionately fewer have been going all the way up to the General Assembly.

²⁴ GA 40/32 and GA 40/146, respectively. See Clark 1994, pp. 147-148.

²⁵ The best presentation of the background, process and results of the restructuring of the UN “crime programme” is to be found in Clark 1994, pp. 24-57.

Also the work on standards and norms was subjected to criticism on a variety of grounds:

- *“No more standards and norms are needed.”* Perhaps the most benign criticism of the standards and norms was that the existing set of United Nations standards and norms already covered the key issues, and much more attention should be paid to assisting member States on request in promoting their implementation in practice, in particular by providing technical assistance. This criticism could be encapsulated in the statement, “We already know what we should do; just give us the resources to get it done.”
- *“The standards and norms are too vague.”* According to other criticism, the standards and norms are unhelpful, because they tend to be phrased in very general terms. The standards and norms must take into account different criminal justice systems and traditions. Since there has also been a consistent effort within the United Nations Programme to reach consensus on the different issues, the extensive negotiations on the drafts tend to raise the language to such a level of generality that they cannot provide specific guidance to the individual practitioner or legal draftsman.²⁶
- *Disagreement over priorities.* The time spent on formulating standards and norms and assessing their implementation was seen by some critics to be at the expense of more urgent measures, such as dealing with transnational organized crime. The argument here has been that the United Nations has very limited resources at its disposal, and these should be focused on priority issues — and not on drafting new standards and norms (or on implementing existing standards and norms, for that matter).
- *Lack of Government control over the formulation of standards and norms.* About half of the standards and norms contained in the Compendium had been adopted before 1992, during the period when the Programme was overseen by a Committee of experts elected in their individual capacity, and not by the present Commission, which consists of Member States. The criticism has been, essentially, that the formulation of the standards had been the handiwork largely of non-governmental organizations and individual experts, and that the final result had been given to the Economic and Social Council or the General Assembly very much as a *fait accompli*, at a stage where no fundamental amendments could in practice be made by the delegations representing the member states.²⁷
- *Potential violation of national sovereignty?* According to one view, the standards and norms, and in particular assessment of their implementation,²⁸ infringe on national sovereignty. This argument has seldom been raised directly, since few are prepared to have themselves seen as opposing, for example, the protection of the rights of suspects. The argument has been raised, however, most notably in connection with the issue of capital punishment, where States supporting capital punishment have objected to attempts by other States to abolish capital punishment in all countries around the world.
- *“Questionnaire fatigue.”* Even if the assessment of the use and application of standards and norms was not seen to infringe on national sovereignty, some states began to be concerned that they were receiving repeated requests from the Secretariat for information on the use and appli-

²⁶ In the hallways of the Vienna International Centre and elsewhere where international texts are negotiated, this is amusingly described as “constructive ambiguity”. There is enough vagueness to satisfy almost everyone’s opinion about what should be in the text.

²⁷ The sheer large number of standards and norms (and indeed resolutions in general — a total of 45!) adopted by the Eighth United Nations Crime Congress in 1990, and sent up to the General Assembly, was a particular sticking point for some. See, for example, footnote 11 above, and Clark 1995, pp. 126-132.

²⁸ Earlier in the UN Programme, there had been discussions on the “monitoring” of the implementation of standards and norms. During the 1990s, there were at times heated debates in the Commission on what exactly “monitoring” involves, and whether the UN had the mandate to ask sovereign member states what they have done for implementation. The term has subsequently in practice disappeared from the UN Crime Programme. According to the wording currently preferred, the Secretary-General of the United Nations does not “monitor” implementation of standards and norms, but “reviews” implementation, and more generally “promotes their use and application”. See, for example, Clark 1994, pp. 229 ff.

cation of over 50 standards and norms. Responding to such requests often requires the collection of statistics or other information from a number of different national agencies. One result was a clear drop in the number of states responding to the various *notes verbale* sent out by the Secretariat for information. (Some critics even interpreted this drop as a sign that the majority of states assigned the standards and norms a very low priority.)

It should be emphasized that the criticism referred to above has been voiced by only a few member States, and even then not all critics have agreed on all points. Even so, since the Commission operates on the basis of consensus, those supporting further action on the standards and norms have had to respond to the criticism.

Following the restructuring of the United Nations Crime Programme in 1992, there was indeed the risk that not only would further standard-setting be halted, but that the work that had been conducted up to that point would be negated: if there could be no agreement on the viability of the existing standards and norms, nor on work on implementation of the standards and norms, they could essentially be ignored by the United Nations Commission. It was thus significant that, in 1994, soon after the restructuring took place, the Economic and Social Council specifically noted that United Nations standards and norms in crime prevention and criminal justice constitute internationally accepted principles outlining desirable practices in that field.²⁹ It is also significant that new standards and norms have been developed and agreed upon, for example on violence against women, children in the criminal justice system, restorative justice and women prisoners.³⁰

Mindful in particular of the criticism regarding “questionnaire fatigue” but also of the need to strengthen technical assistance, ECOSOC decided to request the Secretary-General to convene a meeting of experts to plan the way forward. This expert group meeting was held in 2003, and made several recommendations, including the use of a “cluster approach” in the review of use and application, and the simplification of the forms used in this review.³¹ Following a further intergovernmental expert group meeting, the recommendations were formulated into a resolution, which was adopted by ECOSOC.³² The basic idea was to streamline the collection of information on the use and application of standards and norms, in order to make it more efficient and cost-effective, and to proceed in stages (“clusters”). The first stage was to deal with standards and norms related to persons in custody, non-custodial sanctions, juvenile justice and reformative justice. The second stage was to deal with legal, institutional and practical arrangements for international cooperation, the third stage with crime prevention and victim issues, and the fourth with the independence of the judiciary and the integrity of criminal justice personnel.

In the years that followed, some adjustments were made to this approach. The first stage was carried out as planned, and in 2006, the Commission had before it the Secretariat report on the situation with persons in custody, non-custodial sanctions, juvenile justice and reformative justice.³³ The following year, the Commission discussed standards and norms that dealt with crime prevention, and in 2009, standards and norms that dealt with victim issues.³⁴ However, amid further expressions of concern regarding “questionnaire fatigue” and a relatively low response rate, subsequent reports of the Secretariat focused primarily on the use of standards and norms in technical assistance.³⁵

²⁹ ECOSOC resolution 1994/18 of 25 July 1994. See Redo 2012, pp. 111-113.

³⁰ On the other hand, fewer new United Nations standards and norms have emerged since 2000, and many of these have been UN Crime Congress declarations, which are more aspirational than normative. In the assessment of the author, it has become considerably more difficult to reach consensus in the Commission on the need for new standards and norms, very much in the same way as it has become more difficult to reach consensus on the need for new UN conventions.

³¹ The report is contained in “Application of United Nations Standards and Norms in Crime Prevention and Criminal Justice”, Report of the Expert Group Meeting held at Stadtschlaining, Austria, 10-12 February 2003, UNODC publication. The recommendations are to be found on pp. 247-250.

³² ECOSOC resolution 2003/30. See also Redo 2012, p. 113.

³³ E/CN.15/2006/13.

³⁴ E/CN.15/2007/11 and E/CN.15/2009/6, respectively.

³⁵ See, for example, E/2006/30, para 137; E/2007/30/Rev.1, para 116. The proposal for a questionnaire on the fourth cluster, on the independence of the judiciary and the integrity of criminal justice personnel, was specifically opposed by one speaker in 2007 on the grounds that this would overlap with ongoing work within the framework of the Organized Crime Convention and the Convention against Corruption. E/2007/30/Rev.1, para 118.

VI. STANDARDS AND NORMS IN THE WORK OF THE UNITED NATIONS TODAY

Today, the earlier criticism of United Nations standards and norms has largely abated, and they have been accepted as a mainstay of the United Nations crime prevention and criminal justice programme. This can be seen in a number of ways:

- “the use and application of United Nations standards and norms in crime prevention and criminal justice” has become a standing item on the agenda of the annual sessions of the United Nations Crime Commission;
- the specific question of United Nations standards and norms has been on the agenda of every United Nations Congress since 2005.³⁶ The eleventh Congress (Bangkok, 2005) dealt with “Making standards work: fifty years of standard-setting in crime prevention and criminal justice”, the twelfth Congress (Bahia de Salvador, 2010) dealt with “Making the United Nations guidelines on crime prevention and criminal justice work”, and the most recent, thirteenth Congress (Doha, 2015) dealt in a workshop with the “Role of the United Nations standards and norms in crime prevention and criminal justice in support of effective, fair, humane and accountable criminal justice systems: experiences and lessons learned in meeting the unique needs of women and children, in particular the treatment and social reintegration of offenders”;
- the Secretariat makes extensive use of the standards and norms in providing, on request, technical assistance to member states in crime prevention and criminal justice, and encourages the appropriate United Nations bodies to use the crime prevention and criminal justice standards and norms;³⁷
- similarly, the United Nations Crime Prevention and Criminal Justice Programme Network of Institutes makes extensive use of the standards and norms in its work; and
- various principles and provisions contained in the standards and norms have been used in cross-fertilizing other work in the United Nations, including work on binding instruments. For example, several principles expressed in the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power³⁸ have been incorporated into the United Nations Convention against Transnational Organised Crime, and in even greater detail in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.³⁹

It is true that the collection of information on the use and application of standards and norms has not been continued as a separate exercise since 2007, and that the discussions on the separate agenda item on standards and norms at annual sessions of the Commission have at times been rather brief. These should not, however, be seen as signs of any lessening of the importance of the standards and norms, but more of the fact that they have become more fully integrated into the general work of the United Nations crime prevention and criminal justice programme. They are not issues which can, or should, be seen apart from the work done on, for example, transnational organized crime, or crimes against children, or terrorism.

Both crime and the manner in which society sees and responds to crime are constantly evolving. For this reason also the criminal justice system is subject to unending change. Implementation of the United Nations standards and norms in crime prevention and criminal justice, as is the case with standards in general, can be seen as a never-ending process. The need for further work on implementation of the different standards and norms may vary from one State to the next, and also within a State, but no State should allow itself the complacency of regarding itself as being in full compliance with all of the standards and norms. While it is true that the work of the United Nations in the rule of law and in increasing the efficacy and efficiency of criminal justice systems has in particular taken into account the needs of develop-

³⁶ As for earlier Congresses, the implementation of the SMR was dealt with by the first (Geneva, 1955), fourth (Kyoto, 1970) and fifth Congress (Geneva, 1975); the sixth Congress (Caracas, 1980) dealt with “United Nations norms and guidelines: from standard-setting to implementation”, the Seventh Congress (Milan, 1985) dealt with “Formulation and application of United Nations standards and norms in criminal justice”, and the Eighth Congress (Havana, 1990) with “United Nations norms and guidelines in crime prevention and criminal justice: implementation and priorities for further standard setting”.

³⁷ For example, in the work of the High Commissioner for Human Rights, the Standard Minimum Rules on the Treatment of Prisoners is evolving from soft law into more obligatory rules. Several key standards and norms have been incorporated in the “Blue Book”, which is used on United Nations peacekeeping missions.

³⁸ GA resolution 40/34.

³⁹ E/CN.15/2002/3, para. 38.

ing countries and countries in transition, also the more developed countries may benefit. The administration of criminal justice should be seen within the context of broader political, economic and social development.

Moreover, many of the provisions in standards and norms that have been adopted in the field of crime prevention and criminal justice require what is known as “progressive realization”, as opposed to full application immediately upon adoption.⁴⁰ This means that they need to be made operative in successive stages. Clearly, use and application require continuous review by the authorities of all member states of the United Nations.

The United Nations standards and norms in crime prevention and criminal justice continue to be relevant in the development of crime prevention and criminal justice locally, nationally and internationally. They embody a useful and exemplary set of instruments in international law that contribute to basic human values. Each and every State, whether developed or developing, should examine its progress in the use and application of standards and norms. The standards and norms are relevant in establishing the basis for good governance and institution-building and thus also for economic development especially in post-conflict situations. They should be promoted, protected and pursued by the Governments, intergovernmental, non-governmental organizations and civil society.

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⁴⁰ An example of a provision that should be given immediate application upon adoption is para. 2 of the Safeguards guaranteeing protection of the rights of those facing the death penalty (1984/50, according to which capital punishment may be imposed only for a crime for which the death penalty is prescribed by law at the time of its commission.

⁴¹ The United Nations standards and norms listed here are those that are contained in the *Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice*, United Nations publication, Sales no. 92.IV.1 and corr.1, and is updated to reflect that in 2015, the United Nations Crime Commission recommended to ECOSOC adoption of the “Doha Declaration” and the “Mandela Rules” for submission to the General Assembly for approval.

ANNEX

Timeline of adoption of United Nations standards and norms on crime prevention and criminal justice⁴¹

1957

Standard Minimum Rules for the Treatment of Prisoners (ECOSOC 663/XXIV)

1971

Capital punishment (GA 2857/XXVI)

1976

Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (GA 3452/XXX)

1980

Code of Conduct for Law Enforcement Officials (GA 34/169)

1982

Principles of Medical Ethics relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture and other cruel, inhuman or degrading treatment or punishment (GA 37/194)

1984

Procedures for the effective implementation of the Standard Minimum Rules for the Treatment of Prisoners (ECOSOC 1984/47)

Safeguards guaranteeing protection of the rights of those facing the death penalty (ECOSOC 1984/50)

1986

United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) (GA 40/33)

Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (GA 40/34)

Basic Principles on the Independence of the Judiciary ("endorsed" in GA 40/32 and "welcomed" in GA 40/146)

Model Treaty on the Transfer of Foreign Prisoners and recommendations on the treatment of foreign prisoners ("endorsed" by GA 40/32)

1988

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (GA 43/173)

1989

Implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (ECOSOC 1989/57)

Implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty (ECOSOC 1989/64)

Principles on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions (ECOSOC/65)

Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials (ECOSOC 1989/61)

Procedures for the effective implementation of the Basic Principles on the Independence of the Judiciary (ECOSOC 1989/60)

1991

United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the Tokyo Rules) (GA 45/110)

Basic Principles for the Treatment of Prisoners (GA 45/111)

United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) (GA 45/112)

UN Rules for the Protection of Juveniles Deprived of their Liberty (GA 45/113)
Model Treaty on Extradition (GA 45/116)
Model Treaty on Mutual Assistance in Criminal Matters (GA 45/117)
Model Treaty on the Transfer of Proceedings in Criminal Matters (GA 45/118)
Model Treaty on the Transfer of Supervision of Offenders Conditionally Sentenced or Conditionally Released (GA 45/119)
Model treaty for the prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property ("welcomed" by the GA in 45/121)
Basic Principles on the Use of Force and Firearms by Law Enforcement Officials ("welcomed" by the GA in 45/121)
Basic Principles on the Role of Lawyers ("welcomed" by the GA in 45/121)
Guidelines on the Role of Prosecutors ("welcomed" by the GA in 45/121)

1992

Statement of principles and programme of action of the United Nations crime prevention and criminal justice programme (GA 46/152)

1993

Declaration on the Elimination of Violence against Women (GA 48/104)

1994

Naples Political Declaration and Global Action Plan against Organized Transnational Crime (World Ministerial Conference; transmitted by the Secretary-General to the General Assembly in A/49/748)

1995

Guidelines for cooperation and technical assistance in the field of urban crime prevention (ECOSOC 1995/9)

1996

International Code of Conduct for Public Officials (GA 51/59)
United Nations Declaration against Corruption and Bribery in International Commercial Transactions (GA 51/191)
Safeguards guaranteeing protection of the rights of those facing the death penalty (ECOSOC 1996/15)

1997

Model Strategies and Practical measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice (GA 52/86)
Kampala Declaration on Prison Conditions in Africa (ECOSOC 1997/36)
Guidelines for Action on Children in the Criminal Justice System (ECOSOC 1997/30)
Model Bilateral Treaty for the Return of Stolen or Embezzled Vehicles (ECOSOC 1997/29)
Firearm regulation for the purposes of crime prevention and public health and safety (ECOSOC 1997/28)

1998

Plan of action for the implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (ECOSOC 1998/21)
Status of foreign citizens in criminal proceedings (ECOSOC 1998/22)
Kadoma Declaration on Community Service (ECOSOC 1998/23)

1999

Arusha Declaration on Good Prison Practice (ECOSOC 1999/27)

2000

United Nations Declaration on Crime and Public Security (GA 51/60)

2001

Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (GA 55/89)

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Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-First Century (GA 55/59)
Plans of action for the implementation of the Vienna Declaration on Crime and Justice: meeting the Challenges of the Twenty-first Century (GA 56/261)

2002

Basic principles on the use of restorative justice programmes in criminal matters (ECOSOC 2002/12)
Guidelines for the Prevention of Crime (ECOSOC 2002/13)

2003

The question of the death penalty (Commission on Human Rights 2003/67)

2005

Bangkok Declaration on Synergies and Responses: Strategic Alliances in Crime Prevention and Criminal Justice (GA 60/177)
Model Bilateral Agreement on the Sharing of Confiscated Proceeds of Crime or Property (ECOSOC 2005/14)
Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (ECOSOC 2005/20)

2010

Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World (GA 65/230)
United Nations Rules for the Treatment of Women Prisoners (the Bangkok Rules) (GA 65/229)

2015

(The Doha Declaration on integrating crime prevention and criminal justice into the wider United Nations agenda to address social and economic challenges and to promote the rule of law at the national and international levels, and public participation; to be adopted by the GA during the autumn of 2015)
(revised Standard Minimum Rules for the Treatment of Prisoners [the Mandela Rules]; to be adopted by the GA during the autumn of 2015)

PARTICIPANTS' PAPERS

STAFF TRAINING FOR CORRECTIONAL LEADERSHIP: THE HONG KONG EXPERIENCE

*Lap-yip LO**

I. INTRODUCTION

The Hong Kong Correctional Services Department (“HKCSD”) has experienced tremendous changes in the past few decades. While we are primarily sanctioned to segregate persons having breached the criminal code, it is recognized worldwide nowadays that, with the more sophisticated philosophies of the modern correctional services, more is expected to be done for offenders than just locking them up. Meanwhile, the ever increasing public expectations in providing a wide range of quality custodial and rehabilitative services to offenders has imposed considerable responsibilities on us. Needless to mention, the society also expects a high level of integrity of correctional officers so sanctioned. Besides that, our recent internal review reveals that there will be a tide of natural wastage looming in the coming ten years. To ensure that the Department is geared up to meet the new challenges ahead, the HKCSD has given increased emphasis to human resources management practices on building a team of highly effective, disciplined and well-motivated staff.

In this paper, we will first briefly explain the challenges arising from the transformation. After that, we will share our practice and strategy on strengthening staff members with operational experience and knowledge management, which aims to cope with the challenges arising from the ever changing development of the Department.

II. CURRENT CHALLENGES FACED BY THE HKCSD

Similar to our worldwide counterparts and other enterprises, apart from many undesirable factors significantly affecting the operation of correctional facilities, i.e. the prudent government budgets, high turnover rates, technological innovations and other new legal mandates, the HKCSD also faces various challenges arising from the transformation. Nevertheless, the most significant challenges are the following:

A. Change of Role for Correctional Officers

Over the past three decades, the HKCSD has undergone a major transformation. The change of its name from the original “Prison Department” to current “Correctional Services Department” signified that the scope of services provided by the Department had been extended from a purely custodial nature to a comprehensive means of facilitating offender rehabilitation. Being an integral part of the criminal justice system nowadays, apart from playing a primary role in taking care of offenders committed to our custody, we also have the responsibility to prepare those offenders for reintegration into society upon discharge as law-abiding citizens. Therefore, on top of providing traditional quality custodial services, HKCSD now has to put more efforts into the rehabilitation of offenders.

In this new era, Correctional Officers in Hong Kong are performing “Dual Roles”, i.e., “Society Guardian” and “Rehabilitation Facilitator”. By enforcing Dual Roles, apart from acting as a “Society Guardian”, who protects the public by ensuring the safe custody of those offenders sentenced by court, our officers are also taking up the role as “Rehabilitation Facilitators”. We facilitate the rehabilitation of offenders and their reintegration into the society as law-abiding citizens by working in collaboration with the community and other stakeholders. This again helps reduce recidivism and protect the public.

In adopting the Dual Roles, correctional officers should never again perceive their role only as that of “keepers” and relate to inmates in a custodial fashion, but instead should have the sense of humanity in

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helping offenders reintegrate into the society.

B. Rise of Public Expectations

In recent years, it has been a common phenomenon that public expectations about treatment of offenders have become an area of concern again and again all over the world. Worse still, fear of maltreatment of offenders via media coverage in reporting suicide cases and violent acts among offenders often generates a spate of criticisms against the penal system, demanding more openness and accountability. Correctional officers spend considerable time in managing public outcries and complaints raised through various channels.

We should understand that no system can stay in a vacuum, neither can it claim to be perfect or complete because every system is a dynamic force of changes and development. In most societies, check and balance is the major safeguard against abuse of power and infringement of rights. We have to admit the principle that the primary function of the criminal justice system is to serve and protect all the people of our society. Such a view requires a public engagement strategy in which correctional officers must understand and respect public expectations and take public concerns more seriously. Therefore, while there has been an increase in workload due to the rise of public expectations, we should treat the public attention on penal management as a positive phenomenon in the course of modernization.

Learning from experience, HKCSD has been working actively with the community and viewing the public as a partner in the treatment of offenders towards this direction. Over the past few years, public campaigns were launched, committees including community celebrities were appointed in committees, district councils and community organizations alike were engaged in the formulation of strategies to promote a supportive community for the offenders. After learning about how an offender should be treated and managed properly and having a chance to deliberate over it, the public is now much more open to change than conventional wisdom would suggest.

Thus, correctional officers nowadays are required to have the calibre to interact with public expectations in order to create the boundaries leading the community to support and to accept penal policies.

C. Staff Wastage and Succession Problems

HKCSD has a team of around 5,000 Rank & File grade staff and some 1,000 staff at the grade of Officer and above. The Department is commanded by a Commissioner who is assisted by a deputy Commissioner, and its Headquarters is made up of five divisions, namely the Operations Division, the Rehabilitation Division, the Quality Assurance Division, the Human Resource Division and the Administration and Planning Division, where each division is headed by an Assistant Commissioner or equivalent civilian officer. Frontline policing is delivered by 29 correctional institutions. In general, each institution is headed by a Superintendent (a Senior Officer of the Officer Grade), with the assistance of a group of middle managers (Officer Grade) and the frontline staff (Rank and File Grade) to carry out various correctional duties (*For the details of our organizational chart as well as the grade structure of HKCSD, please refer to Appendix A and B respectively*). Owing to the uniqueness of penal settings, correctional officers are required to have a comprehensive understanding of the actual operation of the Department and the management of penal institutions with practical experience. However, we consider that these valuable experiences and understanding of the day-to-day operation of penal institutions and management of frontline staff can only be acquired through years of active engagement in the profession. Therefore, we always value our staff as one of the greatest assets to the Department.

Though there was no alarming indication on the attrition rate for the HKCSD in the past few years, it is always in our mind that we cannot underestimate the difficulty in maintaining a stable workforce. As a matter of fact, we are now facing a challenge as around 1,600 out of 5,000 staff at Rank & File grade and 400 out of 1,000 staff at Officer and above grade will leave the service due to normal retirement at the age of 55 in the coming 10 years. Apart from those concerning the Rank & File and Officer Grades, of far greater significance is that 86 out of 113, or 76%, of the senior executives are currently above the age of 50 and will retire from service by 2020. This may result in a substantial impact to the Department, particularly the brain drain and outflow of talent.

Therefore, good succession planning is extremely important to maintain the stability of the Department

and to sustain the smooth-running of service. In the context of HKCSD, it is indispensable to achieving smooth transitions of leadership by grooming effective senior managers as well as creating a pool of candidates with high leadership potential, which indeed is an on-going process which takes years to develop and accomplish.

III. INITIATIVES SHAPING HKCSD INTO AN EFFECTIVE AND MOTIVATED PROFESSIONAL SERVICE

To tackle the challenges aforementioned, the HKCSD considers that the quality of correctional officers is critical. Thus, it is important for our administrators to accord to staff training to help our staff members re-conceptualize their role, reconsider their values and adopt approaches that can cope effectively with the ever-rising public expectation for correctional services. Moreover, the commitment and motivation of staff members are critical and the essential elements for success. Over the years, HKCSD has given increased emphasis to human resources management practices on building a team of highly effective, disciplined and well-motivated staff. Below, this paper illustrates the initiatives that the HKCSD has taken to gear up our staff members and to provide opportunities for potential officers to develop themselves through experience.

A. Departmental Vision, Mission and Values (“VMV”)

It is important for staff members to have positive values for the change of role for correctional officers. Strong resistance might arise if our staff members have misunderstanding of the issue. Abraham Maslow suggested that the need to belong was a major source of human motivation¹. He thought that it was one of five human needs in his hierarchy of needs, along with physiological needs, safety, self-esteem, and self-actualization. These needs are arranged in a hierarchy and must be satisfied in order. After physiological and safety needs are met, an individual can then work on meeting the need to belong and be loved. According to the theory of Maslow, if the belonging needs are not met, an individual cannot completely achieve his self-actualization.

Culture is a system of shared beliefs that determines how people act. It pervades every organization and permeates down through each level. Naturally, it bears direct impact on the way the members behave and affects tremendously the organization’s efficacy. Recognizing that a positive culture is instrumental to the success of an organization, the HKCSD has set forth a chain of actions to guide the mindset of its staff and drive the Department towards the desired culture, such as the Integrity Management and the Healthy and Balanced Lifestyle.

Given that we consider the staff commitment towards the Department with positive departmental culture as an essential element for success, the HKCSD therefore always exerts its effort to maintain the strong sense of belongings among staff members. In the late 1990’s, HKCSD adopted a participative approach in creating its first VMV statement. In order to better reflect the shared belief of staff as well as the Department’s roles and commitment, the VMV statement was refined in May 2010 with a view to better reflecting our roles in times of change. All along, staff members are always encouraged to participate in the process of creating the VMV, and it allows all staff of HKCSD to own the VMV as a shared one as well as to carry it through. After establishing its VMV statement, the Department laid the cornerstone to pool the staff in sharing the common organizational goal. This is followed by a number of projects to cultivate an upright and positive cultural growth across the ranks of staff. *(For details of our VMV, please refer to Appendix C)*

With the active participation of staff members in establishing the VMV, these values are not just beliefs but the shared common culture of the whole Department. It maps out the goal of the Department (Vision), a clear indication on our performance (Mission) as well as the way to achieve the objective (Values). All in all, our senior executives are expected to, apart from taking up the role as leaders, actively engage themselves in the promotion of the VMV so as to train up leadership of fellow staff members through leading them to dedicate themselves to the service.

B. Building an Ethical Culture

Following the establishment of positive departmental culture, it is important to translate it into opera-

¹Maslow, A. (1970). *Motivation and personality*, New York: Harper & Row.

tional behaviour and service standards consistent with the strategic objective of the Department. In this regard, it is worth mentioning that HKCSD has established the Departmental Ethics Committee since 2007 for promotion of ethical leadership and integrity management at the departmental level. An integrated ethical management model, namely, "Total Ethics Assurance Management" with elements of "Standard", "Pledge", "Involvement", "Reinforcement", "Inspection" and "Training" (known as the "TEAM-SPIRIT" approach) was introduced with a view to further emphasize integrity as a core value in all aspects of HKCSD. It is through this model that HKCSD has actualized our VMV, Dual Roles and materialized our 3 caring principles (caring for people, caring for the environment and caring for the community) (*For details of the TEAM-SPIRIT approach and the 3 Caring Principles, please refer to Appendix D*).

The TEAM-SPIRIT approach has incorporated the integrity management initiatives introduced by the Department in recent years into a set of strategies which can better address the present-day needs and long-run development needs of the Department. It reflects the determination of the Department in promoting integrity management at a wider level and to more specific targets through a holistic strategy and implementation approach. This is done in order to extend the coverage and strengthen the efforts in promoting integrity management and enhance the ethical culture that has been established.

The TEAM-SPIRIT approach involved staff members throughout the Department, from the top management to individual staff members at the front line working at the institution / section / unit level, allowing them to "own" the responsibility in actualizing the rationale behind it, hence making the ethical culture an organizational culture of HKCSD.

Under the TEAM-SPIRIT approach, the focal point is "Shared". We realize that only if the set of values, behaviours and norms of the organization are shared by members of that organization can it subsequently be considered as the organizational culture of that particular entity. Supervisors at all levels are required to be alerted of unethical pitfalls and to be aware of the supervisory responsibility in managing integrity with a view to raising vigilance of staff against those vulnerable situations. In the meantime, through sustainable education, promotion of the shared values and creating a culture of good governance, every staff member is also empowered and steered towards value-driven behaviour aligned with the departmental strategies. With staff members at all levels nurturing and fostering an ethical working environment, the implementation of integrity management could then be achieved effectively, and the high ethical standard can consequently be upheld and the ethical culture of the Department will be gradually developed and sustained.

The participation of senior and middle executives throughout the process is the key factor leading to success of this new approach. To implement the ethical working environment, the executives are expected to dedicate themselves in performing effective leadership and displaying full commitment via their work posts and participating in various activities organized by the Department. Besides that, they are also expected to walk the talk by actively involving themselves through their role as leaders. Meanwhile, in the course of active participation under the TEAM-SPIRIT approach, senior and middle executives can gain valuable managerial and executive experience throughout the activities and expand their social network among colleagues.

C. Comprehensive Training Programme

Effective formal course training is always a key to success. In the context of HKCSD, all staff members will be arranged to be provided with various kinds of useful, practical and effective training at different stages in order to equip them with the relevant knowledge for the fulfillment of the VMV of the Department.

1. Recruit Training

For disciplined staff in HKCSD, there are only two recruitment ranks in the Department. One is Officer (Officer Grade) and the other is Assistant Officer (Rank and File Grade). For achieving perfection in custodial and rehabilitative services, newly recruited officers will undergo a residential induction training programme before being posted to the correctional institutions, so as to facilitate the understanding of their mission, the job requirements and operational knowledge. The duration of training for recruit Officers is 26 weeks and that for recruit Assistant Officers II is 23 weeks including a two-week field placement at penal institutions. All induction training courses include eight modules, i.e., with the Penal Knowledge,

Tactical and Physical Training, Drill and Weaponry, Social Sciences and Penal Management Training, Staff Conduct Ethics and Integrity, Psychological Competency, Knowledge Implementation and E-learning.



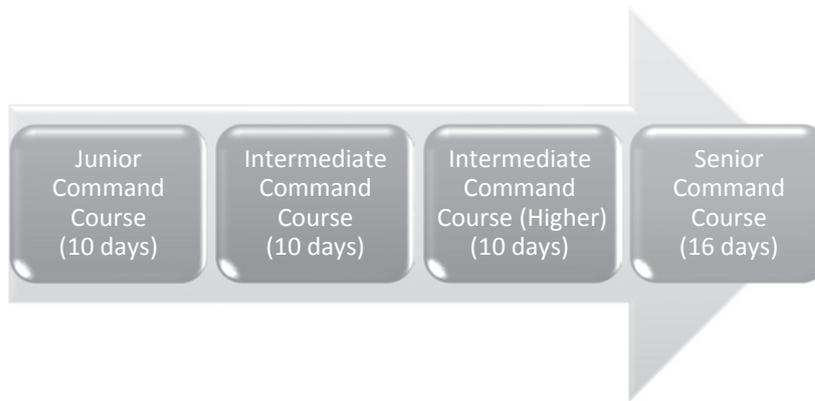
The contents of recruit training emphasize both theory and practice. The training syllabus includes Laws of Hong Kong, rules and regulations, counselling, self-defence, emergency response tactics, the use of weapons and etc. In response to ever-changing societal needs, subjects such as Putonghua have also been included in the training curriculum. At the end of the course, it is expected that all recruits are equipped with basic knowledge and skills for carrying out basic custodial and rehabilitative duties.

Meanwhile, in order to provide newly appointed specialist staff like Clinical Psychologists, Masters, Catering Instructors and technical staff of Correctional Services Industries with a basic understanding of correctional theory, practice, penal operation as well as their respective roles in the Department, we organize orientation training courses for them before they actually take up their offices.

2. Development Training

Besides the recruit training above, we have put a lot of efforts into planning and input at different stages of a staff member's training and career development from time to time. In order to uphold a high standard as society's guardian and rehabilitation facilitator, to strive for excellence in correctional practice and resource optimization, as well as to meet succession needs, the HKCSD has formulated a career training roadmap with four Command Courses (Please refer to the table below), which provides a series of training for staff members from the junior level to senior level. It also aims at advancing the leadership and operational knowledge in the substantive rank. The pedagogy adopted is participatory blended-mode learning. Our approach is to bring in the rich experience of the instructors and guest speakers into the classroom through discussions and to support by the e-Learning platform which blends them with the latest information, rules and regulations in the field. It is supplemented by individual assignments, role plays, lectures, and scenario training.

Each development command course includes seven major focus areas, i.e., Operational Handling and Incident Management, Integrity, Ethics and Conduct, Media Handling Skills and Public Relations Strategy, Political Sensitivity and National Studies, Penal Management, Administration and Policy Studies, Building Leaders and Sustainable Personal Growth and Departmental Way Forward and Sharing with Directorate. The duration of trainings vary from 10 to 16 days. It maps out the career training roadmap of each officer at different stages of career development, and provides opportunities for officers to equip themselves with the concepts and practices in developing leadership and acquiring management skills of the next higher rank as well as advancing the essential operational skills and visions.



D. E-Platform: Knowledge Management System (“KMS”)

E-Learning is an interactive and highly efficient mixed-mode training programme ensuring extensive staff coverage and substantial reduction in training resources in comparison to the traditional learning process. Its advantages have been proven to be immense and far-reaching, not to mention its flexible and versatile characteristics. All users can universally access the learning material in various media formats anytime anywhere and learn at their own pace. Its cost-effectiveness in terms of cost, manpower and time is also crucial under the existing stringent fiscal environment. Most importantly, this E-learning programme can engender a life-long self-learning culture across the Department and bring ongoing enhancement to the professional and academic standing of our staff.

It is always our belief that experience is valuable in every industry and of paramount importance in the correctional services as our core duties are the management of people, including both our staff members as well as the persons in custody. With the aid of well-structured and well-organized sharing of knowledge and experience, in particular those accumulated with decades in the handling and management of the persons in custody, we can tackle challenges arising from the ever-changing environment swiftly and make suitable response promptly without failing the ever-rising public expectations. In this regard, CSD has developed a KMS, an electronic platform that aims to help staff better cope with challenges from work and foster professional development by taking reference to the precedent available and experience picked up from the predecessor.

Launched in August 2010, the system is equipped with a search engine to provide staff with a one-stop information technology platform for capturing, organizing, storing, disseminating, sharing and updating work knowledge. It consolidates various knowledge-oriented databases from different divisions and institutions. Staff members of HKCSD can retrieve from the KMS those latest information and documents, such as news and events, instructions, memos and guidelines, operational manuals, meeting notes and training materials. In addition, a bilingual “Self-learning Topics” programme has also been introduced for access of staff to enhance their knowledge while fostering a continuous self-learning culture. Through this learning platform, staff can acquire the required knowledge from KMS in a more user-friendly way in problem solving, similar to what we experience in the Internet, which is beneficial and vital to staff succession. Recently, a sharing forum has been introduced on the KMS platform. It enables staff members to express their thoughts and ideas about the Department individually, while at the same time sharing them with the larger community.

E. Institutional-Based Mentorship Programme

On the top of the KMS platform, an Institutional-based Mentorship Programme (“IBMP”) has also been developed for sharing of job-related knowledge among the new and experienced staff through an interactive approach. The IBMP has been fully implemented since June 2011 to allow our staff members who are still under probation to receive advice and guidance from the experienced staff members who have taken up the role as their mentors.

In the contemporary society, the style of different generations working in the same office brings challenges for the management. In general, the new, younger generation gives an impression of less job loyalty and weak commitment to their careers. Some of them may quit their job easily without any significant

clues. However, apart from criticizing the new generation, the unconventional values and lifestyle, and different views on more private and leisure time expectations may also constitute to the generational challenge. We believe the solution is communication but not criticism.

The IBMP offers not only an opportunity for the mentors to share their working experience with their mentees, but also helps our new staff members adapt to the penal working environment and the organizational at an early stage of their careers. It also provides opportunities for different generations to work together and to share. During regular meetings between mentors and mentees, the mentees will be given holistic training and counselling, including career review and assessment, training on stress management and effective communication skills, leadership training, taking part in team building exercises, as well as discussion on current and latest departmental issues. Through the interaction, the new staff members will be instilled with the concept of Integrity Management, Healthy and Balanced Lifestyle, and nurturing a positive work attitude. Thus the *esprit de corps* can also be cultivated between the serving and new staff members by means of establishing a good mentor-mentee relationship. At the end, it enriches the executive and managerial experience of potential officers, which equips them with professional knowledge and skills for further advancement in their careers.

F. Overseas Experience

In addition to the training courses mentioned above, opportunities are also given to our senior executives to participate in international conferences or visit correctional services on the Mainland and overseas. This helps broaden their horizons through meeting the leaders of the correctional services from all over the world and engaging in professional exchanges with them. These conferences and visits include the International Corrections and Prisons Association (ICPA), Asia and Pacific Conference of Correctional Administrators (APCCA), Association of Paroling Authorities International (APAI) Training Conference, Beijing-Guangdong-Hong Kong-Macao Prison Forum, etc. Regarding the visits, they cover many countries all over the world and also different prefectures in Mainland China.

To deliver continuous improvement in our performance, we need new thoughts, mindsets, strategies and dynamics. We see professional exchanges with other jurisdictions as leverage to generate new ideas, learn alternative practices, help our service measure up to international standards and enhance our organizational competence and capability to adapt to the fast changing environment. After entering into a fruitful, co-operative Memorandum of Understanding (MOU) with the Correctional Service of Canada in 2001, our Department has also signed MOUs with the Singapore Prison Service and the Korea Correctional Service in July 2003 and September 2005, respectively which call for a programme of cooperation and joint work comprising staff exchanges, research and study projects, e-forum and bilateral seminars, etc. Besides, we have been maintaining close relationships with penal institutions in different provinces of Mainland China. Starting from 2003, a "Co-operation Arrangement" has been signed with Macao Prison and the Central Institute of Correctional Police and Guangdong Prison Administrative Bureau on Mainland China in order to strengthen cooperative relationships, and promote the development of correctional services on both sides.

IV. WAY FORWARD

To sum up, the correctional environment has been influenced by the societal developments in the past decade. Over the years, Hong Kong has developed a penal system which places increasing emphasis on correcting and rehabilitating offenders, on top of its primary responsibility of maintaining security and order within the institutions.

In the context of HKCSD, with a team of good quality, well-trained and versatile staff, high standards of correctional work can be ensured and the Department's corrective role in the Criminal Justice System can thus be fulfilled. In the pursuance of professionalism, we will continue committing our efforts to perfect staff training, career development policies and practices.

Appendix B

Grade Structure of Disciplined Staff in HKCSD

<u>Grade</u>	<u>Rank</u>	<u>Responsible</u>
Directorate Grade	Commissioner	Divisional Heads in Headquarters
	Deputy Commissioner	
	Assistant Commissioner	
	Chief Superintendent	
Officer Grade	Senior Superintendent	Heads of Institutions
	Superintendent	Middle managers
	Chief Officer	
	Principal Officer	
	Officer	
Rank and File Grade	Assistant Officer I	Frontline staff
	Assistant Officer II	

Appendix C

Vision Mission and Values of HKCSD

Vision

Internationally acclaimed Correctional Service helping Hong Kong to be one of the safest cities in the world

Mission

We protect the public and reduce crime, by providing a secure, safe, humane, decent and healthy environment for people in custody, opportunities for rehabilitation of offenders, and working in collaboration with the community and other agencies.

Values

Integrity

We are accountable for our actions by upholding high ethical and moral standards, and have the honour of serving our society.

Professionalism

We strive for excellence in correctional practice and resource optimisation, and take pride in our role as society's guardian and rehabilitation facilitator.

Humanity

We respect the dignity of all people with emphasis on fairness and empathy.

Discipline

We respect the rule of law with emphasis on orderliness in the pursuit of harmony.

Perseverance

We are committed to serving our society, keeping constant vigilance and facing challenges with courage.

The SPIRIT-TEAM Approach

Standard	Standards be set as departmental guidelines on ethical practices
Pledge	Pledge of the departmental management in upholding an ethical culture through effective leadership and full commitment
Involvement	Involvement of staff members at all levels in nurturing and fostering an ethical working environment
Reinforcement	Reinforcement through supportive departmental policies to ensure sustainability of an ethical culture
Inspection	Inspection on possible risks of unethical practices through the establishment of an effective monitoring mechanism
Training	Training on continuous basis for equipping staff members with relevant knowledge and skills in corruption prevention and integrity management

3 Caring Principles

1. Caring for people
2. Caring for environment
3. Caring for Community

STAFF TRAINING FOR CORRECTIONAL LEADERSHIP

*Pamela Monyenche Masese**

Probation and Aftercare Service has 753 Probation Officers and 390 non-technical officers employed on Permanent basis. The Department also depends on 312 Volunteer Probation Officers and 3,600 Community Service Supervisors from the Community to achieve its objectives. These objectives include provision of social enquiry reports to courts and penal institutions, rehabilitation, reintegration and supervision, of offenders placed under non- custodial sanctions.

Kenya public service training and recruitment policy (2005) says that training is crucial for all government agencies as it ensures that the government departments have adequate skills and knowledge to enable each of them to implement relevant mandates as well as meet the strategic objectives of their respective organizations. The policy defines training as a process through which one acquires skills and knowledge essential for a profession or a job while capacity building is the process of developing and strengthening skills, attitude abilities, processes and resources which an organization requires to adapt and thrive in an ever changing environment.

I. ADMINISTRATION OF ORGANIZATION IN RELATION TO TRAINING

The Department of Probation and Aftercare service has a training division that is charged with the responsibility of conducting training needs assessment surveys for 753 probation officers, 390 non-technical staff, Community Service Supervisors and Volunteer Probation Officers. The Civil Service Training Procedures of 2007 strengthened the role of the Departmental Training Committee (DTC) which deliberates, gives approval on the distribution of the training funds; skill needs assessment reports, projections and training requests. It is the role of the DTC to recommend and advise the Cabinet Secretary on technical issues as regards to training of correctional personnel. The internal courses are conducted at Shanzu Training Centre and Nakuru Hostel.

II. CONTENT AND METHODS OF TRAINING IN PROBATION KENYA

In 2006 the Performance Appraisal System (PAS) was introduced in the department of Probation and Aftercare service to enhance assessment, rehabilitation and reintegration of offenders. PAS is a performance management tool which integrates the work of an individual staff with the strategic objectives of the organization. It is a process of setting targets, work planning, provision of feedback and evaluation on work performance and professional conduct. It enables leaders of correctional agencies to identify gaps in work performance which can be filled through training and capacity building.

Training has also been geared towards succession planning. The *Scheme of Service for Probation Officers (2004)* stipulates which training is required for each designation, the skills and knowledge each probation officer is required have for career progression. Training Projections, which are done each year, are also meant to implement the scheme and address challenges of succession management. In 2014 a Mentoring Scheme was formulated which is geared towards ensuring the experienced officers “leave their skills behind” upon exit from the service. However this Scheme is yet to be implemented.

The Public Service Integrity Program (PSIP) was introduced in the department so as to prevent corrupt practices and inappropriate treatment of offenders. 123 Probation officers from each station have been trained as Integrity Officers so as not to only train others but be champions of the programme. It has also been found necessary to mainstream the integrity programme in all training and capacity building

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programmes.

Training has also been geared towards enhancing community participation, and currently the department has partnered with Youth Change Initiative, a Non-Governmental Organization to conduct an on-the-job training for Volunteer Probation Officers (VPO) from Machakos Probation Office.

The newly recruited officers are sensitized on the Civil Service Code of Regulations so as to prevent misconduct and enhance professionalism. Each probation officer is encouraged to be a member of the Kenya National Association of Probation Officers (KNAPO). The Association has a code of conduct that binds the member. In the major training forums the association is given a slot in the programme so as to sensitize members on the same.

Probation Kenya has enhanced collaboration and partnerships through training and seminars. This has been done through initiating various proposals. In March 2015, twenty probation officers undertook a training of trainers' workshop on the Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (Bangkok Rules). Penal Reform International (PRI) sponsored this workshop. The officers are expected to train other officers on the implementation of the rules).

Probation Service has also entered into a partnership with PRI in an Excellence in Training and Rehabilitation Program in Africa (EXTRA Project) in undertaking several activities in capacity building which are geared towards enhancement of non-custodial measures by the courts. Similarly in 2013 there was collaboration with the Danish Intelligence Service, and 44 probation officers were trained in prevention of radicalization and violent extremism.

In the past Probation Kenya has also partnered with the Japan International Cooperation Agency (JICA) in capacity building in Child Care Protection officers Training and the Volunteer Probation Officers Program. JICA has also played an important role each year by training Probation Officers in the areas of assessment, rehabilitation of offenders and on the international best practices in correctional services.

The work of a Probation Officer involves conducting social enquires, interviewing offenders and working to create harmony between the victim, the offender and the community. This work can be emotionally draining. Stress management sessions are conducted by the Kenya National Association of Probation Officers to debrief the officers. The most recent sessions were organized in Nyanza Province.

The content and methods of training are geared towards addressing the current crime trends and the diversity of offenders. According to 2014 departmental statistics on the status of offenders the number of drug use and substance offenders has increased by 20%; assault, creating disturbance and sexual offences, by 11% while stealing has decreased by 6%.

The *Kenya National Crime and Research Centre's Report (2014)* indicates that radicalization and violent extremism that results in terror attacks is a major threat to national security. Crime among the youth is on the rise and over 50% of convicted persons are aged between 18 to 20 years. According to the report there are 46 major criminal gangs in the country with the majority engaging in illicit drug trafficking and extortion of money.

Domestic violence, sexual offences, drug and substance abuse are also indicated in the report as the major crimes in the country. All Chief Probation Officers have undertaken courses in crime prevention because this is also a requirement in the Scheme of Service for Probation Officers, which is currently under review. Probation Kenya has a challenge in drawing appropriate training programmes for Probation Officers to address the emerging crime trends.

The 2013 a training survey conducted by Egerton University on behalf of Probation and Aftercare Service indicated that upon recruitment probation officers require more training besides the initial five days' induction. This is because the officers have diverse academic backgrounds and there is no direct link between what is taught in the universities and probation work. The results of this survey led to the development of the curriculum for a Post Graduate Diploma in Probation Practice and Correctional Studies. When implemented the curriculum will to equip officers with appropriate technical orientation and compe-

tencies so as to respond to crime prevention, the needs and challenges in correctional services. It is also expected that the implementation of the syllabus will harmonize the diverse skills, standardize, probation work and increase the capacity of officers to adapt to new technology.

III. EFFECTIVE TRAINING METHODS

Probation Kenya utilizes a wide variety of training methods to cater for a broad diversity of participants whose personalities differ from each other. The training methods that have been used include:

A. Brainstorming

The method is widely used in training. It requires that participants have some background information related to the topic. It is used during training to establish ground rules and to bring out the expectations of the participants at the beginning of the training sessions. A written record of the information is entered in the flip charts.

B. Lecture Method

This involves the trainer presenting facts, ideas continuously without the trainees' involvement. However, trainers in the department have enhanced their lecture methods through the use of appropriate training/learning aids and illustrations. This is meant to make participants more active during the training sessions.

C. Group Discussion

In this method four to five participants meet and discuss a topic under the direction of a group leader; it is usually combined with the lecture method. Participants are prepared prior to the discussion, and a summary of each groups' discussion is presented to the whole class to facilitate learning of the subject matter. However, this method has been difficult to utilize when participants are many.

D. Role Playing

In this training method a person imitates or acts out (dramatizes) a situation. The trainer sets the tone and provides direction, and the participants choose characters and the actors are asked to assume parts of real or imaginary situations. Feedback and comments are given later. It is interactive and participant centered. It has been used to impact leadership skills among correctional officers.

E. Case Study

All the senior correctional officers are expected to attend strategic leadership courses and the major method used is case studies where workplace assignments are given to each of them. They undertake case studies of challenging leadership situations at the workplace and provide possible solutions.

IV. UNDERSTANDING AND RESPECTING INTERNATIONAL STANDARDS AND NORMS

The Kenyan criminal justice system has been undergoing several reforms as a result of the promulgation of the Constitution of Kenya (2010). Correctional agencies are now encouraged to develop treatment programmes that focus on crime prevention, individual assessment and therapeutic interventions to promote effective rehabilitation.

This is also in line with standards and norms on the treatment of offenders such as the United Nations Minimum Rules for Non-Custodial Measures (Tokyo Rules). Rule 13(3) emphasizes the need for correctional agencies to focus on programmes that take into account the personality traits of the offender, aptitude and circumstances leading to the offence. In this regard Probation Kenya is domesticating these rules through training officers in effective assessment and treatment of offenders. The social enquiry reports to courts are used to provide background information on the circumstances of the offence(s) and offenders' attitude towards the crime committed and recommendation on possible sentencing alternatives. This has been able to give the judiciary a wide range of non-custodial options at its disposition in the dispensation of justice.

In rehabilitation, corrective interventions need to have a holistic approach. In developing the Bangkok Rules in 2010, the United Nations urged countries to develop individualized gender sensitive, trauma

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informed and comprehensive mental health programmes. Kenya Constitution (2010) article 51(3) takes into account the relevant international instruments in the treatment of offenders.

The Department is domesticating these rules. Twenty probation officers undertook a Trainer of Trainers' course by PRI. More officers have been encouraged to undertake an online course.

The Departmental Youth Justice Strategy developed and validated in 2013 provides a blue print for use by Probation Officers. It is making progress in ensuring quality, consistency and uniformity in all youth justice programmes. The strategy lays a lot of emphasis on the Standard Minimum Rules for Administration of Juvenile Justice (Beijing Rules).

In addition, the department collaborated with other correctional agencies and JICA to develop Through Care Guidelines, which are meant to facilitate the implementation of the Beijing Rules and the United Nations Guidelines for Administration of Juvenile Delinquency (Riyadh Guidelines).

Probation Kenya is a member of the Regional East African Community Correctional Services and will be instrumental in the implementation of the Peace and Security Protocol, which is not only going to assist in exchange of information related to security and correctional services but to also facilitate an exchange of offenders within the member states.

V. CHALLENGES

- There is lack of consistency and uniformity in implementing training programmes. Despite the fact that the trainers may agree in broad areas to be delivered in any training programme, what is finally delivered will depend on each individual trainer.
- A lot attention has been laid on the offender and not much has been done for the Probation Officer who works in a stressful environment. This has made some officers turn to inappropriate stress management interventions like alcohol and drug abuse.
- The Department has concentrated on classroom training approaches that are not only expensive but also time consuming.
- The objectives of training and capacity building are hindered by inappropriate recruitment and selection of correctional officers. Some of the correctional officers who are recruited lack appropriate personality traits required for the job.
- There is a problem of low budgetary allocation leading to inadequate training resources and facilities at the Training Centre because training allocation is minimal.
- It has not been possible to document the long term impact training and capacity building programmes in the department
- The Department has a number of old, experienced officers whose knowledge has not been reaped for the benefit of the department.
- Most officers come from diverse academic backgrounds because no university in Kenya teaches probation work, and upon recruitment only a five days' induction training is given. There is need for a long, comprehensive course for the officers to effectively deliver services.
- Despite the fact that KNAPO organizes stress management sessions for the officers, not all the officers have gone through the programme and some officers have often engaged in inappropriate stress management interventions like alcohol use.

VI. POSSIBLE SOLUTIONS

A. Ministerial Level

- The possible solution for standardizing training is to develop training manuals to enhance the quality of learning.
- It would be ideal if E-learning programmes can be developed to facilitate correctional officers' acquisition of knowledge and skills so as to enhance service delivery. This is cheaper than classroom learning.
- The Ministry needs to train officers in the use of psychometric tests during recruitment. This will ensure that there is effective recruitment of the officers
- The Ministry needs to set money aside to equip the Centre with appropriate training equipment

and materials.

B. The Department Level

- In order to have adequate qualified trainers to facilitate training and capacity building programmes so as to enhance staff training in correctional leadership programmes. It would be ideal for the department to enhance partnerships with local and international organizations to train a pool of qualified trainers.
- The Department needs to implement the Mentoring Scheme to facilitate on-the-job training and transfer of skills from more experienced officers to newly recruited personnel.
- Harmonize skills by actualizing the Curriculum for Post Graduate Diploma in Probation Practice and Correctional Studies.
- Develop a detailed monitoring and evaluation framework so as to assess the long term impact of the training programmes on Correctional services.

C. The Officer Level

- Each officer needs to take responsibility and be proactive in acquiring knowledge and skills related to his/her profession through reading books and registering for on-line courses.
- Identify and develop appropriate stress management techniques.
- Old officers need to take the initiative of passing their knowledge and skills to newly recruited officers

VII. CONCLUSION

It is apparent that the department has challenges in training and capacity building to enhance succession management in correctional leadership. Training is also required to address challenges in emerging crimes trends, meet the demands of the expanded mandates and implement international best practices. Hence there is need to equip trainers with relevant skills in curriculum development, effective training methodologies to enable them to offer appropriate training interventions.

Appendix A

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ADMINISTRATION OF THE KENYA PRISONS ORGANIZATION

*Peter Kimani Ndung'u**

I. BACKGROUND OF THE KENYA PRISONS SERVICE— EXECUTIVE SUMMARY

The prisons system was introduced in Kenya by the British East Africa protectorate with the enactment of East Africa Prisons Regulations in April, 1902. At independence, the reforms in the penal system were strengthened with the enactment of chapters 90 and 92 to establish the Kenya Prisons, and Act (Cap 90) has since been reviewed, the last being 1977. The Borstal Act (cap 92) has also been reviewed, the last being in 1967.

The Kenya Prisons Service has grown gradually since its inception on 1 April 1911. At inception the prisoners' population stood at six thousand five hundred and fifty-nine (6,559) with a staff strength of three hundred and nineteen (319). To-date there has been a gradual increase in both staff and prisoner population. There are 107 penal institutions, two Borstal institutions and one youth corrective Training Centre in the Republic with inmate population averaging 54,000. A girls' correction centre will also be opened during this year. These institutions are coordinated under Prisons Regional Commanders who are answerable to the commissioner General of Prisons based at Prisons Headquarters, Nairobi.

A. Organizational Structure of the Prisons

The Kenya Prisons Service is headed by a Commissioner General of Prisons assisted by a Deputy Commissioner General of Prisons. Under them are Assistant Commissioner General, Senior Deputy Commissioner, Deputy Commissioner of Prisons, Senior Assistant Commissioner of Prisons, Assistant Commissioner of Prisons, Senior Superintendent of Prisons, Superintendent of Prisons, chief inspectors, inspectors, senior sergeants, sergeants, corporals and constables.

The service is also supported by a civilian cadre of officers who are professionals in their areas of operation. These are Chaplains and Sheikhs, Counselors/welfare officers, medical personnel, finance and procurement personnel.

We have the following directorates that assist in effective governance of the prisons: Administration and Finance; Inspection; Legal, Human rights research and statistics; Planning and Development; Rehabilitation, welfare and Chaplaincy; Industries and Farms; Medical unit; Complaints; Gender, sports and NGOs.

B. Mandate of the Kenya Prisons Service

The Prisons Act (CAP 90) empowers the prisons service to perform the following functions:

1. Containment and safe custody of inmates
2. Rehabilitation and reformation of prisoners
3. Facilitation of administration of justice
4. Controlling and training of young offenders in Borstal institutions and Youth Corrective Training centers.
5. Provision of facilities for children aged between 4 years and below accompanying their mothers in prison.

*Principal Chaplain, Kenya Prisons Service.

The service is also guided by other acts including Criminal Procedure Act, Children's Act and Mental Health Act.

Vision

A correctional service of excellence in Africa

Mission

To contain offenders in humane and safe conditions in order to facilitate responsive administration of justice, rehabilitation, social reintegration and community protection.

Motto

Kurekebisha na haki. (Rehabilitation and Justice)

**II. EFFECTIVE TRAINING FOR THE PREVENTION OF MISCONDUCT—
CORRUPTION, INAPPROPRIATE TREATMENT OF OFFENDERS**

The KPS has endeavoured to overcome the cancer of corruption in the department by not only establishing an anti-corruption committee at the prisons headquarters that has also been replicated in the counties and prison institutions but also adapted and domesticated other legal and regulatory frameworks to eliminate corruption.

A corruption prevention policy and code of conduct and ethics for the department was launched in 2009 which prevents corruption in all areas of service delivery. Sensitization of the same and formation of anti-corruption committees in all levels of prison governance has brought about reduction of corruption cases.

A. Other Legal Instruments Used to Promote Integrity

Anti-Corruption and Economic Crimes Act 2003, Public Officers Ethics Act 2003, Prevention of Corruption Act, Prisons Standing Orders, Code of Regulations, Public Procurement and Disposal Act, Government Financial Act 2004, Government performance contract. All these instruments are taken into account at all training sessions in the department's Training College.

B. Human Rights

KPS has launched a handbook on Human Rights in Kenya Prisons which was funded by the Embassy of Switzerland and the Institute of Education and Democracy. The handbook is intended for both male and female prisons personnel to aid them in their duties. It aims at developing a culture of respect for human rights for prison staff and other agencies in the justice sector to fulfill the core mandate of rehabilitating prisoners.

A permanent bill board enumerating the rights of prisoners and their duties has been erected in every prison. This enables every officer and prisoner to know their rights and duties while in prison. These endeavours have improved the relationship between staff and inmates and created a conducive environment for rehabilitation

III. PROMOTING INTERNATIONAL COOPERATION THROUGH TRAINING AND SEMINARS

The KPS has extended its networks in ensuring the personnel working in it are well trained in skills and knowledge to enable them to carry out their mandate effectively. Besides the government sponsored training, KPS also partners with other stakeholders to empower the staff. These organizations include the Raoul Wallenberg Institute Institute of Education and Democracy.

KPS also has seconded its uniformed officers to work in the United Nations as Consultant Correctional Officers in post-conflict African countries in reconstructing their prison systems, e.g., Liberia, Democratic Republic of Congo, South Sudan, Somalia and the DPKO office in New York, USA.

KPS is also a critical member of the African Correctional Services Association (ACSA), International

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Corrections and Prisons Association (ICPA), United Nations African Institute for the Prevention of Crime and the Treatment of Offenders (UNAFRI). The KPS Catholic Chaplaincy is also a member of the International Commission for Catholic Prisons Pastoral Care (ICPPC)

IV. STRESS MANAGEMENT FOR CORRECTIONAL OFFICERS

The KPS has in its organizational structures a fully fledged directorate which is mandated to counsel and accompany correctional officers in their work. This is the directorate of welfare and rehabilitation of offenders. It is constituted of chaplains, psychological counsellors, welfare officers who oversee the officers' psycho/spiritual well-being. The officers also are entitled to leave breaks and compassionate leave when they are believed to enable them to unwind and take up their work with ease.

- i) Debriefing seminars, sports and motivational speakers' sessions are some of the activities undertaken to ensure the officers, well-being is guaranteed.

V. SUCCESSION PLANNING

The KPS has developed a career progression plan for its officer to ensure there is a regime that does not leave gaps in its rank and file. There is an established scheme of service for the uniformed officers and draft scheme for the civilian cadre of chaplains and welfare. The department makes a concerted effort to enhance capacity building with specific focus on professionalization of the service to improve service delivery to the public. This has been done mainly by:

- i) Reorganizing training programmes on the basics of the curricular for all levels of training prisons officers which are used to deliver programmes that meet international standards.
- ii) Engaging with a local university (Kenyatta University) to establish a centre for correctional and criminal justice studies which offers certificates and diplomas in the same field.
- iii) All this is geared towards professionalization of the department and succession management in the Kenya Prison Service.

VI. CONTENTS AND METHODS OF TRAINING

A. Analysis of Current Offenders and Their Types

The Kenya Prison Service holds two categories of prisoners under different classifications as follows:

1. Non-convicted (Remands)
 - Ordinary Remands
 - Capital Remands
 - Robbery with violet Remands.
2. Convicted Prisoners
 - Young class-15 years old and below 21 years.
 - Star class- First offenders and well behaved.
 - Ordinary class- All convicted prisoners not in young and star class.
 - Special- Death row convicts.
 - Lifers-Serving life sentences
 - Civil Debtors.

VII. EFFECTIVE TRAINING CURRICULUMS FOR PREVENTION OF CRIMES

Rehabilitation and reformation of offenders is one of the core functions of the Kenya Prisons Service. It comprises a number of various intervention mechanisms that are employed in varying degrees to provide purposeful activities for prisoners, challenge their offending behaviours, provide basic education to tackle illiteracy and equip them with life and work skills. In Kenya Prisons we have embarked on a number of programmes to empower prisoners to achieve social rehabilitation as follows:

A. Vocational Training

This is offered to inmates in 60% of our institutions where we have developed various forms of apprenticeships such as upholstery, fashion and designs, tailoring, pottery, carpentry, metal work, welding, stone calving, leather work, mat making, motor vehicle mechanism, number plates making, polishing, hair dressing, modeling, farming, printing and building among others.

B. Educational Programmes

Primary School Education: Standard 1-8 (8-4-4 system)
Secondary School Education; Form 1-4 (8-4-4 system)

C. Professional Programmes

Certificates and diploma levels, e.g., I.C.T, Theology, and Accounts, secretarial

D. Guidance and Counselling

Prisons are comprised of professional workers who offer both social and psychological support to inmates in the form of group and individual counselling.

E. Spiritual Rehabilitation / Moral Formation

The prison department has employed spiritual workers from three distinct faiths: Roman Catholics, Protestants and Muslim to form the Chaplaincy whose responsibility is to offer spiritual nourishment to inmates and members of staff.

VIII. UNDERSTANDING AND RESPECTING THE RELATED INTERNATIONAL STANDARDS NORMS

The Kenya Prisons Service has domesticated international instruments for Prisons management and governance. These include:

A. Basic Principles for the Treatment of Prisoners

This convention addresses concerns of the UN for the humanization of Criminal Justice and the protection of human rights.

B. Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)

Youthful offenders in Kenya Prisons are detained in separate wards of prisons upon conviction away from adults. We have youth correctional training centres, two Borstal institutions and an upcoming Borstal for girls.

C. Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules)

The Kenya Prisons Service has domesticated this rule by ensuring women in custody live in humane conditions and are provided with basic needs for their hygiene. There is a lot of dependence on donors for these hygiene provisions due to low budget allocations. Aged women have also been granted non-custodial sentences. In terms of budgetary support Kenya Prisons Service has granted enough resources to support women's prisons in Kenya.

D. Convention on the Rights of the Child

Children accompanying their mothers in prisons are granted special care and provisions for the children are guaranteed.

E. Safe Guards Guaranteeing Protection of the Rights of Those Facing the Death Penalty

Kenya still has death penalty in the penal code and therefore persons who commit capital offences are condemned to death. KPS has set up structures that guarantee their dignity and has provided counsellors and chaplains to accompany them during their incarceration time by providing psycho-spiritual counselling to them. KPS also facilitates visits by their family members.

F. Convention against Torture and Other Cruel Inhuman and Degrading Treatment or Punishment Throughout the World

G. Standard Minimum Rules for the Treatment of Prisoners

This instrument is a comprehensive set of safeguards for the protection of the rights of persons who are detained or imprisoned. Kenya Prisons Service applies this instrument by ensuring the officers are trained on the principles and that attempts have been made to realize them in the institutions.

H. Universal Declaration of Human Rights

This is a course unit in our Prisons staff training college so that every officer whether at the initial training or development course is sensitized on the need to observe the human rights for all

I. Convention on the Transfer of Sentenced Prisoners

KPS safeguards prisoners from the public and media while on transfer. This means providing them with safe transport and escort by armed officers.

J. Other Instruments

Other instruments domesticated by KPS for good governance and effective treatment of offenders include the African Charter on Human and People's Rights and the African charter on Prisoners' Rights.

IX. EFFECTIVE TRAINING METHODS

Kenya Prisons service has various modules of training that make the staff more effective and professional in carrying out their mandate of securing prisoners for the purpose of rehabilitation and reintegration back into society. These include: Development courses, International attachments, workshops and seminars.

X. CHALLENGES

The Kenya Prisons Service has its own share of challenges that threaten the expected output envisioned in its mandate. Chief among them include:

1. Overcrowding—the capacity of our prisons is only 20,000 prisoners but the current holding averages between 50,000-55,000 inmates, both convicted and those awaiting cases to be concluded. This result in overstretched physical facilities puts pressure on stores and services leading to unhygienic conditions, and prisoners are not classified properly.
2. Insufficient professionals who can deal with specific criminogenic needs of prisoners. The service does not have enough counsellors, psychiatrists, and psychologists who are well qualified to address the special cases arising in prisons.
3. Delayed administration of justice.
4. Lack of sufficient health kits to cater for this big population.
5. Terrorism, drugs, piracy and radicalization in the prisons which have become a challenge to the rehabilitation programmes as this is a new phenomenon to the service.
6. Insufficient funding to cater for the training and rehabilitation programmes for the inmates. This has made many of them stay idle in prisons and some even leave the prisons worse than they came in.
7. Budgetary constraints—continued resource allocation to procure basic requirements is a serious impediment in the provision of quality service to clients.
8. Staff housing—most of the prison institutions have colonial age housing which by now are dilapidated, some share houses whose space is quite small and this has caused low morale on staff due to

poor housing.

XII. SOLUTIONS

1. The department embarks on decongesting the prisons by encouraging the judiciary to offer affordable bonds, commit petty offenders to community service, apply the prerogative of mercy act to the aged and those who have reformed and have served long terms.
2. Recruit professionals and classify inmates according to their criminogenic needs so that case management can be possible.
3. There is need for the government of Kenya to raise the budgetary allocation for the implementation of various programmes, supply enough medical kits, and improvement of infrastructure in the prisons so that there are humane conditions for all, prisoners and staff.
4. All state actors in the criminal justice system should work together to reduce custodial sentences for petty offenders.
5. There should be well designed rehabilitation programmes for inmates with well qualified professionals to handle the programmes. Classification of prisoners should also be done.

XIII. CONCLUSION

The effectiveness of the treatment programmes for offenders largely depends on the skills and knowledge acquired by the officers who are working in correctional institutions. It is therefore of paramount importance to ensure there is a collaborative effort to empower the officers, develop the right network of partnerships, and develop a culture of continuous training of personnel on the emerging issues according to international standards.

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GROUP 1

ENHANCING THE ORGANIZATIONAL STRENGTHS OF CRIMINAL JUSTICE ORGANIZATIONS

Chairperson	Mr. Peter Kimani NDUNGU	(Kenya)
Co-chairperson	Mr. Beresford Henry HEATHER	(Cook Islands)
Rapporteur	Mr. Lap-yip LO	(Hong Kong)
Co-rapporteur	Ms. Elizabeth MIRIO	(Papua New Guinea)
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Adviser	Professor Toru NAGAI	(UNAFEI)

I. INTRODUCTION

Group 1 started its discussion on 27 August 2015. The Group elected, by consensus, Mr. Peter Kimani NDUNGU as its Chairperson, Mr. Beresford Henry HEATHER as its Co-chairperson, Mr. Lap-yip LO as its Rapporteur, and Ms. Elizabeth MIRIO as its Co-rapporteur. The Group was assigned to discuss the topic of “Enhancing the Organizational Strengths of Criminal Justice Organizations”. Though members of the Group come from different sectors, including prosecution, the judiciary, correctional services as well as probation offices, it was agreed without dispute that all criminal justice authorities should maximize the performance of their staff members in order to pursue the ultimate aim, a safe and inclusive society. Therefore, it is worthy to explore the ways of enhancing organizational strengths and its personnel.

II. SUMMARY OF THE DISCUSSION

In the course of the discussions, the Group identified four major common issues that the criminal justice authorities are now facing, i.e., (A) Developing an Organizational Culture of Integrity, (B) Stress Management for Correctional Personnel, (C) Passing Knowledge and Experience to the Next Generation and (D) Promoting Cooperation in Capacity Building with Other Organizations. The following is a summary of discussion of each issue:

A. Developing an Organizational Culture of Integrity

Upon discussion, it was found that the corruption situations of all the authorities of various members were under control and there was no sign of the resurgence of syndicated corruption, though some members expressed serious concern about the “ethical climate” of their police and prosecution authorities. Nevertheless, all members of the Group shared the view that there was a need to strengthen the capacity of their own authority in order to tackle the potential corruption cases, as there were also several separate cases that occurred in the past, such as receiving advantage for the introduction of unauthorized articles, including dangerous drugs and mobile phones, into correctional facilities for inmates.

It was stated by the visiting experts that the lack of resources, poor management and the absence of leadership or supervision were the causes of corruption. In response to the above, on top of the nationwide policies, such as regular vetting of officials, introduction of internal and external organizations to keep track of government services, strict law enforcement against corruption, declaration of assets, application of new technology (such as video recording) during investigation as well as adopting the anti-corruption strategy of introducing an adequate pay scale, the government of Kenya had introduced and promoted a Service Charter indicating clearly the performance and obligations of their service, with a view to enhancing transparency and accountability. The Hong Kong participant also pointed out that their correctional department had adopted a participative approach in creating its Vision, Mission and Values (“VMV”) statement, which encouraged its staff to maintain positive values against corruption as the participative approach allowed all staff to own the VMV as a shared statement, as well as to carry it through.

Apart from the challenge arising from corruption, the Group had also discussed the issue of inappropriate treatment of offenders by correctional officers, including the use of unnecessary force, indecent and abusive language towards inmates, or treatment in breach of human rights. In the discussions, the Group had shared various measures to prevent the recurrence of inappropriate treatment of offenders, including the introduction of outside human rights organizations to keep track of government services, sufficient channels of complaints, publishing departmental brochures about the expected conduct of criminal justice officers, tailor-made training on the latest appropriate treatment of offenders as well as the enactment of legislation on offenders' rights and treatment. Notwithstanding the above, the Group considered that it was not easy to change the attitude of officers in the course of implementing a human rights approach for offenders. In this regard, the member from the Cook Islands pointed out that they had tried to position prison officers and offenders as father and son, in which their relationship was mentorship instead of opposing force. Under such positioning, it relieved the tension between the prison officers and offenders, and also facilitated the implementation of the human rights approach.

Furthermore, the handling of difficult offenders, including their threats and seductions of criminal justice personnel were also discussed in the meeting. All members shared the views that most of the threats and seductions come from offenders serving long-term imprisonment in correctional institutions, and the correctional officers were therefore identified to be the group most affected. It was pointed out by the members of the Cook Islands and Kenya that the lack of sufficient resources, including manpower, accoutrements or hardware facilities, has long been a source of challenge to their correctional services. In fact, due to the difference of social and economical development, they might sometimes require some low security risk inmates to provide assistance to the prison management in ensuring smooth daily operations. Such arrangement had attracted considerable discussion and quite diverse views. Though the privilege of the above low security risk inmates could be treated as a motivation for offenders to rehabilitate, all members shared the view that the arrangement of seeking inmates to provide assistance to the prison management was not desirable in principle.

To tackle the challenge arising from difficult offenders, it was agreed that clear, precise and concrete guidelines on handling such circumstances should always be maintained. Besides, an effective classification of offenders should be conducted upon admission in order to segregate problematic offenders from normal associations. Specific medical treatment for offenders suffering mental sickness had also been mentioned in the discussion. In conclusion, it is important to develop an organizational culture of integrity. In this regard, apart from strict enforcement of prison discipline by means of legislation as well as appropriate equipment (weapons), some members further suggested to introduce some tailor-made training on integrity management for staff members, with a view to enhancing their awareness of the importance of staff integrity. Emergency control plans should always be ready with regular rehearsal in order to make staff members familiar with the procedures. The member of Hong Kong had shared their experience on developing a strong culture of professional ethics and probity among staff by launching a series of educational and publicity campaigns on staff integrity and healthy lifestyle. He also suggested that a mentorship programme might assist in bridging experienced and newly recruited staff so as to pass the knowledge on handling difficult offenders as well as working under temptations.

B. Stress Management for Correctional Personnel

Due to its job nature, it is not difficult to imagine how stressful the life of a criminal justice agency/officer can be. After discussion, the source of stress could be categorized into five major areas which are summarized as follows:

- Job Nature
 - a. Remote working stations
 - b. Long and irregular working hours
 - c. High-risk and life-threatening job nature
 - d. Frequent contacts with criminals
 - e. Tight daily routine procedures

- Insufficient resources
 - a. Uncompetitive pay scale
 - b. Overload of work

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- c. Very tight deadlines for reports
- d. Insufficient manpower
- e. Insufficient equipment

- Poor working environment
 - a. Potential exposure to infectious diseases
 - b. Potential threat/attack from gangsters or terrorists
 - c. Poor housing arrangements
 - d. Violence within the workplace

- Self-expectations
 - a. Strong power and responsibilities under legislation
 - b. Keen competitions among colleagues

- Change of social development
 - a. Rise of public expectation for government services
 - b. Rise of human rights concerns
 - c. Dealing with difficult offenders during criminal proceedings

It was agreed without dispute that it was stressful for them in daily operations. Although stress is a common problem among people in modern societies, the Group saw the importance of stress release and strength building in helping our staff to maintain a work-life balance. To achieve this, the member from Hong Kong stated that they had rolled out a Health and Balanced Lifestyle campaign for staff members for maintaining a healthy and productive workforce, in which various healthy activities had been held for their staff members and their families in bridging staff members to healthy life style, family support as well as a sense of belonging to the service. Moreover, members agreed that family fun days and parent-child activities should be held in order to strengthen family bonds. Also, thematic talks should be regularly organized with the help of professional expertise, such as clinical psychologists, which help staff members to enhance their abilities to cope with adversity. Furthermore, staff members should be invited to share their healthy and positive life experiences in the departmental newsletter so as to promote the positive values across the Team. In addition, counselling, team building and sport activities were also common practice in different countries to release staff stress. A proposal on paid leave had also been suggested and discussed in the meeting.

In the context of Kenya, apart from the similar measures aforementioned, they had also widely introduced technology devices to assist the work of officers (installation of CCTV, new design of uniforms, distribution of personal computers, etc.) and improved staff welfare by conducting enhancement of staff quarters. The Group had reached a consensus that the enhancement of staff welfare had a positive effect on productivity.

The member from the Cook Islands pointed out that the complicated rules, regulations and practices was one of the main causes of stress for staff members, especially for the new recruits. In this regard, he suggested that a comprehensive training programme with clear guidelines and a manual provided to staff members was definitely effective to help officers to gain a better understanding of complicated rules and regulations. Meanwhile, the management had the responsibility to promote the ideas of team work and mutual support among colleagues at work. The Japanese participants mentioned that management should be reminded of the importance of staff deployment in ensuring a team of officers with different characteristics, which helped to maintain the creativity of the team. It was also agreed that management should be aware of the imperfection of reality and should avoid falling into the ideology of perfectionism, which causes unnecessary stress to staff members. Last but not least, it was pointed out by the visiting expert that the resource shortage was definitely the most critical cause for the stress of staff members. With the above in mind, management should always be reminded that it is their responsibility to fight for adequate funding to relieve the resource shortage problem.

The Group had also found the importance of communications among officers in improving stressful work environments. Some members from Kenya raised the point that it was necessary to improve the means of communication between the line officers and management in order to facilitate the sharing and

reporting system. Line officers should be allowed to report and to seek advice from management, while management is encouraged to share their experience. Meanwhile, the idea of regular conferences for case sharing was also discussed and agreed to as a useful measure to help officers to further improve the quality of their case handlings. A Staff Complaint Register was also introduced allowing staff to raise their grievances against their supervisors through the established mechanism. Staff welfare services and activities, such as regular staff relation meetings, professional therapy seminars, sport activities, mental treatment with financial support and even specific facilities (mental illness due to stressful work) were provided. The Japanese participants had also shared their regular conference on case sharing, which had the effect of passing experience to new staff members and helping the supervisors understand the difficulties of frontline staff. It was also mentioned that the criminal justice authorities should be aware of the image in the mass media. With a positive image in the public, it not only helps staff members to deliver services, but relieves staff from stressful the working environment.

C. Passing Knowledge and Experience to the Next Generation

The Group reached a consensus that good succession planning was extremely important to maintain the stability of the criminal justice authorities and to sustain the smooth-running of services. In fact, passing knowledge and experience to the next generation is an on-going process which takes years to develop and accomplish. During the discussion, members of different countries had shared their practices, which are summarized as follows:

- **Comprehensive Training Programmes**
Rationale: Effective formal course training is always a key to success. It is important for management to provide comprehensive training to all staff members to facilitate their understanding of the departmental mission, job requirements and operational knowledge. It was agreed that a step-by-step principle should be adopted, i.e., the content of the courses and trainings should be based on the actual needs of officers concerned, having regard to their career development.
- **Diversified posting policy/internship programme**
Rationale: To deliver continuous improvement in performance, new thoughts, mindsets, strategies and dynamics are necessary. Throughout different postings and attachments, criminal justice agencies can generate new ideas and learn alternative practices during professional exchanges with other parties. It helps our criminal justice agencies enhance competence and adapt to the fast changing environment.
- **Clear documentation on emergency control plans and daily operations**
Rationale: To tackle challenges arising from the ever-changing environment swiftly, it is important to maintain a proper records of relevant experience, in particular those experiences accumulated over decades in the handling and management of offenders. Otherwise, the valuable knowledge and experience will be lost upon the retirement of experienced staff. Besides, apart from making a good reference for the next generation, these kinds of records facilitate the new generation to have a well-structured and well-organized sharing of knowledge and experience.
- **Mentoring and coaching scheme**
Rationale: Mentorship and coaching schemes offer not only an opportunity to share their work experience, but also helps new staff members adapt to the work environment and the organization at an early stage of their careers. It also provides opportunities for different generations to work together and to share.
- **Cooperation with outside bodies to conduct research and refine training curriculum**
Rationale: Under the ever-changing environment, the efforts of the criminal justice authorities will never be sufficient if they insist to continue working alone. With the collaboration with outside academic bodies, objective and scientific research can be conducted in a professional manner so as to refine the current training content, methods, as well as the curriculum.
- **Clear career path**
Rationale: A career path maps out the journey that the new generation has to take in order to reach their career goals. By making a clear career path for staff members, they will feel more secure in

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the career direction and they will be better prepared for the many uncertainties and difficulties that lie ahead in their careers. It also encourages the new generation to make conscientious efforts to acquire the necessary skills and experience, so as to be fully prepared once opportunities arise.

➤ Standardization of training materials and content

Rationale: To maintain quality service delivered by the service, it is important to have a detailed and standardized guide or manual for teaching a lesson. If the training content varies among different instructors or divisions among the service, the department will have difficulty in providing standardized services. Therefore, it should adopt a step-by-step guide that outlines the instructor's objectives for what the students will accomplish during the lesson to ensure appropriate information is taught in the most effective manner.

➤ E-learning

Rationale: E-Learning is an interactive and highly efficient mixed-mode training ensuring extensive staff coverage and substantial reduction in training resources in comparison to the traditional learning process. Its advantages have been proven to be immense and far-reaching, not to mention its flexible and versatile characteristics. All users can universally access the learning material in various media formats anytime, anywhere and learn at their own pace. Its cost-effectiveness in terms of cost, manpower and time is also crucial under the existing stringent fiscal environment. In addition, the introduction of E-learning policy can engender a life-long self-learning culture among staff members.

At the end of the discussion, the visiting expert stated that it was extremely important to develop a positive attitude among staff members to learn and pass on job knowledge and experience to colleagues. Without a positive attitude, the impact and effectiveness of different succession programmes would deteriorate. Apart from that, he also mentioned that management should play a serious role in editing manuals and guidelines, as it is a process of defining and selecting useful knowledge and experience. In addition, he was of the view that an exit interview for retiring staff or officers leaving the service was a useful means to collect opinions on useful job knowledge from the perspective of experienced staff, so as to refine the content of knowledge and experience sharing.

D. Promoting Cooperation in Capacity Building with Other Organizations

With the rising public expectations for rehabilitation of offenders, criminal justice authorities are now expected to do more for offenders than just locking them up in jail. It is noted that the efforts by the government and the offenders themselves alone are never sufficient for the rehabilitation of offenders.

All members of various authorities collaborate with outside organizations to provide training to staff members, despite variations in the level of involvement. With the collaboration with overseas counterparts/institutions, or with the cooperation with other local governmental departments, advanced training on leadership or specific skills, such as peace keeping, treatment of offenders, management skills, counselling and family support, are provided to senior officers to broaden their knowledge and experience so as to further improve their service. Experts from various backgrounds (both private and public sectors) have also been invited to conduct seminars to share their experience on specific topics. Some countries, such as Kenya, Papua New Guinea, Hong Kong and Korea have also collaborated with local and overseas tertiary institutions to develop new training programmes to enhance officers' knowledge and skill sets. Korea had also gained resources from hospitals, libraries, museums, universities and other organizations to educate staff and provide welfare.

Though various outside collaborations were mentioned, it is also found that there are several unsatisfactory issues under the prevailing practice. A participant raised that the shortage of funding was always a challenge for establishing collaborations with outside organizations, which made them lack exposure to international training and qualifications. Other participants shared the view and indicated that there were insufficient training places for all eligible officers. Also, though their government had adopted an open door policy to boost cooperation and partnership, the criminal justice authorities in Kenya were required to select partners carefully as some of the organizations were not meeting the required standard. There was also insufficient research on correctional training in some countries.

The Group agreed that management should keep on fighting for adequate budget to provide training. However, with limited resources, management should be careful in selecting suitable officers to attend available trainings. Apart from the above, another participant noted that the quality of the training content should also be a concern, and it was important to choose suitable outside organizations to provide appropriate training to ensure the proper use of limited funding. Further, as the ultimate aim of training is to acquire useful knowledge or experience to improve each respective service, it is important to encourage the officers having outside training to share their experience with colleagues and to adopt useful new experience and knowledge in practice, though it is noted that it is not easy to change the conservative culture of organizations. Meanwhile, it is also worthy to mention that though it is a good practice for the criminal justice authorities to track the level of public support for various policies, relevant authorities should bear in mind their professional background and ensure that their decisions are based on professional judgement instead of public opinion.

III. CONCLUSION AND RECOMMENDATIONS

With the above summary of the discussion, the Group concluded that the following should be recommended as possible ways of enhancing the organizational strengths of criminal justice authorities and their personnel:

A. Developing an Organizational Culture of Integrity

1. Developing High-Integrity Personnel and Sound Organization as Well as the Prevention of Illegal Conduct Such as Corruption and Inappropriate Treatment of Offenders
 - To provide adequate payment to lower the motivation for misconduct
 - To have staff involvement in setting departmental goals and objectives
 - To develop a positive departmental culture in enhancing the quality of service
 - To establish and promote service charters (performance pledges) to ensure the quality of service
 - To provide sufficient staff welfare and relations activities programmes, such as sports, music and family activities, etc.
2. Enhancing Organizational Strength to Address Difficult Offenders Who May Coax or Threaten Corrections Officers
 - To reposition the relationship between officers and offenders
 - To have effective classification and treatment of offenders
 - To provide sufficient and appropriate training
 - To introduce mentorship programmes

B. Stress Management for Correctional Personnel

1. Mitigating the Stress of Officers Who Work in Stressful Environments
 - To provide sufficient resources to eliminate the shortage problem
 - To improve communication between management and frontline by technology devices
 - To provide sufficient staff welfare and activities to release the stress of staff
 - To provide adequate training to make staff be effective with their work
 - To provide specific medical treatments / therapy seminars to stressed staff
 - To improve the public image of various criminal justice agencies in the mass media
 - To prevent the ideology of perfectionism by streamlining complicated work procedures, so as to avoid unnecessary workload and stress
2. Enhancing Communications among Officers to Improve Stressful Work Environments
 - Staff Suggestion Box / Complaint Register to receive feedback
 - Regular conferences / staff meetings on case handling and knowledge sharing
 - Use of Intranet / mass / social media to share useful information

C. Passing Knowledge and Experience to the Next Generation

1. Developing Effective Capacity-Building Programmes for Passing Knowledge and Experience to the Next Generation, as Well as for Enhancing Organizational Strength
 - To provide comprehensive needs-orientated training programmes
 - To have cooperation with outside bodies to conduct research and have continuous and regular re-

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- finements on the training curriculum
 - To standardize the training materials and content by clear teaching plans for instructors as well as providing training-of-trainers programmes
 - To extend the use of e-learning in staff training
2. Building and Exerting Leadership in Order to Improve the Efficiency of the Organization and to Enhance Organizational Strength, in Particular Developing the Capacity and Morale of Young Officers
- To introduce a diversified posting policy / internship programmes
 - To have clear documentation on emergency control plans and daily operations
 - To have mentoring and coaching schemes
 - To stipulate clear career paths for young officers
 - To have “exit interviews” to collect useful information from the perspective of experienced staff
 - To invite retired professionals to participate in the criminal justice system and to share their rich experience
 - To collect and share useful training information on the ICPA website

D. Promoting Cooperation in Capacity Building with Other Organizations

1. Promoting Cooperation in Capacity Building with Other Organizations Including NGOs, Academics, Research Institutes, Etc. in Order to Improve Capacity Building and Organizational Strength
- To continue collaboration with outside bodies to provide appropriate training
 - To devote substantial resources to improve quantity and quality of training
 - To carefully select candidates for training
 - To encourage trained staff to share their knowledge acquired
 - To change the conservative culture and to apply new experience
 - To conduct regular customer satisfaction surveys
 - To have exchange programmes with overseas counterparts for benchmarking of services to international standards

Group 2

DEVELOPING EFFECTIVE TRAINING CURRICULA

Chairperson	Mr. Joseph Teokotai	(Cook Islands)
Co-chairperson	Ms. Pauline Wanja Ngara	(Kenya)
Rapporteur	Ms. Pamela Monyenche Masese	(Kenya)
Co-rapporteur	Ms. Suzuki Mariko	(Japan)
Members	Mr. Naing Soe Lin	(Myanmar)
	Mr. Muraguchi Seiji	(Japan)
	Ms. Sonam Choden	(Bhutan)
	Ms Purity Mumbi Mulandi	(Kenya)
	Ms. Mary Tukavai	(Papua New Guinea)
Adviser	Professor Satoshi Minoura	(UNAFEI)

I. INTRODUCTION

Group 2 started its discussion on 27th August 2015. The members elected officials by consensus: Mr. Teokotai as the Chairperson, Ms. Ngara as the Co-Chair, and Ms. Masese as the Rapporteur and Ms. Suzuki as the Co-Rapporteur. The Group, which was assigned to discuss “Developing effective training curricula”, agreed to conduct its discussion in accordance with following agenda: 1) Training staff with high expertise; 2) Understanding and respecting international standards as guidance; and 3) Organizing training based on effective training methods.

II. SUMMARY OF THE DISCUSSIONS

A. Training Staff with High Expertise for Correctional Agencies

Group members decided that in the discussions the term corrections would be used to refer to both prison and probation. All participants agreed that most curricula of corrections agencies were prepared some time back, and they should therefore be reviewed. It would be necessary to conduct a training needs assessment so as to train officers with expertise to effectively assess and treat offenders and prevent recidivism. The training programmes need to be aligned to the career progression of corrections/probation officers to promote professionalism. The officers need to understand emerging crime trends like radicalization and violent extremism, drug abuse, human trafficking, domestic violence, sexual offences and money laundering, and they should be included in the training curricula.

In some cases, it may be necessary to enhance specialization to handle juvenile and special needs offenders. Participants were in agreement that the training curricula should be aligned to the strategic plans, missions and mandates of corrective organizations.

The participants were in agreement that disciplines like sociology, criminology and psychology are important for correctional officers, and the curricula should be harmonized so as to address identified gaps.

In the discussions the participants identified examples of difficult offenders and agreed that correctional officers should develop competencies and have relevant knowledge to define, identify, assess and treat these difficult offenders as indicated below:

1. Drug Offenders

The curricula should be geared towards definition, identification and treatment of drug offenders. A drug offence refers to the possession, use, sale or furnishing of any drug or intoxicating substance that is prohibited by law. The training should aim at equipping officers with effective search methods. “Drug offenders” can be divided into three parts: transactions (drug trafficking), possession, and consumption (abuse, addiction). Members were of the view that countries with increasing numbers of drug-related cases need to set up drug courts so as to take effective multidisciplinary remedial initiatives. It would be important for officers to understand the need to sensitize offenders on the negative effects of drug abuse.

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The participants agreed that the curricula should embrace the risk assessment methods which are divided into quantitative and qualitative approaches. It was observed that the treatment of drug offenders can be done as follows:

- Drug dependence: It can be seen as a chronic, recurring disorder that can have serious associated problems (family disintegration, criminality and psychiatric pathology).
- Drug abuse treatment: To improve health and alleviate the social problems of patients, which can be achieved in a cost-effective manner through proper organization and delivery of care.

Effective treatment approaches will include

- Medication and behavioural therapy
- Easing withdrawal symptoms
- Preventing relapse

2. Offenders with Terrorism-Related Cases

Participants agreed that the curriculum needs to include concepts of radicalization as a gradual process of intensive socialization into a closed group and lack of respect for other peoples' freedom and rights. The training content needs to address underlying factors that lead to radicalization and violent extremism

Personal and psychological factors:

- Search for identity, role models, a sense of belonging and low self-esteem
- Lack of close relations and a sense of alienation from normal social networks
- Victims of harassment or discrimination
- Poverty makes one vulnerable

Social factors and group dynamics include:

- Discrimination
- Corruption and unequal distribution of economic benefits
- Individuals' acquaintances
- The role of charismatic individuals who the individual admires

The training curriculum should address effective treatment of these offenders which will depend on actual assessment.

Suggested interventions may include the following:

- Personal protective factors: Develop competencies for reasoning and problem-solving skills; anger management; assertiveness training; stress management
- Family protective factors: Good parenting and close family relations, family therapy
- Social protective factors: Good choice of peers; Affiliation to positive community networks, for example, school, appropriate clubs and other social networks
- Motivational factors: Search for identity; Need for togetherness; Need for recognition; Need for a role model
- Ideological factors: Establish rapport and understand the driving forces and world views

3. Sexual Offenders

The curricula will be able to provide a clear understanding of:

- Definition of sex crimes: Forms of human sexual behaviours that are crimes
- Types of sexual offences: Incest, sodomy, child sexual abuse/pedophiles, rape, bestiality, prostitution/pimping and other sexually related crimes
- Background of offending: Analyzing the background of each offender which may include a history of sexual and physical abuse as a child, drugs and alcohol abuse, economic reasons, e.g., prostitution and pimping, anxiety and depression or isolation
- Assessment Tools:
 - ✓ Risk Principle: The tool suggests that the intensity of the correctional intervention must be matched to the level of risk posed by the offender's treatment
 - ✓ Need Principle: Treatment and intervention such as supervision should explicitly be longer depending on the criminogenic needs of the offender

- ✓ Responsivity Principle: Which involves the interaction between the individual and treatment
- Types of Treatment: Cognitive-behavioural treatment; Behavioral social learning theory; Relapse prevention

4. Offenders with Cases of Human Trafficking

The participants agreed that the curriculum needs to include:

- Definition: what is an act of recruitment, transportation, transfer, harbouring or receipt of persons, threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, or giving payments or benefits to a person in control of the victim
- The Purpose: For the purpose of exploitation, which includes prostitution, sexual exploitation, forced labour, slavery or similar practices and the removal of organs
- Types of traffickers: Highly organized criminal groups; loosely connected; individuals; family and friends of the victims; business people.
- Assessment: Through the interviewing process, identify the histories, social circumstances, relationships of offenders and victims, associates and the situations that enable these relationships to be manipulated for criminal purposes.
- Classification of offenders: By their positions in their criminal groups; supporters, partners in crime, leaders. The assessment tools for organized crime should be used for human trafficking offenders.
- Types of treatment: Cognitive-behavioural therapy for offenders especially in the treatment and adjustment of the offenders' social environment

B. Understanding International Standards and Norms as Guidance

Most participants were of the view that the curriculum should be in line with international instruments and protection of human rights. These instruments include:

1. Standard Minimum Rules for the Treatment of Prisoners (The Mandela Rules)

The curriculum should aim at addressing the following:

- The respect of human rights for persons in custody.
- It should form part of the subject matter as well as a reference for all other lessons during the training programmes.

2. United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)

The curriculum should emphasize dealing with offenders in the community aiming at de-penalization and decriminalization and avoidance of the formal court proceedings in accordance with legal safeguards and the rule of law. The curriculum should incorporate the legal safeguards on the protection of the dignity and privacy of the offender and the confidentiality of the offender's personal records. The contents of a social inquiry report for the offender should be factual and objective. Where applicable, the report should contain social information on the offender that is relevant to the person's pattern of offending and current offences.

3. United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)

The curriculum should aim at addressing the following:

- "The well-being" of young people and ensure that any reactions should always be in proportion to the circumstances of both the offenders and the offence
- Diversion programmes from litigation for youth and implementation of support services
- Privacy and procedural safeguards including presumption of innocence
- Emphasis on the best interests of the child and ensuring that young people have the opportunity to participate in the process

4. United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (The Bangkok Rules)

The participants were in agreement that in order to effectively address emerging issues related to women offenders, the curriculum needs to cover the Bangkok Rules with special reference to the following:

- Rule 29 — Capacity-building for staff employed in women's prisons shall enable them to address the special social reintegration requirements of women prisoners and manage safe and rehabilitative facilities
- Capacity-building measures for women staff shall also include access to senior positions with key re-

sponsibility for the development of policies and strategies relating to the treatment and care of women prisoners

- Training for Correctional Officers should also include addressing victims in accordance to the Victim Impact Act

C. Organizing Training Based on Effective Training Methods

The group observed that there are a wide variety of training methods to cater to a broad diversity of correctional officers. Some of the factors to consider when choosing a training method were identified as follows:

- Human factors—trainers' experience, personality and characteristics of the participants
- Social factors—social and cultural conditions of the participants
- Objectives of the training—to impart knowledge, influence attitude and develop practical skills of the trainees
- Subject area—various subjects have their specific features
- Time and material factors—length of the training programme and time of day
- Training facilities

The Group discussed some effective training methods which include:

- Brainstorming
- Lectures
- Group discussion
- Role playing and mock scenarios and practical experiences
- Mentorship
- Case study
- Study tours and exchange programmes
- The use of experts
- Demonstration

The group members discussed and agreed that the following are appropriate training materials:

- Training manuals and lesson plans
- Relevant text books
- Audio visual aids
- Relevant constitutions, mandates and policies
- International instruments
- Television programmes and documentaries.
- Use of working tools

III. CONCLUSION AND RECOMMENDATIONS

Most correctional agencies have challenges in training and capacity building. A comprehensive organizational needs assessment is necessary so as to isolate problems related to training from other organizational difficulties. An elaborate curriculum is required to address challenges arising from emerging crime trends, meet the demands of the various mandates as well as implement international best practices. The participants gave the following recommendations:

1) General Recommendations

- Decentralize training so as to have satellite training centres to address training gaps at the point of service delivery
- Correctional agencies to develop training infrastructures and facilities
- Training should address the needs of victims, special needs and difficult offenders
- In all training programmes, lesson plans should take into account the needs of the participants, the subject matter and the timeframe.

2) Training Staff with High Expertise

- The curriculum should be aligned to the mission and mandates of individual agencies
- Training needs assessment is necessary before conducting any training programmes
- Training of all law enforcement agencies to ensure a multi-disciplinary approach in offender man-

agement

- The initial phase of implementation of a curriculum should be to train the implementors
- Regular review of the curriculum to allow necessary adjustments

3) Understanding and Respecting International Standards as Guidance

- It would be ideal for universal guidelines to be prepared to standardize training curricula while taking cognizance of the unique differences of each correctional agency
- Training curriculum to embrace international instruments as norms for correctional work

4) Organizing Training Based on Effective Training Methods

- Develop a national systematic training framework
- Develop training support programme aids and materials
- Implement the curriculum through the use of effective training methods; integrating theoretical and practical perspectives through study tours
- Conduct impact evaluation of all training programmes

PART TWO
RESOURCE MATERIAL SERIES
No. 98

Work Product of the 18th UNAFEI UNCAC Training Programme
**“Effective Anti-Corruption Enforcement and Public-Private and
International” Cooperation**

UNAFEI

VISITING EXPERT'S PAPER

BRIEF OVERVIEW OF THE GERMAN CRIMINAL JUSTICE SYSTEM: THE GERMAN LEGISLATIVE RESPONSE TO CORRUPTION CRIME

*Richard Findl**



I. BRIEF OVERVIEW OF THE CRIMINAL JUSTICE SYSTEM IN GERMANY

Germany is a federal republic consisting of sixteen federal states (German: “*Länder*”). Since today’s Germany was formed from an earlier collection of several states, it has a federal constitution, and the constituent states retain a measure of sovereignty.



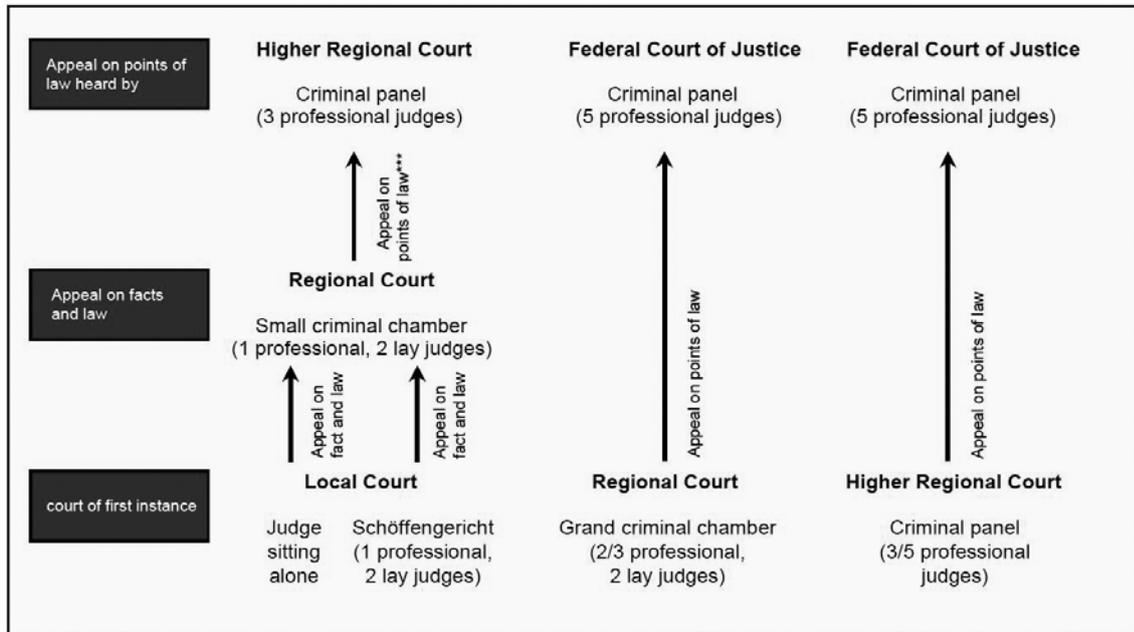
A. The Organization of the Judiciary

The judicial system is established and governed by part IX of the constitution. Article 92 of the constitution establishes the courts and states that the judicial power shall be vested in the judges; it shall be exercised by the Federal Constitutional Court, by the federal courts, and by the courts of the federal states (“*Länder*”).

Because of the federal order of the Republic, jurisdiction is exercised by federal courts and by the courts of the 16 federal states. The administration of justice lies chiefly with the federal states. The German court system is divided into five specialised branches or jurisdictions: ordinary, labour, general administrative, fiscal and social. In addition, there is the constitutional jurisdiction, i.e., the Federal Constitutional Court and the constitutional courts of the federal states.

*Chief Judge at the Regional Court, Germany.

The highest ordinary court is the Federal Court of Justice. At the regional level there are Local Courts (Amtsgerichte) and Regional Courts (Landgerichte), which are the first or the second instance courts depending on the character of the case, and Higher Regional Courts (Oberlandesgerichte).¹



Judgments are delivered by professional judges, who belong to a single professional group but may specialise in different fields due to their appointment to different court branches. In some proceedings, professional judges are joined by lay judges (honorary judges) and judgments are delivered jointly. The lay judges for the criminal courts (Local and Regional Courts) are elected for a period of five years, on the basis of lists of nominees, by a committee at the Local Court by a two-thirds majority vote.

During the main hearing, lay judges in criminal proceedings exercise judicial office in full and with the same voting rights as their professional counterparts. All decisions made outside the main hearing are made solely by the professional judge.

At the end of 2012, a total of 459 professional judges were working in the federal courts (Federal Constitutional Court, ordinary jurisdiction, administrative jurisdiction, fiscal jurisdiction, labour jurisdiction, social jurisdiction, patent jurisdiction and military service courts). At the same time, a total of 19,923 professional judges were working in the *Länder*, of whom 1,970 were probationary judges. 121 (40.16%) of all professional judges were female. In 2009, 36,956 lay judges were sitting in the criminal courts; of those 19,183 (51.9%) were male and 17,773 (48.1%) female².

The principle of independence of the judiciary is enshrined in the constitution. In accordance with article 97(1), "judges shall be independent and subject only to the law." Section 1 GVG states that "judicial power shall be exercised by independent courts that are subject only to the law." As a fundamental principle of German constitutional law, judicial independence implies that when exercising judicial power, judges may not be given any instructions. The executive branch and, in particular, the court administration are not allowed to influence judicial decisions by giving instructions on a specific case, through administrative provisions or in any other way. The legislature is also prevented from directly influencing case-related decisions in ongoing proceedings. The courts of a higher instance are also not allowed to prompt a

¹Diagram taken from: German Federal Ministry of Justice, Criminal Justice in Germany Facts and Figures by Jörg-Martin Jehle 2009.

²Statistic data taken from: <https://www.bundesjustizamt.de/DE/SharedDocs/Publikationen/Justizstatistik/Gesamtstatistik.pdf?__blob=publicationFile&v=5>.

judge to make a certain decision.

B. The Organization of the Prosecution Service

The public prosecution offices are part of the executive branch, despite their integration in organisational terms into the judicial branch. Within the field of criminal justice, the public prosecution offices share the task, on an equal footing with the courts, of providing access to justice and form a distinct judicial body of the judiciary.

Again as a consequence of the organization as a federal state the responsibility for the prosecution service lies with the federal states. In the federal states, there are a total of 116 public prosecution offices at the Regional Courts. They are subordinate to the Offices of the Public Prosecutors General ("*Generalstaatsanwaltschaften*") located at each of the Higher Regional Courts. There are a total of 25 Public Prosecutors General in the federal states. The Offices of the Public Prosecutors General are subordinate to their respective State Justice Ministries.

At the federal level and parallel to the Federal Court of Justice, there is the "Office of the Federal Prosecutor General at the Federal Court of Justice". The Office of the Federal Prosecutor General performs the tasks of a classic public prosecution office at the Federal Court of Justice. It represents the prosecution in all proceedings before the federal court (e.g. appeals on points of law). The federal prosecutor also acts in the capacity of a public prosecution office in criminal offences affecting the internal and external security of the Federal Republic of Germany, i.e., treason, terrorist acts of violence and so on).

The public prosecution offices are structured hierarchically. They are headed by "superior officials". Public prosecution offices are not autonomous institutions. They are subject to administrative and professional supervision by the relevant superior official of the public prosecution office. The Federal Prosecutor General at the Federal Court of Justice is subject to supervision by the Federal Ministry of Justice and the public prosecutors of the federal states are subject to the supervision by the Justice Ministries of the federal states, who have the right to issue instructions.

C. Criminal Procedural Law

German criminal procedural law is to be found in the Criminal Procedure Act (*Strafprozessordnung*, StPO).

The prosecution offices in Germany are in charge of the investigation as well as the prosecution of criminal offences. The prosecutors open investigations and will take part in the investigation process. After all the evidence is collected the prosecutors decide about the further proceedings. If they believe, that there is a sufficient probability of a conviction by the competent court, the prosecutor will indict the suspect. The prosecutor will appear in court, will present the indictment to the court and will take part in all of the court hearings.

The prosecution office is entitled to decide about the opening of the investigational proceedings under the condition of adequate suspicions of criminal activity against the suspect. The public prosecutor may start investigations with or without the report of an offence by a citizen. The relevant section of the criminal procedure code reads as follows³:

"Section 152

[Indicting Authority; Principle of Mandatory Prosecution]

- (1) The public prosecution office shall have the authority to prefer public charges.*
- (2) Except as otherwise provided by law, the public prosecution office shall be obliged to take action in relation to all prosecutable criminal offences, provided there are sufficient factual indications."*

The prosecutor has the duty to be objective and neutral. He is obliged to collect evidence both against and in favor of the suspect.

In cases of petty crimes the police perform the investigations on their own. In major and complex

³<http://www.gesetze-im-internet.de/englisch_stpo/englisch_stpo.html#p1223>.

cases, however, the investigations are led and controlled by the prosecution office.

If no suspect is found, if the act is not punishable or if there are other procedural impediments (e.g., the statute of limitations), the public prosecution office will discontinue the proceedings in accordance with section 170 paragraph 2 of the Criminal Procedure Act.

Section 170

[Conclusion of the Investigation Proceedings]

- (1) *If the investigations offer sufficient reason for preferring public charges, the public prosecution office shall prefer them by submitting a bill of indictment to the competent court.*
- (2) *In all other cases the public prosecution office shall terminate the proceedings. The public prosecutor shall notify the accused thereof if he was examined as such or a warrant of arrest was issued against him; the same shall apply if he requested such notice or if there is a particular interest in the notification.*

The proceedings can also be terminated if the offender's guilt is of a minor nature and if there is no public interest in prosecution. This termination can involve the imposition of certain conditions, such as financial redress for the injury caused by the act, the payment of a fine or the undertaking of community service (section 153 and 153a of the Criminal Procedure Act).

Furthermore, the Public Prosecution Office can refrain from prosecution if the crimes involved are insignificant additional offences compared with the main crime with which the accused is charged (section 154 of the Criminal Procedure Act).

In the case of certain crimes (trespass, minor bodily injury, criminal damage, etc.), the Public Prosecution Office can advise that a private prosecution be pursued if there is no public interest in prosecution; the injured party must then bring a charge himself.

D. The Criminal Trial

For all cases with a punishment up to four years' imprisonment, the local court (*"Amtsgericht"*) is the court of first instance. The regional court (*"Landgericht"*) is responsible for serious cases with imprisonment of over four years or commitment to a psychiatric hospital, and the regional court hears all such cases. In case of crimes against the state (e.g., terrorism, espionage), the Higher Regional Court (*Oberlandesgericht*) is the competent court.

Once the indictment has been filed by the public prosecutor's office, the court checks whether there is sufficient reason to suspect the accused of the crime. If so, the main court proceedings will begin. The criminal trial is led by the judge. Public prosecutor and judge are independent from each other and from other governmental authorities. Judges do not have to follow any instructions.

The judge underlies the principle of authoritative investigations (*Amtsermittlungsgrundsatz*), i.e., his duty is to investigate and consider all facts and matters relevant to the case. The judge need not rely on the evidence brought forward by the prosecutor or the defence.

Section 244

[Taking of Evidence]

- (1) (···)
- (2) *In order to establish the truth, the court shall, proprio motu, extend the taking of evidence to all facts and means of proof relevant to the decision.*

E. The German Federal Police Statistics 2014

In 2014 the German police recorded 6.082 million incidents.⁴ The total clearance rate was 54.9 %.

The clearance rate for murder and manslaughter is particularly high at 96.5 %. The clearance rate for theft offences is particularly low, at 14.7 %.

⁴ <http://www.bka.de/DE/Publikationen/PolizeilicheKriminalstatistik/pks__node.html?__nnn=true>.

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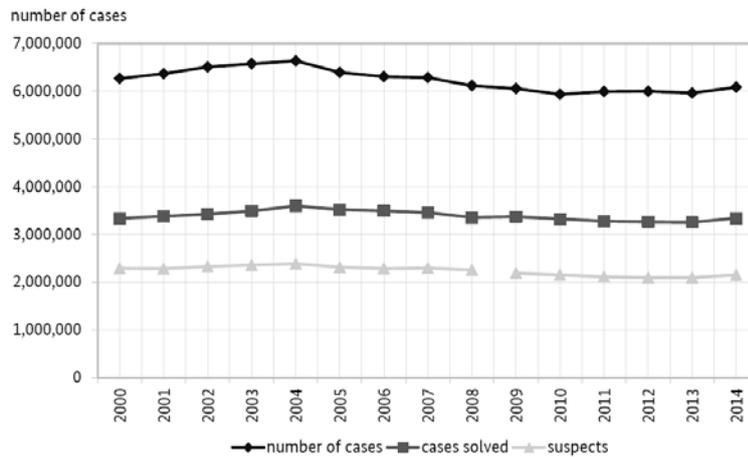
In 2014 the number of suspects rose to 2,149,504 (+2.6%), 552,263 of whom were female suspects (25.7%).

There were 63.194 cases of economic crime. The clearance rate was 90.7 %. However, this rate does not mean that all of these cases led to conviction in the courts.

The number of competition- and corruption-related offences and offences in public office was 6,571. The clearance rate was slightly lower: 82.3 %.

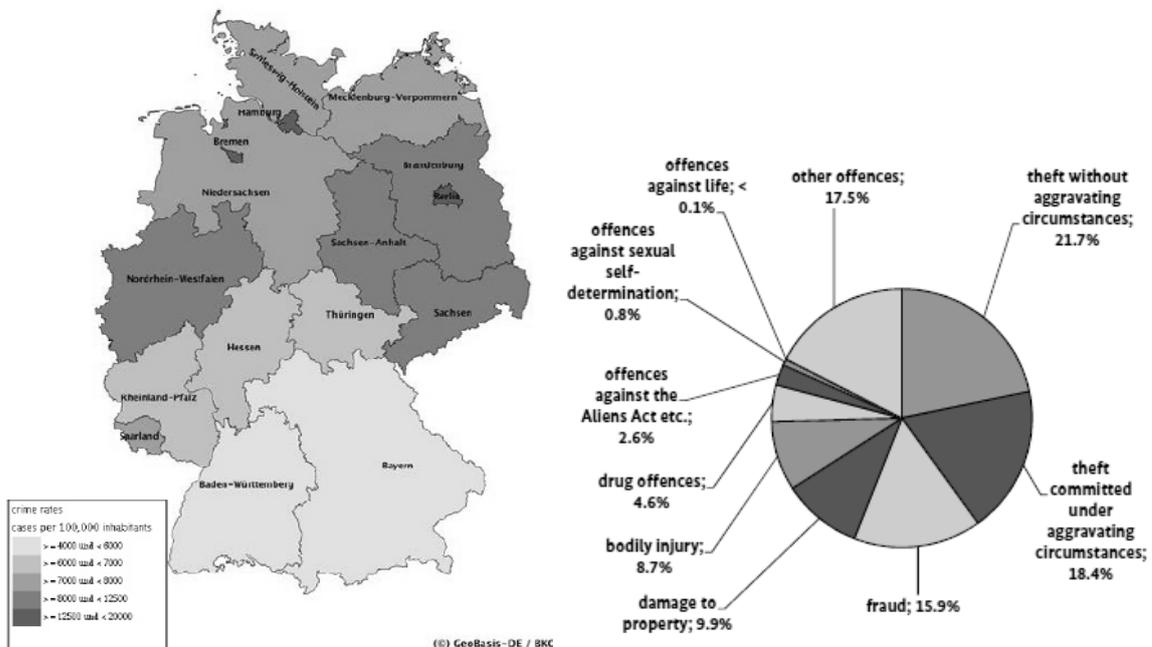
3.1.1 Development of total crime

3.1.1 - G01



Geographical distribution by offence rates

3.1.2 - K01



II. THE GERMAN LEGISLATIVE RESPONSE TO CORRUPTION CRIME

A. Overview

According to the German criminal code bribery in the public as well as in the private sector is a punishable crime (Public officials: sections 331- 338 and private employees: sections 299-301). Both passive and active bribery are criminalised in the criminal code.

Since February 1999 bribe payments to foreign public officials are a criminal offence (the Act on Combating International Bribery "*Gesetz zur Bekämpfung internationaler Bestechung*" – hereinafter "IntBestG"). The payments to foreign private employees are a punishable crime under section 299 paragraph 3 of the criminal code.

B. Bribery of Domestic Public Officials

Bribery of German public officials is regulated in section 331 and following (et seq.) of the Criminal Code (CC), which incriminate two forms of corruption, namely bribery as such, but also a looser form of criminal behaviour. Passive bribery is criminalised in sections 331 and 332 CC, and active bribery in sections 333 and 334 CC. Sections 332 and 334 CC encompass offences where the advantage is awarded in return for an official act which is in breach of duty or which is at the discretion of the public official. Sections 331 and 333 CC each encompass offences where the benefit is awarded as an incentive. It is not necessary to prove that the official is violating his official duties. Section 335 CC contains a regulation on the assessment of punishment for especially serious cases of active and passive bribery.

1. The Term "Domestic Public Official"

The terms "public officials", "individual with a special obligation for the public service" and "judge" are used in sections 331 et seq. of the criminal code, to describe the person receiving the benefit or bribe. These terms are given a statutory definition in section 11, paragraph 1, Nos. 2 to 4 of the criminal code. The definition section of the statute reads as follows:

Section 11 Definitions

(1) For the purposes of this law

1. (...)
2. *'public official' means any of the following if under German law*
 - (a) they are civil servants or judges;*
 - (b) otherwise carry out public official functions; or*
 - (c) have otherwise been appointed to serve with a public authority or other agency or have been commissioned to perform public administrative services regardless of the organisational form chosen to fulfil such duties;*
3. *'judge' means any person who under German law is either a professional or a lay judge;*
4. *'persons entrusted with special public service functions' means any person who, without being a public official, is employed by, or is acting for*
 - (a) a public authority or other agency, which performs public administrative services; or*
 - (b) an association or other union, business or enterprise, which carries out public administrative services for a public authority or other agency,**and who is formally required by law to fulfil their duties with due diligence;*

Under section 11, paragraph 1, No. 2, the term "public official" covers all those who, under German law, are employed as civil servants or judges, those who are otherwise in an official duty-relationship under public law functions, and those who have been appointed to a public authority or other agency or have been commissioned to perform duties of public administration without prejudice to the organizational form chosen to fulfill such duties.

In addition to civil servants and judges, as well as to other individuals in an official relationship under public law, individuals in Germany appointed to carry out tasks of the public administration in an authority or in another agency or on its behalf also belong to public officials within the meaning as defined under criminal law (section 11, paragraph 1, No. 2 (c) Criminal code). These include employees in the public service who carry out public tasks, but who are not civil servants within the meaning under status law.

Furthermore, it covers individuals who carry out public tasks in agencies similar to authorities. These agencies also include facilities organised under private law which are subject to such state management in carrying out administrative tasks that, in an overall evaluation of the characteristics typifying them, nonetheless appear to be an extended arm of the State.

Section 11, paragraph 1, No. 4 of the criminal code also includes individuals who are not public officials, but who are under a special public service obligation. An obligation applies in particular to individuals who work in authorities, but do not carry out public tasks (e.g., employed cleaning staff), and to individuals who contribute as external contractors for an authority in carrying out public tasks.

2. The wording of the Relevant Provisions of the Criminal Code

**“CHAPTER THIRTY
OFFENCES COMMITTED IN PUBLIC OFFICE**

Section 331

Acceptance of a benefit

- (1) *A public official or a person entrusted with special public service functions who demands, allows himself to be promised or accepts a benefit for himself or for a third person for the discharge of an official duty shall be liable to imprisonment not exceeding three years or a fine.*
- (2) *A judge or arbitrator who demands, allows himself to be promised or accepts a benefit for himself or a third person in return for the fact that he performed or will in the future perform a judicial act shall be liable to imprisonment not exceeding five years or a fine. The attempt shall be punishable.*
- (3) *The offence shall not be punishable under subsection (1) above if the offender allows himself to be promised or accepts a benefit which he did not demand and the competent public authority, within the scope of its powers, either previously authorises the acceptance or the offender promptly makes a report to it and it authorises the acceptance.*

Section 332

Taking a bribe

- (1) *A public official or person entrusted with special public service functions who demands, allows himself to be promised or accepts a benefit for himself or for a third person in return for the fact that he performed or will in the future perform an official act and thereby violated or will violate his official duties shall be liable to imprisonment from six months to five years. In less serious cases the penalty shall be imprisonment not exceeding three years or a fine. The attempt shall be punishable.*
- (2) *A judge or an arbitrator, who demands, allows himself to be promised or accepts a benefit for himself or for a third person in return for the fact that he performed or will in the future perform a judicial act and thereby violated or will violate his judicial duties shall be liable to imprisonment from one to ten years. In less serious cases the penalty shall be imprisonment from six months to five years.*
- (3) *If the offender demands, allows himself to be promised or accepts a benefit in return for a future act, subsections (1) and (2) above shall apply even if he has merely indicated to the other his willingness to*
 1. *violate his duties by the act; or*
 2. *to the extent the act is within his discretion, to allow himself to be influenced by the benefit in the exercise of his discretion.*

Section 333

Granting a benefit

- (1) *Whosoever offers, promises or grants a benefit to a public official, a person entrusted with special public service functions or a soldier in the Armed Forces for that person or a third person for the discharge of a duty shall be liable to imprisonment not exceeding three years or a fine.*
- (2) *Whosoever offers promises or grants a benefit to a judge or an arbitrator for that person or a third person in return for the fact that he performed or will in the future perform a judicial act shall be liable to imprisonment not exceeding five years or a fine.*
- (3) *The offence shall not be punishable under subsection (1) above if the competent public authority, within the scope of its powers, either previously authorises the acceptance of the benefit by the recipient or authorises it upon prompt report by the recipient.*

Section 334
Offering a bribe

- (1) *Whosoever offers, promises or grants a benefit to a public official, a person entrusted with special public service functions or a soldier of the Armed Forces for that person or a third person in return for the fact that he performed or will in the future perform an official act and thereby violated or will violate his official duties shall be liable to imprisonment from three months to five years. In less serious cases the penalty shall be imprisonment not exceeding two years or a fine.*
- (2) *Whosoever offers, promises or grants a benefit to a judge or an arbitrator for that person or a third person, in return for the fact that he*
 1. *performed a judicial act and thereby violated his judicial duties; or*
 2. *will in the future perform a judicial act and will thereby violate his judicial duties,**shall be liable in cases under No 1 above to imprisonment from three months to five years, in cases under No 2 above to imprisonment from six months to five years. The attempt shall be punishable.*
- (3) *If the offender offers, promises or grants the benefit in return for a future act, then subsections (1) and (2) above shall apply even if he merely attempts to induce the other to*
 1. *violate his duties by the act; or*
 2. *to the extent the act is within his discretion, to allow himself to be influenced by the benefit in the exercise of his discretion.*

Section 335
Especially serious cases

- (1) *In especially serious cases*
 1. *of an offence under*
 - (a) *Section 332(1) 1st sentence, also in conjunction with (3); and*
 - (b) *Section 334(1) 1st sentence and (2), each also in conjunction with (3),**the penalty shall be imprisonment from one to ten years and*
 2. *of an offence under section 332(2), also in conjunction with (3),*
the penalty shall be imprisonment of not less than two years.
- (2) *An especially serious case within the meaning of subsection (1) above typically occurs when*
 1. *the offence relates to a major benefit;*
 2. *the offender continuously accepts benefits demanded in return for the fact that he will perform an official act in the future; or*
 3. *the offender acts on a commercial basis or as a member of a gang whose purpose is the continued commission of such offences.*

Section 336
Omission of an official act

The omission to act shall be equivalent to the performance of an official act or a judicial act within the meaning of sections 331 to 335.

3. Undue Advantage

The term “undue advantage” covers material and immaterial advantages.

The Federal Court of Justice has already ruled several times that the element “advantage” also encompasses immaterial advantages, including advantages of a symbolic nature (e.g., honorific titles and distinctions) as well as those which have an important value for the beneficiary himself. The federal court also ruled that sexual favors fall under the definition of “advantage”.

The criminal code does not contain a restriction according to which only unfair or inappropriate advantages would be covered. There is no provision for a value threshold. Low value advantages are also covered by the offences. This means that so called “facilitation payments” are also covered by the code and there is no exemption for these kinds of payments under German law.

The wording of the active and passive bribery offences involving a public official does not explicitly refer to indirect bribery, i.e., those cases where an intermediary is involved. But granting an advantage by an intermediary is a sufficient element for the offence to qualify as active bribery.

4. “For Himself or for Anyone Else”

The law also covers undue advantages for a third party beneficiary. Not only advantages are covered which for instance are granted to the spouse or to other close individuals. Advantages to third persons may also lie in advantages for groups of individuals or legal entities (clubs, enterprises, associations and parties), as well as advantages for the employing corporation of the public official, including sponsoring services and donations.

5. Active Bribery, Sections 333 and 334

German law contains the elements “offers, promises or grants”. The offence is completed as soon as the offender has formulated the proposal and the latter has reached the potential bribe taker, no matter what his reaction is. The offence is already deemed to have been committed if the action (demanding, allowing himself to be promised or accepting, as well as offering, promising or granting an advantage) relates to an official activity, official act or judicial act.

6. Passive Bribery, Sections 331 and 332

The law contains the elements “demands, allows himself to be promised or accepts” as a description of the act in sections 331 and 332 CC. The element “allows himself to be promised” encompasses the acceptance of offers and promises. The offence is already completed if the offender has formulated the proposal and the latter has reached the potential bribe-payer, no matter what his reaction is. Therefore, the attempt is prosecutable.

7. Section 332 and 334: Return for the Execution of an “Official Act” or “Judicial Act” in Breach of Duty or in the Discretion of the Public Official or Judge

For sections 332 and 334, the undue advantage needs to be a return for a specific official act of the public official. Official acts and official activity include all acts belonging to the official duties of the public official and which are carried out by him in his official capacity. They do not encompass offences relating to private acts on the part of the public official.

8. Sections 331 and 333 of the Criminal Code

Different from sections 332 and section 334, the offence here is already deemed to have been committed if the action (demanding, allowing himself to be promised or accepting, as well as offering, promising or granting a benefit) relates to an official activity, official act or judicial act. It covers, for example, a payment made to a public official a few days before Christmas without a connection to a specific project. The purpose of the payment is to increase his goodwill for any projects that might be awarded in the New Year.

Sections 331 and 333 cover cases in which the acceptance or granting of the benefit takes place prior to a specified official act, as well as those in which the acceptance or granting of the advantage follows the official act (subsequent granting, reward).

Sections 331 and 333 are sometimes used as the legal “safety net” which allows for dealing with cases that cannot be prosecuted under section 334 because of the evidential requirements (*i.e.*, the link between the bribery act and a breach of duties).

9. Criminal Sanctions

As regards criminal sanctions, section 331 provides for the following statutory ranges of punishment:

- accepting and granting a benefit by and to public officials (section 331, paragraph 1 and section 333, paragraph 1 CC): up to three years' imprisonment or a criminal fine (5 to 10,800,000 €);
- accepting and granting an advantage by and to judges and arbitrators (section 331, paragraph 2 and section 333, paragraph 2 CC): up to five years' imprisonment or a criminal fine (5 to 10,800,000 €)
- taking a bribe by public officials (section 332, paragraph 1 CC): from six months up to five years' imprisonment

- bribery of public officials (section 334, paragraph 1 CC): from three months' up to five years' imprisonment
- taking a bribe by judges and arbitrators (section 332, paragraph 2 CC): from one up to ten years' imprisonment
- bribery of judges and arbitrators (section 334, paragraph 2 CC): a) from three months' up to five years' imprisonment (when granted subsequently); b) from six months' up to five years' imprisonment (with granting for future acts)

In some instances, the above sanctions can be modulated both ways, depending on the circumstances of the concrete case. Section 335 foresees aggravated circumstances for particularly serious cases of bribery under sections 332 and 334 CC, i.e., where the bribe was of great magnitude, or the offence was committed repeatedly over a longer period of time, or it involved a gang or a commercial basis: the sanction is then one to ten years' imprisonment for regular officials, and a minimum of two years' imprisonment in the specific cases of bribery of judges and arbitrators (the upper limit is also increased to 15 years according to section 38 paragraph, 2 CC). Sections 332 and 334 CC also contain provisions on less serious cases which entail a lower statutory range of punishment. In cases where the act or omission sought from the public official or judge is unlawful (sections 332 and 334 CC) more serious/higher sanctions apply than in cases where the act or omission sought is lawful (sections 331 and 333 CC). For this reason, sections 331 and 333 CC do not contain provisions about less serious cases.

B. Bribery of Foreign Public Officials

The Act on Combating International Bribery (*Gesetz zur Bekämpfung internationaler Bestechung*) of 10 September 1998 is based on the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The convention is focused on the 'supply side' of the bribery transaction. According to this convention, all OECD are obliged to establish a foreign bribery offence:

“Article 1

The Offence of Bribery of Foreign Public Officials

1. *Each Party shall take such measures as may be necessary to establish that it is a criminal offence under its law for any person intentionally to offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business.*
2. *Each Party shall take any measures necessary to establish that complicity in, including incitement, aiding and abetting, or authorisation of an act of bribery of a foreign public official shall be a criminal offence. Attempt and conspiracy to bribe a foreign public official shall be criminal offences to the same extent as attempt and conspiracy to bribe a public official of that Party.*
(“...”)

The OECD convention focuses only on the active side of bribery. The act deems foreign public officials to be equal to domestic public officials with regard to the application of the offence of active bribery (section 334, as well as the complementary provisions of sections 335, 336 and 338, paragraph 2). These acts need to be related to future unlawful acts in the context of international business transactions.

The German law reads as follows:

“Act on Combating International Bribery – IntBestG (basis: OECD Convention)

Article 2: Implementing Provisions

Section 1 Equal treatment of foreign and domestic public officials in the event of acts of bribery

For the purpose of applying section 334 of the Criminal Code, also in conjunction with sections 335, 336 and 338 paragraph 2 of the Code, to bribery concerning a future judicial or official act which is committed in order to obtain or retain for the offender or a third party business or an improper advantage in international business transactions, the following shall be treated as equal:

1. *to a judge:*

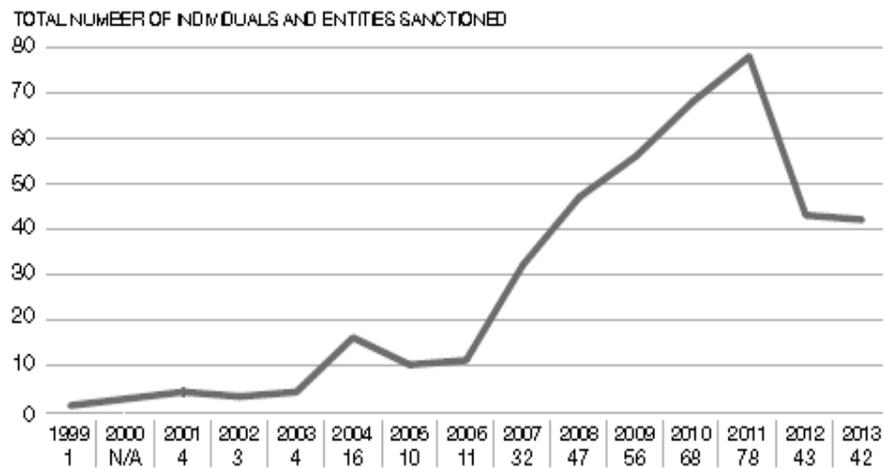
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- a) a judge of a foreign state,
- b) a judge at an international court;
2. to any other public official:
 - a) a public official of a foreign state,
 - b) a person entrusted to exercise a public function with or for an authority of a foreign state, for a public enterprise with headquarters abroad, or other public functions for a foreign state,
 - c) a public official and another member of the staff of an international organisation and a person entrusted with carrying out its functions;
3. to a soldier in the Federal Armed Forces (Bundeswehr):
 - a) a soldier of a foreign state,
 - b) a soldier who is entrusted to exercise functions of an international organisation.

The term “public official” is to be interpreted autonomously on the basis of the OECD Convention. The sanctions for taking a bribe and bribery of foreign public officials correspond to those applicable to domestic officials, including for particularly serious cases (sections 332, 334, 335).

The enforcement of the OECD convention has become more and more important over the recent years. The OECD report⁵ shows an increase of foreign bribery cases:

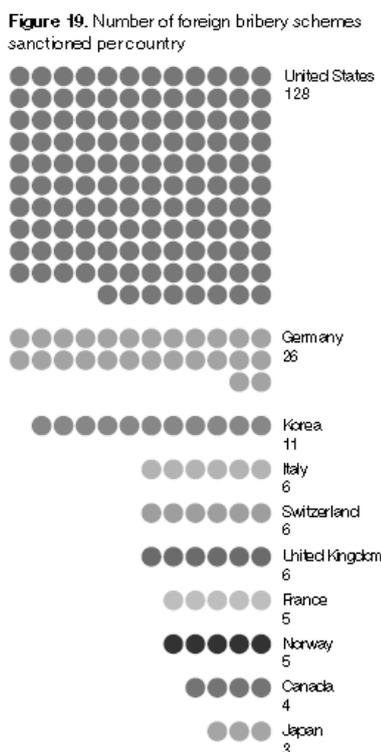
Figure 1. Number of foreign bribery cases concluded per year



Source: OECD analysis of foreign bribery cases concluded between 15/02/1999 and 31/12/2013

⁵OECD Foreign Bribery Report 2014: An Analysis of the Crime of Bribery of Foreign Public Officials.

Germany is one of the countries with strong enforcement of the OECD convention:



C. Bribery in the Private Sector

Section 299—and sections 300 to 302 CC for complementary provisions—appear under Chapter 26, which deals with crimes against competition. Active and passive bribery in the private sector under German law only cover bribery in situations of market competition.

“Chapter Twenty-Six – Crimes against competition

Section 299 Taking and Offering a Bribe in Business Transactions

- (1) *Whoever, as an employee or agent of a business, demands, allows himself to be promised, or accepts a benefit for himself or another in a business transaction as consideration for giving an unfair preference to another in the competitive purchase of goods or commercial services, shall be punished by imprisonment for not more than three years or a fine.*
- (2) *Whoever, for competitive purposes, offers, promises or grants an employee or agent of a business a benefit for himself or for a third person in a business transaction as consideration for such employee or agent giving him or another an unfair preference in the purchase of goods or commercial services, shall be similarly punished.*
- (3) *Paragraphs (1) and (2) shall also apply to acts performed in foreign competition.*

Possible offenders and recipients of advantages of the offence is “the employee or agent of a business”. The elements “employee” and “agent” are to be interpreted broadly. An “employee” is anyone who is in a service relationship with the proprietor of the business on the basis of a contract or de facto and is subject to his instructions. A permanent or paid activity is not required. De facto employees within the meaning of the offence also include individuals who are used as “go-betweens” to hide the acceptance and payment of bribes. Employed managers of legal persons (limited companies), as well as civil servants and employees of corporations under public law (owned or not by the State) taking part in business transactions, are also employees. An “agent” is whoever, without being an employee, acts with an empowerment for a business. The term “agent” is not to be determined in accordance with civil law standards; only the actual circum-

stances are material and there is no need for a contractual relationship.

Section 299 only covers offences committed in the course of business activity. This term is very broad and covers all measures serving to promote any business objective, i.e., any activity pursuing an economic purpose in which participation in competition is expressed.

The offences criminalizing bribery in the private sector correspond to those criminalising bribery of public officials. The service to be rendered in return constitutes unfair preferential treatment related to the acquisition of goods or services in the context of competition. The intended preference must consist of a future privilege. The beneficiary of the preference can be the advantage-giver or any third person; a third person does not need to be formally designated yet at the time of the offence.

Offences of active and passive bribery in accordance with section 299 are punished by up to three years' imprisonment or a criminal fine (5 to 10,800,000 €). In particularly serious cases, the term of imprisonment is three months to five years (section 300).

D. Statute of Limitations

The prosecution of these offences in most cases lapses after five years (section 78, paragraph 3, No. 4 Criminal Code). The statute of limitations does not start to run until the offence has ended. If the offender initially demands or permits himself to be promised an advantage and later accepts it, the offence has not ended until the complete acceptance of the advantage.

There are various actions that can interrupt the running of the statute of limitations. These interruptions can be very important for the success of a prosecution of a bribery case. The law reads as follows:

“Section 78c Interruption

(1) The running of the statute of limitations shall be interrupted by:

- 1. the first interrogation of the accused, notice that investigative proceedings have been initiated against him, or the order for such interrogation or notice;*
- 2. any judicial interrogation of the accused or the order thereof;*
- 3. any commissioning of an expert by the judge or public prosecutor if the accused has previously been interrogated or he has been given notice of the initiation of investigative proceedings;*
- 4. any judicial seizure or search order and judicial decisions which uphold them;*
- 5. an arrest warrant, placement order, order to be brought before a judge for interrogation and judicial decisions which uphold them;*
- 6. the preferment of a public indictment;*
- 7. the institution of proceedings in the trial court;*
- 8. any setting of a trial date;*
- 9. a penal order or another decision equivalent to a judgment;*
- 10. the provisional judicial dismissal of the proceedings due to the absence of the indicted accused as well as any order of the judge or public prosecutor which issues after such a dismissal of the proceedings or in proceedings in absentia to ascertain the whereabouts of the indicted accused or to secure evidence;*
- 11. the provisional judicial dismissal of the proceedings due to the lack of capacity of the indicted accused to stand trial as well as any order of the judge or public prosecutor which issues after such a dismissal of the proceedings to review the fitness of the indicted accused to stand trial; or*
- 12. any judicial request to undertake an investigative act abroad.*
In a preventive detention proceeding and in an independent proceeding, the running of the statute of limitations shall be interrupted by acts in the conduct of a preventive detention proceeding or an independent proceeding which correspond to those in sentence 1.

(2) The running of the statute of limitations shall be interrupted by a written order or decision at the time at which the order or decision is signed. If the document is not immediately processed after signing, then the time it is actually submitted for processing shall be decisive.

(3) *After each interruption the statute of limitations shall commence to run anew. Prosecution shall be barred at the latest by the statute of limitations, however, when twice the statutory period of limitation has elapsed since the time indicated in Section 78a, or three years, if the period of limitation is shorter than three years. Section 78b shall remain unaffected.*

(4) (···)”

E. Liability of Legal Persons

Germany establishes the liability of legal persons, including liability for the bribery offences, under the Administrative Offences Act (hereinafter, “OWiG”). Germany opted for a non-criminal form of responsibility for its legal persons. Reason for this concept is the German principle that the fundament of criminal liability is personal guilt of the defendant. Guilt is something individual and this is possible only for natural persons. Legal persons cannot be guilty, but they can be held responsible.

Section 30 of the Administrative Offences Act (“OWiG”) reads as follows:

“Section 30: Fine imposed on legal entities and associations

(1) *If a person*

1. *acting in the capacity of an agency authorised to represent a legal entity, or as a member of such an agency,*
2. *as the board of an association not having legal capacity, or as a member of such a board,*
3. *as a partner of a commercial partnership authorised to representation, or*
4. *as the fully authorised representative or in a leading position as a procura holder, or as general agent of a legal entity or of an association as specified in Nos. 2 or 3 has committed a criminal or administrative offence by means of which duties incumbent upon the legal entity or the association have been violated, or the legal entity or the association has gained or was supposed to gain a profit, a fine may be imposed on the latter.*

(2) *The fine shall be*

1. *up to ten Million Euro in cases of a willfully committed offence;*
2. *up to five Million Euro in cases of a negligently committed offence.*

(···)“

Pursuant to section 30 OWiG, the liability of legal persons is triggered where any “responsible person” (which includes a broad range of senior managerial stakeholders and not only an authorised representative or manager), acting for the management of the entity commits:

- i) a criminal offence including bribery; or
- ii) an administrative offence including a violation of supervisory duties (section 130 OWiG) which either violates duties of the legal entity, or by which the legal entity gained or was supposed to gain a “profit”.

Germany enables corporations to be imputed with offences i) by senior managers, and, somewhat indirectly, ii) with offences by lower level personnel which result from a failure by a senior corporate figure to faithfully discharge his duties of supervision.

Section 17(4) OWiG provides that the administrative fine ordered against a legal person must exceed the financial benefit gained from the underlying offence. An administrative fine has two components, a punitive one and a confiscatory one (the fine in respect of the benefit, also referred to as “skimming-off of profits”). If the financial benefit is higher than the statutory maximum fine (*i.e.* EUR 10 million or EUR 5 Million), the total amount of the administrative fine must include an amount equal to the benefit gained (the confiscatory component of the fine), and be increased by an amount that may be a maximum of EUR 10 million or EUR 5 Million (the punitive component of the fine).

As pointed out above, the underlying offence for the imposition of a fine pursuant to Sec. 30 OWiG must not necessarily be a criminal offence, but may also be an administrative offence, in particular an offence pursuant to Sec. 130 OWiG. This section refers to the owner of a legal entity or association who wilfully or

negligently fails to take the supervisory measures required to prevent the contravention of duties in the company which concern the owner in this capacity. In such a case, the owner shall be deemed to have committed an administrative offence, if such a contravention is committed which could have been prevented or made much more difficult by proper supervision. Sec. 9 OWiG extends this duty to the company's legal representatives such as Board members or managing directors. Thus Sec. 130 OWiG—in addition to Sec. 9 and 30 OWiG—is part of a set of legal provisions that allows to combat the contravention of duties in legal entities and associations effectively and which is of particular importance since the mere failure to take supervisory measures is an administrative offence pursuant to Sec. 30 OWiG, providing for the imposition of an administrative fine against the legal entity or association itself.

APPENDIX

English translation of the relevant German law

A. Criminal Code (“StBG“)

I. General provisions

Section 11 Definitions

- (1) For the purposes of this law
 1. (···)
 2. ‘public official’ means any of the following if under German law
 - (a) they are civil servants or judges;
 - (b) otherwise carry out public official functions; or
 - (c) have otherwise been appointed to serve with a public authority or other agency or have been commissioned to perform public administrative services regardless of the organisational form chosen to fulfil such duties;
 3. ‘judge’ means any person who under German law is either a professional or a lay judge;
 4. ‘persons entrusted with special public service functions’ means any person who, without being a public official, is employed by, or is acting for
 - (a) a public authority or other agency, which performs public administrative services; or
 - (b) an association or other union, business or enterprise, which carries out public administrative services for a public authority or other agency,and who is formally required by law to fulfil their duties with due diligence;

Section 78 Limitation period

- (1) The imposition of punishment and measures (section 11(1) No 8) shall be excluded on expiry of the limitation period. Section 76a(2) 1st sentence No 1 remains unaffected.
- (2) Felonies under section 211 (murder under specific aggravating circumstances) are not subject to the statute of limitations.
- (3) To the extent that prosecution is subject to the statute of limitations, the limitation period shall be
 1. thirty years in the case of offences punishable by imprisonment for life;
 2. twenty years in the case of offences punishable by a maximum term of imprisonment of more than ten years;
 3. ten years in the case of offences punishable by a maximum term of imprisonment of more than five years but no more than ten years;
 4. five years in the case of offences punishable by a maximum term of imprisonment of more than one year but no more than five years;
 5. three years in the case of other offences.
- (4) The period shall conform to the penalty provided for in the law defining the elements of the offence, irrespective of aggravating or mitigating circumstances provided for in the provisions of the General Part or of aggravated or privileged offences in the Special Part.

Section 78a Commencement

The limitation period shall commence to run as soon as the offence is completed. If a result constituting an element of the offence occurs later, the limitation period shall commence to run from that time.

Section 78b Stay of limitation

- (1) The limitation period shall be stayed

1. until the victim of an offence under sections 174 to 174c, 176 to 179, 225 and 226a has reached the age of twenty-one,
2. as long as the prosecution may, according to the law, not be commenced or continued; this shall not apply if the act may not be prosecuted only because of the absence of a request or authorisation to prosecute or a request to prosecute by a foreign state.
- (2) If a prosecution is not feasible because the offender is a member of the Federal Parliament or a legislative body of a state, the stay of the limitation period shall only commence upon expiry of the day on which
 1. the public prosecutor or a public authority or a police officer acquires knowledge of the offence and the identity of the offender; or
 2. a criminal complaint or a request to prosecute is filed against the offender (section 158 of the Code of Criminal Procedure).
- (3) If a judgment has been delivered in the proceedings at first instance before the expiry of the limitation period, the limitation period shall not expire before the time the proceedings have been finally concluded.
- (4) If the Special Part provides for a sentence of imprisonment of more than five years in aggravated cases and if the trial proceedings have been instituted in the District Court, the statute of limitations shall be stayed in cases under section 78 (3) No 4 from the admission of the indictment by the trial court, but no longer than for five years; subsection (3) above remains unaffected.
- (5) If the offender resides in a country abroad and if the competent authority makes a formal request for extradition to that state, the limitation period is stayed from the time the request is served on the foreign state,
 1. until the surrender of the offender to the German authorities,
 2. until the offender otherwise leaves the territory of the foreign state,
 3. until the denial of the request by the foreign state is served on the German authorities or
 4. until the withdrawal of the request.

If the date of the service of the request upon the foreign state cannot be ascertained, the request shall be deemed to have been served one month after having been sent to the foreign state unless the requesting authority acquires knowledge of the fact that the request was in fact not served on the foreign state or only later. The 1st sentence of this subsection shall not apply to requests for surrender for which, in the requested state, a limitation period similar to section 83c of the Law on International Assistance in Criminal Matters exists, either based on the Framework Decision of the Council of 13 June 2002 on the European Arrest Warrant and the surrender agreements between the member states (OJ L 190, 18.7.2002, p 1), or based on an international treaty.

Section 78c Interruption

- (1) The limitation period shall be interrupted by
 1. the first interrogation of the accused, notice that investigations have been initiated against him, or the order for such an interrogation or notice thereof;
 2. any judicial interrogation of the accused or the order for that purpose;
 3. any commissioning of an expert by the judge or public prosecutor if the accused has previously been interrogated or has been given notice of the initiation of investigations;
 4. any judicial seizure or search warrant and judicial decisions upholding them;
 5. an arrest warrant, a provisional detention order, an order to be brought before a judge for interrogation and judicial decisions upholding them;
 6. the preferment of a public indictment;
 7. the admission of the indictment by the trial court;
 8. any setting of a trial date;
 9. a summary judgment order or another decision equivalent to a judgment;
 10. the provisional judicial dismissal of the proceedings due to the absence of the indicted accused as well as any order of the judge or public prosecutor issued after such a dismissal of the proceedings or in proceedings in absentia in order to ascertain the whereabouts of the indicted accused or to secure evidence;
 11. the provisional judicial dismissal of the proceedings due to the unfitness to plead of the indicted and any order of the judge or public prosecutor issued after such a dismissal of the proceedings for the purposes of reviewing the fitness of the indicted accused to plead; or
 12. any judicial request to undertake an investigative act abroad.

In separate proceedings for measures of rehabilitation and incapacitation and in an independent proceeding for deprivation or confiscation, the limitation period shall be interrupted by acts in these proceedings corresponding to those in the 1st sentence of this subsection.

- (2) The limitation period shall be interrupted by a written order or decision at the time at which the order or decision is signed. If the document is not immediately processed after signing the time it is actually submitted for processing shall be dispositive.
- (3) After each interruption the limitation period shall commence to run anew. The prosecution shall be barred by limitation once twice the statutory limitation period has elapsed since the time indicated in section 78a, or three years if the limitation period is shorter than three years. Section 78b shall remain unaffected.
- (4) The interruption shall have effect only for the person in relation to whom the interrupting act is done.
- (5) If a law which applies at the time the offence is completed is amended before a decision and the limitation period is thereby shortened, acts leading to an interruption which have been undertaken before the entry into force of the new law shall retain their effect, notwithstanding that at the time of the interruption the prosecution would have been barred by the statute of limitations under the amended law.

II. Bribery in the Private Sector

Section 299 Taking and Offering a Bribe in Business Transactions

- (5) Whoever, as an employee or agent of a business, demands, allows himself to be promised, or accepts a benefit for himself or another in a business transaction as consideration for giving an unfair preference to another in the competitive purchase of goods or commercial services, shall be punished by imprisonment for not more than three years or a fine.
- (2) Whoever, for competitive purposes, offers, promises or grants an employee or agent of a business a benefit for himself or for a third person in a business transaction as consideration for such employee or agent giving him or another an unfair preference in the purchase of goods or commercial services, shall be similarly punished.
- (3) Paragraphs (1) and (2) shall also apply to acts performed in foreign competition.

Section 300

Aggravated cases of taking and giving bribes in commercial practice

In especially serious cases an offender under section 299 shall be liable to imprisonment from three months to five years. An especially serious case typically occurs if

1. the offence relates to a major benefit or
2. the offender acts on a commercial basis or as a member of a gang whose purpose is the continued commission of such offences.

Section 301 Request to prosecute

- (1) The offence of taking and giving bribes in commercial practice under section 299 may only be prosecuted upon request unless the prosecuting authority considers *proprio motu* that prosecution is required because of special public interest.
- (2) The right to file the request under subsection (1) above belongs, in addition to the victim, to all of the business persons, associations and chambers indicated in section 8(3) Nos 1, 2, and 4 of the Restrictive Practices Act.

III. Bribery of Public Officials

Section 331 Acceptance of a benefit

- (1) A public official or a person entrusted with special public service functions who demands, allows himself to be promised or accepts a benefit for himself or for a third person for the discharge of an official duty shall be liable to imprisonment not exceeding three years or a fine.
- (2) A judge or arbitrator who demands, allows himself to be promised or accepts a benefit for himself or a third person in return for the fact that he performed or will in the future perform a judicial act shall be liable to imprisonment not exceeding five years or a fine. The attempt shall be punishable.
- (3) The offence shall not be punishable under subsection (1) above if the offender allows himself to be promised or accepts a benefit which he did not demand and the competent public authority, within the scope of its powers, either previously authorises the acceptance or the offender promptly makes a report to it and it authorises the acceptance.

Section 332 Taking a bribe

- (1) A public official or person entrusted with special public service functions who demands, allows himself to be promised or accepts a benefit for himself or for a third person in return for the fact that he performed or will in the future perform an official act and thereby violated or will violate his official duties shall be liable to imprisonment from six months to five years. In less serious cases the penalty shall be imprisonment not exceeding three years or a fine. The attempt shall be punishable.
- (2) A judge or an arbitrator, who demands, allows himself to be promised or accepts a benefit for himself or for a third person in return for the fact that he performed or will in the future perform a judicial act and thereby violated or will violate his judicial duties shall be liable to imprisonment from one to ten years. In less serious cases the penalty shall be imprisonment from six months to five years.
- (3) If the offender demands, allows himself to be promised or accepts a benefit in return for a future act, subsections (1) and (2) above shall apply even if he has merely indicated to the other his willingness to
 1. violate his duties by the act; or
 2. to the extent the act is within his discretion, to allow himself to be influenced by the benefit in the exercise of his discretion.

Section 333 Granting a benefit

- (1) Whosoever offers, promises or grants a benefit to a public official, a person entrusted with special public service functions or a soldier in the Armed Forces for that person or a third person for the discharge of a duty shall be liable to imprisonment not exceeding three years or a fine.
- (2) Whosoever offers promises or grants a benefit to a judge or an arbitrator for that person or a third person in return for the fact that he performed or will in the future perform a judicial act shall be liable to imprisonment not exceeding five years or a fine.
- (3) The offence shall not be punishable under subsection (1) above if the competent public authority, within the scope of its powers, either previously authorises the acceptance of the benefit by the recipient or authorises it upon prompt report by the recipient.

Section 334 Offering a bribe

- (1) Whosoever offers, promises or grants a benefit to a public official, a person entrusted with special public service functions or a soldier of the Armed Forces for that person or a third person in return for the fact that he performed or will in the future perform an official act and thereby violated or will violate his official duties shall be liable to imprisonment from three months to five years. In less serious cases the penalty shall be imprisonment not exceeding two years or a fine.
- (2) Whosoever offers, promises or grants a benefit to a judge or an arbitrator for that person or a third person, in return for the fact that he
 1. performed a judicial act and thereby violated his judicial duties; or
 2. will in the future perform a judicial act and will thereby violate his judicial duties,shall be liable in cases under No 1 above to imprisonment from three months to five years, in cases under No 2 above to imprisonment from six months to five years. The attempt shall be punishable.
- (3) If the offender offers, promises or grants the benefit in return for a future act, then subsections (1) and (2) above shall apply even if he merely attempts to induce the other to
 1. violate his duties by the act; or
 2. to the extent the act is within his discretion, to allow himself to be influenced by the benefit in the exercise of his discretion.

Section 335 Especially serious cases

- (1) In especially serious cases
 1. of an offence under
 - (a) Section 332(1) 1st sentence, also in conjunction with (3); and
 - (b) Section 334(1) 1st sentence and (2), each also in conjunction with (3),the penalty shall be imprisonment from one to ten years and
 2. of an offence under section 332(2), also in conjunction with (3), the penalty shall be imprisonment of not less than two years.
- (2) An especially serious case within the meaning of subsection (1) above typically occurs when
 1. the offence relates to a major benefit;
 2. the offender continuously accepts benefits demanded in return for the fact that he will perform an official act in the future; or

3. the offender acts on a commercial basis or as a member of a gang whose purpose is the continued commission of such offences.

Section 336 Omission of an official act

The omission to act shall be equivalent to the performance of an official act or a judicial act within the meaning of sections 331 to 335.

B. Act on Combating International Bribery (“IntBestG”)

Article 2: Implementing Provisions

Section 1 Equal treatment of foreign and domestic public officials in the event of acts of bribery

For the purpose of applying section 334 of the Criminal Code, also in conjunction with sections 335, 336 and 338 paragraph 2 of the Code, to bribery concerning a future judicial or official act which is committed in order to obtain or retain for the offender or a third party business or an improper advantage in international business transactions, the following shall be treated as equal:

1. to a judge:
 - a) a judge of a foreign state,
 - b) a judge at an international court;
2. to any other public official:
 - a) a public official of a foreign state,
 - b) a person entrusted to exercise a public function with or for an authority of a foreign state, for a public enterprise with headquarters abroad, or other public functions for a foreign state,
 - c) a public official and another member of the staff of an international organisation and a person entrusted with carrying out its functions;
3. to a soldier in the Federal Armed Forces (Bundeswehr):
 - a) a soldier of a foreign state,
 - b) a soldier who is entrusted to exercise functions of an international organisation.”

C. Administrative Offences Act (“OWiG”)

Section 30: Fine imposed on legal entities and associations

- (1) If a person
 1. acting in the capacity of an agency authorised to represent a legal entity, or as a member of such an agency,
 2. as the board of an association not having legal capacity, or as a member of such a board,
 3. as a partner of a commercial partnership authorised to representation, or
 4. as the fully authorised representative or in a leading position as a procura holder, or as general agent of a legal entity or of an association as specified in Nos. 2 or 3 has committed a criminal or administrative offence by means of which duties incumbent upon the legal entity or the association have been violated, or the legal entity or the association has gained or was supposed to gain a profit, a fine may be imposed on the latter.
 - (2) The fine shall be
 1. up to ten Million Euro in cases of a willfully committed offence;
 2. up to five Million Euro in cases of a negligently committed offence.
- (...“

D. Criminal procedure code (“StPO”)

Section 100a

[Conditions Regarding Interception of Telecommunications]

- (1) Telecommunications may be intercepted and recorded also without the knowledge of the persons concerned if
 1. certain facts give rise to the suspicion that a person, either as perpetrator or as inciter or accessory, has committed a serious criminal offence referred to in subsection (2) or, in cases where there is criminal liability for attempt, has attempted to commit such an offence or has prepared such an

- offence by committing a criminal offence; and
 - 2. the offence is one of particular gravity in the individual case as well; and
 - 3. other means of establishing the facts or determining the accused's whereabouts would be much more difficult or offer no prospect of success.
- (2) Serious criminal offences for the purposes of subsection (1), number 1, shall be:
- 1. pursuant to the Criminal Code:
 - a) (…)
 - r) crimes against competition pursuant to section 298 and, subject to the conditions set out in section 300, second sentence, pursuant to section 299;
 - (…)
 - t) taking and offering a bribe pursuant to sections 332 and 334;
- (3) Such order may be made only against the accused or against persons in respect of whom it may be assumed, on the basis of certain facts, that they are receiving or transmitting messages intended for, or transmitted by, the accused, or that the accused is using their telephone connection.
- (4) If there are factual indications for assuming that only information concerning the core area of the private conduct of life would be acquired through a measure pursuant to subsection (1), the measure shall be inadmissible. Information concerning the core area of the private conduct of life which is acquired during a measure pursuant to subsection (1) shall not be used. Any records thereof shall be deleted without delay. The fact that they were obtained and deleted shall be documented.

Section 100b

[Order to Intercept Telecommunications]

- (1) Measures pursuant to Section 100a may be ordered by the court only upon application by the public prosecution office. In exigent circumstances, the public prosecution office may also issue an order. An order issued by the public prosecution office shall become ineffective if it is not confirmed by the court within three working days. The order shall be limited to a maximum duration of three months. An extension by not more than three months each time shall be admissible if the conditions for the order continue to exist, taking into account the information acquired during the investigation.
- (…)

Section 102

[Search in Respect of the Suspect]

A body search, a search of the property and of the private and other premises of a person who, as a perpetrator or as an inciter or accessory before the fact, is suspected of committing a criminal offence, or is suspected of accessoryship after the fact or of obstruction of justice or of handling stolen goods, may be made for the purpose of his apprehension, as well as in cases where it may be presumed that the search will lead to the discovery of evidence.

Section 103

[Searches in Respect of Other Persons]

- (1) Searches in respect of other persons shall be admissible only for the purpose of apprehending the accused or to follow up the traces of a criminal offence or to seize certain objects, and only if certain facts support the conclusion that the person, trace, or object sought is located on the premises to be searched. For the purposes of apprehending an accused who is strongly suspected of having committed a criminal offence pursuant to section 89a of the Criminal Code or pursuant to section 129a, also in conjunction with section 129b subsection (1), of the Criminal Code, or one of the criminal offences designated in this provision, a search of private and other premises shall also be admissible if they are located in a building in which it may be assumed, on the basis of certain facts, that the accused is located.
- (2) The restrictions of subsection (1), first sentence, shall not apply to premises where the accused was apprehended or which he entered during the pursuit.

Section 105

[Search Order; Execution]

- (1) Searches may be ordered only by the judge and, in exigent circumstances, also by the public prosecution office and the officials assisting it (section 152 of the Courts Constitution Act). Searches pursuant to Section 103 subsection (1), second sentence, shall be ordered by the judge; in exigent circumstances the public prosecution office shall be authorized to order such searches.

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- (2) Where private premises, business premises, or enclosed property are to be searched in the absence of the judge or the public prosecutor, a municipal official or two members of the community in the district of which the search is carried out shall be called in, if possible, to assist. The persons called in as members of the community may not be police officers or officials assisting the public prosecution office.
- (3) If it is necessary to carry out a search in an official building or in an installation or establishment of the Federal Armed Forces which is not open to the general public, the superior official agency of the Federal Armed Forces shall be requested to carry out such search. The requesting agency shall be entitled to participate. No such request shall be necessary if the search is to be carried out on premises which are inhabited exclusively by persons other than members of the Federal Armed Forces.

Section 112

[Admissibility of Remand Detention; Grounds for Arrest]

- (1) Remand detention may be ordered against the accused if he is strongly suspected of the offence and if there is a ground for arrest. It may not be ordered if it is disproportionate to the significance of the case or to the penalty or measure of reform and prevention likely to be imposed.
- (2) A ground for arrest shall exist if, on the basis of certain facts,
 1. it is established that the accused has fled or is hiding;
 2. considering the circumstances of the individual case, there is a risk that the accused will evade the criminal proceedings (risk of flight); or
 3. the accused's conduct gives rise to the strong suspicion that he will
 - a) destroy, alter, remove, suppress, or falsify evidence,
 - b) improperly influence the co-accused, witnesses, or experts, or
 - c) cause others to do so,and if, therefore, the danger exists that establishment of the truth will be made more difficult (risk of tampering with evidence).

(6) Remand detention may also be ordered against an accused strongly suspected pursuant to section 308 subsections (1) to (3) of the Criminal Code, of having committed a criminal offence pursuant to section 6 subsection (1), number 1, of the Code of Crimes against International Law or section 129a subsections (1) or (2), also in conjunction with section 129b subsection (1), or pursuant to sections 211, 212, 226, 306b or 306c of the Criminal Code, or insofar as life and limb of another have been endangered by the offence, even if there are no grounds for arrest pursuant to subsection (2).

Section 257c

[Negotiated Agreement]

- (1) In suitable cases the court may, in accordance with the following subsections, reach an agreement with the participants on the further course and outcome of the proceedings. Section 244 subsection (2) shall remain unaffected.
- (2) The subject matter of this agreement may only comprise the legal consequences that could be the content of the judgment and of the associated rulings, other procedural measures relating to the course of the underlying adjudication proceedings, and the conduct of the participants during the trial. A confession shall be an integral part of any negotiated agreement. The verdict of guilt, as well as measures of reform and prevention, may not be the subject of a negotiated agreement.
- (3) The court shall announce what content the negotiated agreement could have. It may, on free evaluation of all the circumstances of the case as well as general sentencing considerations, also indicate an upper and lower sentence limit. The participants shall be given the opportunity to make submissions. The negotiated agreement shall come into existence if the defendant and the public prosecution office agree to the court's proposal.
- (4) The court shall cease to be bound by a negotiated agreement if legal or factually significant circumstances have been overlooked or have arisen and the court therefore becomes convinced that the prospective sentencing range is no longer appropriate to the gravity of the offence or the degree of guilt. The same shall apply if the further conduct of the defendant at the trial does not correspond to that upon which the court's prediction was based. The defendant's confession may not be used in such cases. The court shall notify any deviation without delay.
- (5) The defendant shall be instructed as to the prerequisites for and consequences of a deviation by the court from the prospective outcome pursuant to subsection (4).

ACT ON INTERNATIONAL COOPERATION IN CRIMINAL MATTERS

European arrest warrant:

Section 83a

Extradition Documents

- (1) Extradition shall not be admissible unless the documentation mentioned in s. 10 or a European arrest warrant containing the following information have been transmitted:
1. the identity of the person sought as defined in the Annex to the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, and his citizenship,
 2. name and address of the requesting justice authority,
 3. the declaration of whether an enforceable judgment, an arrest warrant or another enforceable judicial decision with equal legal effect exists,
 4. the nature and legal characterisation of the offence, including the provisions applied,
 5. a description of the circumstances in which the offence was committed, including the time and place of its commission and the mode of participation by the person sought and
 6. the maximum term provided for under the law of the requesting Member State for the pertinent offence or in the case of a final judgment the actual sentence imposed.
- (2) Listings for arrest for the purposes of extradition under the Schengen Agreement containing the information under subsection (1) nos. 1 to 6 above or to which this information has subsequently been attached shall be treated as an European arrest warrant.

Section 83b

Obstacles to Granting an Application

- (1) Extradition may be refused
- a) if criminal proceedings are pending against the person sought in Germany for the same offence as the one on which the request is based,
 - b) if criminal proceedings against the person sought for the same offence as the one on which the request is based, have either not been instituted or if initiated have been closed,
 - c) if a request for extradition by a third State shall be given precedence,
 - d) unless on the basis of the duty to surrender under the Council Framework Decision of 13 June 2002 (OJ L 190/1) on the European Arrest Warrant and the surrender procedures between the Member States, on the basis of an assurance by the requesting State or based on other reasons it can be expected that the requesting State would honour a similar German request.
- (2) Extradition of a foreign citizen normally living on German territory may further be refused
- a) if in the case of an extradition for the purpose of prosecution the extradition of a German citizen would be inadmissible under s. 80(1) and (2),
 - b) if in the case of an extradition for the purpose of enforcement, after being judicially warned, the person sought does not consent on the record of the court and his interest in an enforcement in Germany prevails; s. 41(3) and (4) shall apply mutatis mutandis.
- S. 80(4) shall apply mutatis mutandis.

PARTICIPANTS' PAPERS

CRIMINAL JUSTICE RESPONSE TO CORRUPTION IN HONDURAS

*Jose Humberto Palacios Guifarro**

I. UNITED NATIONS CONVENTION AGAINST CORRUPTION AND HONDURAS

Honduras signed the United Nations Convention Against Corruption on May 17, 2004. The Convention was ratified on May 23, 2005. The country of Honduras has significant legislation related with the battle against corruption, most of it included in the United Nations Convention Against Corruption. For example, Honduras has an institute with its respective law¹, used to control and investigate the administrative component of any public institution or public official. The name of the institution is Supreme Accounts Tribunal², and its basic function, as before said, is the yearly control and investigation of public institutions and officials. The public officials have the obligation, when entering public office, to report all personal assets, debts, accounts and anything relevant for further investigations. They also have the obligation to immediately report any asset increase, including significant purchases and salary increases. Another important obligation of public officials is to yearly report the status of their assets and duly explain any abnormal increase. The Honduran Supreme Accounts Tribunal, also has the obligation to investigate any abnormal situation occurring within a public institution or related with a public official, if administrative responsibility is verified, the respective fines shall be imposed. If criminal responsibility is verified, the information and evidence must be remitted immediately to the criminal public prosecutor's office or the civil public prosecutor's office.

Honduras also has the National Council Against Corruption³, with its respective law⁴. This institution is an independent council that investigates corruption cases presented before them by individuals or by any type of institution. Once the investigation is concluded, the council decides if the information and evidence is presented before the public criminal prosecutor's office.

Honduras has the Public Civil Prosecutors Office⁵; with its respective law⁶, this institution prosecutes in the administrative area, the responsibility derived of irregular actions executed by public officials. Their main mission is to recuperate assets and execute the proper actions in order to seize these assets.

Honduras has the Public Corruption Prosecutors Office, which is part of the Public Prosecutors Office and part of the Public Ministry Office⁷, with its respective law⁸. The responsibility of the office is to receive possible corruption commission information from the National Anti-Corruption Council, from the Supreme Accounts Tribunal and from any common citizen, and to begin the proper investigation and proceed to prosecute the public official responsible of the corruption case. The Public Criminal Corruption Prosecutors Office can execute any action without receiving outside information, meaning it can begin its own investigations and proceed in the criminal prosecution process.

Many of the problems faced by the country of Honduras implementing UNCAC exist because of the lack of funds required to investigate and prosecute the great number of corruption cases that exist in this country. The extremely low level of education of the general population of the country of Honduras, is also

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¹Ley Orgánica del Tribunal Superior del Cuentas de Honduras, Decreto No. 10-2002-E.

²Tribunal Superior de Cuentas de Honduras.

³Consejo Nacional Anticorrupción.

⁴Ley del Consejo Nacional Anticorrupción, decreto número 7-2005.

⁵Procuraduría General de la República de Honduras.

⁶Ley de la Procuraduría General de la República de Honduras, decreto número 74-2000

⁷Ministerio Público de Honduras.

⁸Ley Orgánica del Ministerio Público de Honduras, decreto número 228-96

considered as a significant factor. This is because the population of this country does not have a proper complaint culture, which is definitely necessary in the battle against corruption. Other important factor includes the high level of corrupt public officials that are inside of the system and are able effectively to diminish the success of the fight against corruption.

II. INTELLIGENCE

Honduras and its criminal justice officials have various measures to generate leads in the process of detecting corruption cases. The most common measure is the complaint issued by a common citizen or by a company representative. After the complaint is received, the criminal public prosecutor orders the police to begin the corresponding investigation process; this may include interviews with people with knowledge of the situation or possible participants of the corruption case itself. The investigation process may also include wiretapping; this has to be requested by a public criminal prosecutor before a judge. Honduras has call centers that receive corruption complaints, these are located in the Presidential Ministry, in the National Anti-Corruption Council, in the Public Criminal Prosecutors Office and inside Police Headquarters.

The most useful measure is the call centers, through which the criminal justice operators receive useful information to request or order further investigation tools, that will be mentioned further along in this paper.

Honduras has enacted article⁹ number 237 of the Criminal Process Law, most commonly known as the witness protection procedure. A witness that possesses valuable information in any criminal case, including corruption cases, is ordered to be protected, taking any measure necessary to protect his or her identity, as well as his or her physical integrity, so that he or she can make a statement before a judge in their condition as witnesses, without the existence of any risk to his or her well-being.

If the possible witness has had any type of involvement in the corruption case, and the criminal justice official considers that the information offered in the statement by the witness is much more valuable for prosecuting higher ranking corruption criminals or greater criminal corruption organizations, in comparison to the prosecution of the initial witness, Honduras has a tool located in article 28 section 5¹⁰ of the Criminal Process Law, which allows for the criminal justice official to negotiate with the possible corrupt individual, so that he can provide a useful statement, in order for higher ranking public officials to be appropriately and effectively prosecuted. This tool can also be considered as the Honduran plea bargain.

Common citizens or any other person can present their corruption complaint before the National Council Against Corruption, the National Prosecutors Office or before the police headquarters, without providing any personal information, although no reward is currently being offered.

III. INVESTIGATION

Honduras has been using wiretapping for a few years; the results have been positive and the tendency is to improve each time it is implemented. The wiretapping procedure is authorized by a judge and requested by a criminal public prosecutor utilizing a specific law¹¹, called the Special Law of the Intervention, of Private Communications. When there is a verification of suspicious activities, the police authorities request the criminal public prosecutor to submit a special request, in order for the criminal law judge to decide if the request fulfills all specifications established in the law. After this, the wiretapping begins; it is admissible at trial only if all specifications and procedures are met.

Bugging is already established and regulated in the previously mentioned law; however it is not as clear as it should be, and until today it has not been used in a trial. However, in my opinion it is a very effective and useful tool in the battle against public corruption.

⁹ Artículo 237 del Código Procesal Penal, decreto número 9-99 E.

¹⁰ Artículo 28 numeral 5 del Código Procesal Penal, decreto 9-99 E

¹¹ Ley Especial de Intervención de las Comunicaciones Privadas, decreto número 234-2011.

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In Honduras, undercover operations are allowed in the investigation process, as well as in trial. This is because article 198 and 199 of our Criminal Process Law is open in the sense that it allows the implementation and introduction at trial of any type of trustworthy evidence. Undercover investigation police officers or others designated for that purpose, act as common citizens offering bribes to public officials. However, analysing national statistics, this is not a common practice in Honduras, reducing the effectiveness of this covert investigation measure. It is my personal opinion that the lack of the use of this investigation measure is, in fact, part of the corruption practices in the country of Honduras.

In Honduras, computer software investigation is allowed in all stages of the prosecution process; hard drives, portable massive storing data devices have been retrieved and analysed, as well as e-mails. Important information has been retrieved and used in trials in the process of obtaining positive results. However, this tool is not used very often, perhaps because of the lack of experts in the area or because of the same corruption cycle already explained.

In this country of Honduras all this information obtained by covert investigation measures is admissible at trial, if it is obtained using the correct procedures established in our laws; if not, it is dismissed and it will not be analysed or valued by the courts.

In Honduras, sting operations and controlled delivery have been used; they are extremely effective and are in fact admissible at trial. However, its use is not very common, so we believe these tools are being under-utilized in Honduras, and that situation should be addressed thoroughly.

Wiretapping, controlled delivery and under-cover operations are the most useful covert investigation measures. I am hopeful that with the support of first world countries, such as Japan, and the useful information received by the criminal justice operators in these type of cooperation processes, we will increase the correct use of these effective and useful covert investigation measures in order to decrease the corruption levels in developing countries.

On average, in Honduras it usually takes about six months to a year to investigate a corruption case. Yes, we have problems expediting the investigation processes. This is due to the poor cooperation from other institutions to provide useful, and effective information in the process of the investigation, the small amount of funding directed towards the investigation processes and corruption from inside public institutions and officials in charge of fighting corruption.

Some institutions investigate and control other institutions in corruption cases, but the results are still not satisfactory.

IV. PROSECUTION

The Public Criminal Prosecution Office decides whether to prosecute or not. The decision depends on whether there is enough evidence that can indicate the probability of the commission of a corruption case and the probability that can indicate one or several individuals as possible authors of the commission of the corruption case. Public interest has been shown in the past as a factor; however, enough evidence is the final and decision-making factor in prosecuting a corruption case. Reasonable prospect would have to be the standard in Honduras; beyond a reasonable doubt is the standard to convict.

The prosecution rate is about 50%, which translates to 60 prosecutions a month countrywide. Both immunity and plea-bargaining, exist in Honduras through a tool located in article 28 section 5¹² of the Criminal Process Law, which allows for the criminal justice official to negotiate with the prosecuted individual, so that he can make an efficient and effective statement before a judge, in order for higher ranking public officials to be appropriately and effectively prosecuted.

V. TRIAL PROCEDURES

Honduras has a mixed adversarial system since 2002. In Honduras, it takes about one-and-a-half years

¹² Artículo 28 numeral 5 del Código Procesal Penal, decreto 9-99 E

to adjudicate a corruption case on average. Yes, we have problems expediting trials on corruption cases; this is because of the amount of delaying measures the defence attorneys present in these types of trials, e.g., appeals. Through a series of meetings and law reforms, we have managed to reduce the amount of time a corruption trial may take by speeding the resolution of appeals and other procedural tools utilized by the defence attorneys to delay trials. The proof of conviction standard is beyond a reasonable doubt. The conviction rate is approximately 50%. Any type of evidence can be presented at trial, as long as it is objectively trustworthy. The witness protection programme in Honduras consists of not including any witness information at trial and using any type of procedure so that the witness is not visually or audibly identified at trial. In some rare cases, the witness is transported to another state or country.

Honduras is the second most corrupt country in the Americas, according to Transparency International. This says a lot. Not much positive information can be addressed; however, I consider some correct steps are being taken to improve our situation. Without a doubt, effective and precise measures have to be implemented here, such as increased wiretapping, under-cover investigations, bugging, controlled deliveries, stings and increasing the investigation of higher ranking officials, such as presidential secretaries, congressmen, magistrates, judges, public prosecutors and much more.

CRIMINAL JUSTICE RESPONSE TO CORRUPTION IN KAZAKHSTAN

*Kushimov Nurkhat**

I. UNCAC

The Republic of Kazakhstan ratified the UN Convention against Corruption on 4 May 2008. Already having anti-corruption legislation in place, Kazakhstan is nevertheless continuing to improve it to achieve its declared policy of “zero tolerance for corruption”.

In accordance with Article 4 of the Constitution of the Republic of Kazakhstan, universally recognized norms and principals of international law and ratified international conventions are part of the legal system of Kazakhstan and prevail before any conflicting national legislation.

II. CRIMINALIZATION OF CORRUPTION IN KAZAKHSTAN

In 2014, Kazakhstan had a major reform of criminal, criminal procedural and administrative legislation. Accordingly, three new codes (laws) were enacted. The Criminal Code (“CC”) provides the group of the articles characterized as corruption crimes. They all have several obligatory features so that they could be counted as corruption.

These features are that the offence:

- 1) Should be committed by a person who is authorized to perform state functions or hold official public position
- 2) Should involve the execution of state (public) function
- 3) Should result in obtainment by such person of intangible profit or advantages for him/herself or a third party

Corruption crimes includes:

- embezzlement of funds or property committed by the public (official) person (imprisonment from 5 to 10 years with confiscation)
- fraud committed by a public (official) person (imprisonment from 3 to 7 years with confiscation)
- false business activity committed by a public (official) person (imprisonment from 3 to 7 years with confiscation)
- creation and management of a financial pyramid committed by a public (official) person (imprisonment from 5 to 12 years with confiscation)
- money laundering committed by a public (official) person (imprisonment from 3 to 7 years with confiscation)
- smuggling committed by a public (official) person (imprisonment from 3 to 8 years with confiscation)

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- raiding committed by a public (official) person (imprisonment from 7 to 10 years with confiscation)
- abuse of power (imprisonment up to 2 years with confiscation, aggravated – up to 8 years with confiscation)
- exceeding the limits of power (stretch of authority) in order to receive profit for him/herself or a third party (imprisonment from 4 to 8 years)
- illegal participation in business activity (imprisonment up to 1 year with confiscation, aggravated – up to 4 years with confiscation)
- obstruction of legal business activity (imprisonment up to 2 years with confiscation, aggravated – up to 7 years with confiscation)
- receiving a bribe (imprisonment up to 5 years with confiscation, aggravated – up to 15 years with confiscation)
- giving a bribe (imprisonment up to 3 years with confiscation, aggravated – up to 15 years with or without confiscation)
- intermediation in bribery (imprisonment up to 2 years with confiscation, aggravated – up to 6 years with or without confiscation)
- official forgery (imprisonment up to 2 years with confiscation, aggravated – up to 6 years with confiscation)
- inaction of service (imprisonment up to 2 years with confiscation, aggravated – up to 8 years with confiscation)

The new edition of the CC concerning bribery provides a system of fines corresponding to the sums of the bribe, which in turn provides a flexible and balanced approach to punishment for the bribery. Depending on the seriousness of the crime, the fine could range from, for example, for a simple bribe (receiving) the fine is 50 times the sum of the bribe; for an aggravated bribe, it is from 60 to 80 times the sum of the bribe. For bribe giving, the fine is from 20 to 50 times. For intermediation in bribery, it is from 10 to 20 times.

Nevertheless, other sanctions were significantly toughened. Mandatory life restriction against holding public official positions and positions in companies with state participation in a case of the conviction for corruption crimes was imposed for all corruption crimes.

Officials of foreign states and international organizations under the new CC are included as subjects of corruption crimes.

In case of corruption crimes, the property obtained by criminal means or purchased using funds obtained by criminal means, passed by a convicted person to third parties can also be confiscated from these third parties. The procedural confiscation of the property which was used or intended to be used during the crime commission, including money and other valuables, raised by criminal means is also allowed. The new Criminal Procedure Code (“CPC”) introduces the confiscation of property before conviction if the suspect is the subject of an international search or criminal proceedings were terminated due to an act of amnesty, time limit of prosecution expired or the death of the suspect.

Criminal responsibility of legal entities was declared inexpedient due to the principle of personal criminal responsibility. The code of administrative offences introduces corruption administrative offences (which are not crimes). They are:

- provision to persons authorized to perform state functions of the illegal material remuneration (presents, discounts or services)

- reception of illegal material remuneration by a person authorized to perform state functions
- failure to take anti-corruption measures by management
- hiring a person who was previously convicted for corruption

The Code also punishes legal entities. Meanwhile, the legislation of Kazakhstan does not contain any provisions criminalizing trading in influence.

The new CC also does not directly criminalize “promise of bribe”. Deeming the intention to commit a crime as a completed offence is unacceptable according to the criminal law doctrine of Kazakhstan. Crimes can only be actions (inaction) that pose danger to the public, entail public injury or create immediate threat of such injury. Pursuant to the Legislative Guide for the implementation of UNCAC, the Convention treats promise as reaching an agreement to give (take) a bribe. Such actions could be defined by the legislation of Kazakhstan as conspiracy and are treated as preparation.

The new CC waved the statute of limitations for persons committing corruption crimes.

III. INTELLIGENCE

The CPC provides several causes when the investigation should be started. Such leads include statements of citizens; the report of the official of a state body or the person carrying out administrative functions in the organization; appearance of the guilty; reports in the mass media; direct detection of a crime by officials and bodies competent to investigate criminal cases.

The major source of the leads is the *complaints of people* who become victims of corruption. For this reason, the agencies responsible for tackling corruption use various call-centers and mailboxes to facilitate the direct communication with people.

For example, from the beginning of 2014 the call-center has been established within the Department of Internal Security of the Ministry of Internal Affairs. The call-center has a short telephone number (1402) which is free to call from any place within the country. This call-center works 24/7 and has an operative officer on duty. Any signal about corruption is taken seriously by organizing a swift check and if the lead is valid it will then be developed into a fully fledged investigation.

Another major source of the leads is the work with informants, who, if they receive any information about an already committed crime or preparation of the crime, would pass it to its contacting officer. The officer after checking the validity of the information received will register the lead and proceed with the investigation.

The CPC provides a number of measures to provide security for any persons involved in criminal process. In the investigation stage, such measures include:

- official warning (caution) to a person who poses any threat
- limiting access to the information of the protected person
- provision of personal physical security
- arrest, detention of the accused which excludes the possibility of harmful actions towards the protected person
- restraining order that prohibits any attempt to approach or communicate with the protected person

During the trial the judge could provide further measures of security. They include:

- the witness or victim statement without disclosure of their personal information and with the use of

nicknames

- the witness or victim statement in the conditions that exclude the possibility of recognition by voice, accent, sex, nationality, age, etc.
- the witness or victim statement without visual contact, including the use of video conferencing

In addition, the judge can prohibit the video or audio recording during testimony or can have the defendant leave the courtroom, except his/her counsel.

The State Protection of Persons Involved in Criminal Procedures Act (2000) provides additional measures such as personal protection, confidentiality of data, relocation, the change of the place of study, the change of the place of job, and assistance in work placement.

Kazakhstan also is a party to the Agreement on Protection of the Participants of Criminal Procedures (2006), which provides relocation of protected persons to another country.

Kazakhstan encourages whistle-blowing. According to the Government decree on approving the Rules on rewarding those who disclose facts of **corruption offences** or otherwise assist in the fight against corruption (2012), whistle-blowers receive monetary rewards for providing the leads on corruption activities. However, the legislation does not provide any additional protection measures for whistle-blowers, as everybody is considered to be equal and has the equal right to be protected.

All the proactive measures can be used in the process of investigation of corruption cases.

IV. INVESTIGATION

The power to proceed with criminal investigation is given only to four agencies:

1. Police (the Ministry of Internal Affairs)
2. The Committee of National Security
3. The Anticorruption Office (Civil-service and Anti-corruption Agency)
4. The Office of Economic Investigations (The Ministry of Finance)

The CPC provides clear division of what type of crimes should be investigated by each of the four agencies. All corruption cases are investigated by the Anticorruption Office. However, all other agencies, if they detect corruption, can start investigation so that no evidence is lost. Then the prosecution office will direct the case to the Anticorruption Office for further investigation. The prosecutor could, nevertheless, leave the case to the agency that started investigation. The General Prosecution Office has the Special Prosecution Department that also can investigate corruption cases.

Any investigation starts by registration of the information about the crime in the single register of pre-trial investigations. After this registration, the investigator could conduct investigative steps to collect evidence.

Investigative measures:

- Interrogation and cross-interrogation (video recording could be used)
- Deposition and interview
- Crime scene investigation/examination
- Search and seizure (need warrant from the prosecutor)

- Forensic examination
- Covert investigation

Covert investigation measures include:

- Controlled delivery
- Wiretapping (telephone, computer)
- Bugging (person, place)
- Penetration of offices, houses or other places
- Physical control of a person or place

Sting operations are not available for corruption cases as any provocation by the investigators of other persons to commit corruption is prohibited by the CC.

All covert investigation measures require warrants from the prosecutor. Nevertheless, the accused and all the parties of the investigation have the right to challenge the decisions and measures taken to the court. The investigative judge has to consider the challenge within 3 days.

Information, which is the subject of commercial and bank secret protection (Art. 122 of the CPC), can be obtained by law enforcement agencies on the basis of the prosecutor's sanction or on the basis of the court's decree.

The accused and his/her counsel have a very active role at the stage of investigation. They can petition an investigator to take the investigative measures they consider necessary to establish or refute his/her guilt. The investigator is obliged to consider the necessity of such measures and give an answer in writing. If the investigator considers such measures unnecessary, then the accused could petition the prosecution office or the court, which if they consider it necessary, could direct the investigator to take such measures.

The person could be arrested up to 72 hours without a warrant. During this time the investigation should send all material to the prosecutor to consider whether it is necessary to ask the court to give the warrant for detention of the accused. If the prosecutor finds it necessary, then he/she will apply to the court for the warrant. The judge decides whether to issue warrant or not. The length of the detention is two months, but could be prolonged. If the judge decides not to issue the warrant for detention, bail or house arrest could be used.

The normal length of investigation is two months, but could be prolonged by the prosecutor up to 18 months. However, if the accused admits his/her guilt, the investigation could take the form of an expedited investigation, which is 15 days.

After the completion of all the investigating actions, the investigator invites the victim(s), accused(s) and their counsel to examine all the evidence collected. The accused could take as much time as necessary for the examination of the evidence. However, if the time asked for is unreasonable, the investigator on the approval by the prosecutor could make a timetable for the examination of the evidence.

The accused has the right to petition the investigator to take additional investigative actions to collect evidence that denies his/her guilt. Upon the completion of such actions the accused again is invited to examine the evidence. Thus, the disclosure takes place before the prosecution and trial.

V. PROSECUTION

After the investigation is completed, the case is then sent to the prosecution office. Having considered and evaluated all the collected evidence, the prosecution office then decides whether to support the prose-

cution or to drop the case. The only test is the sufficiency of the collected evidence to convict and the reasonable prospect of conviction. There is no such test as public interest.

If the prosecutor is not satisfied with the sufficiency of collected evidence, the prosecutor could terminate the investigation and prosecution or send the case for additional investigation. The prosecutor has to make the decision whether to proceed with the prosecution in 10 days and in the case of an expedited investigation, in 3 days.

Recently, *plea bargaining* has been introduced to the Kazakhstan criminal procedure in the form of *the procedural agreement*.

It can only be used if three conditions are fulfilled:

1. The accused voluntarily pleads guilty and initiates the conclusion of a procedural agreement.
2. The accused does not contest (dispute) the charges against him/her, the collected evidence and the character and scale of the damage caused.
3. The victims should consent to the agreement.

The procedural agreement **cannot** be considered if the crime has the maximum sentence of more than 12 years of imprisonment. The plea bargain gives the accused a 50% discount on the maximum sentence possible for the crime committed and shortens the time when he/she could be released on parole.

The procedural agreement should be signed by three sides: the accused, the prosecutor and the victim(s). The agreement can be initiated by the accused/defendant or the prosecutor at any stage of the investigation, prosecution or trial, but before the judge(s) retires for deliberation, and the accused/defendant has the right to revoke the agreement at any time before the judge(s) retires for deliberation. After the agreement is signed, the victim cannot ask to increase the amount of the damages caused by the crime.

The procedural agreement is then sent to the court for the judge to decide whether to uphold it or discharge and initiate a full investigation. This is the monitoring system to prevent any facts of misuse of procedural agreements. However, the procedural agreement has not been used for corruption cases yet.

Some categories of public persons have immunity from arrest, detention or criminal prosecution. The list of such persons is limited by those specified in the Constitution of the Republic of Kazakhstan. The procedure for lifting such immunity is established by the Criminal Procedural Code.

VI. TRIAL PROCEDURE

The trial system of Kazakhstan can be characterized as adversarial as the prosecution and defence have equal rights at the trial. The trial is conducted orally, and it is open for the general public to attend. The burden of proof lies on the prosecution. The standard of proof for conviction is beyond a reasonable doubt.

The defendant enjoys a wide range of rights, such as the right to remain silent, to the presumption of innocence, to present any exculpatory evidence, to know and examine all the evidence and to receive the copies of any documents collected during investigation, prosecution and trial, to the treatment of any doubt in his/her favour, and the right to counsel (provided at the expense of the state).

Pretrial procedures are obligatory for especially grave crimes and take 10 days but could be prolonged for an additional 20 days. At the pretrial stage, the judge considers all the petitions from the defendant and the prosecution.

The trial has the following stages: opening, examination of evidence, closing arguments, the last word of the defendant and judgement. The trial should be completed within a reasonable time. On average it takes 2-3 months for a first instance trial. Appellate procedures could take another 2-3 months. If the

defendant voluntarily pleads guilty, the trial will be in form of an expedited trial which takes 10 days and could be prolonged for an additional 20 days. The jury trial, which does exist in Kazakhstan, is only available for a certain number of crimes (those punishable by capital punishment or life imprisonment); therefore, corruption cases are not subject to jury trials.

VII. EVALUATION AND RECOMMENDATIONS

In general, the criminal justice response to corruption is adequate and balanced. The simplification of the criminal procedures, regulating collection of evidence, increases the number of detected cases of corruption and the conviction rate of such cases. The priority of procedural norms is to guaranty the certain level of protection for the innocent facing criminal charges. The early disclosure of evidence expedites the criminal procedure.

CRIMINAL JUSTICE RESPONSE TO CORRUPTION IN MALDIVES

*Fathimath Haifa Abdul Gayoom**

I. INTRODUCTION

The Anti-Corruption Commission (ACC) of the Maldives was established on 16 October 2008. Prior to that, the function of corruption control was mandated to the Anti-Corruption Board (ACB), a governmental body established by Presidential decree on 21 April 1991.

ACC consists of five Members, appointed by the President of the Maldives with approval of the Peoples Majlis (Parliament). The Chairman of the Commission is the primary head of the institution responsible for oversight and delegation of tasks to Commission Members, Secretary General and Staff.

The first piece of legislation formulated to combat corruption in the Maldives is Act no 2/2000, Prevention and Prohibition of Corruption Act (PPCA) which was enacted on 31 August 2000.¹ The Act criminalizes various acts of corruption committed in public offices. Later, the democratic process led to the ratification of the 2008 Constitution, mandated the establishment of an independent statutory institution to combat corruption. Hence, Act no 13/2008, the Anti-Corruption Commission Act (ACCA) was enacted on 24 September 2008.²

Key functions of the Anti-Corruption Commission

The ACC Act 13/2008 mandates the following obligations of the Commission:³

- To inquire into and investigate all allegations of corruption; any complaints, information, or suspicion of corruption must be investigated;
- To recommend further inquiries and investigations by other investigatory bodies, and to recommend prosecution of alleged offences to the Prosecutor General, where warranted;
- To carry out research on the prevention of corruption and to submit recommendations for improvement to relevant authorities regarding actions to be taken;
- To promote the values of honesty and integrity in the operations of the State, and to promote public awareness of the dangers of corruption;
- Conduct seminars, workshops and other programmes to enhance public awareness on the prevention and prohibition of corruption; conduct surveys and research to further this end and the publication of such surveys and research;
- Disseminate information related to the prevention and prohibition of corruption that require public disclosure and publish statements where necessary;
- Implement and monitor the implementation of the Prevention and Prohibition of Corruption Act 2/2000 and formulate and implement all rules necessary for the enforcement of the Act.

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¹ Act no 2/2000, Prevention and Prohibition of Corruption Act.

² Act no 13/2008, the Anti-Corruption Commission Act.

³ Article 21 of the Anti-Corruption Commission Act.

A. UNCAC

Maldives acceded to the United Nations Convention against Corruption (UNCAC) on 22 March 2007. Since the Maldives accession to the United Nations Convention against Corruption, the legislative authorities have been trying to bring about legislative, institutional and policy measures or changes to implement UNCAC. Maldives has completed its first self-assessment on chapters 3 and 4 of the Convention and is in the process of finalizing its self-assessment report.

The provisions of the convention are incorporated into the domestic law through amendments or by passing new legislations or by adopting them into the administrative system. So far the main pieces of legislation in the anti-corruption framework are the Prevention and Prohibition of Corruption Act (the 'PPCA'),⁴ the Penal Code,⁵ the Prevention of Money Laundering and Financing of Terrorism Act⁶ (AML/CFT Act) and the Anti-Corruption Commission Act⁷ (the 'ACCA').

In 2015, two important international cooperation laws were enacted. They are the Law on Extradition,⁸ and the Act on Mutual Legal Assistance in Criminal Matters.⁹

1. Challenges or Problems Faced by Maldives in Implementing UNCAC

- Lack of an effectively coordinated means of communication among the stakeholders, resulting in a lack of coordinated effort on implementing UNCAC.
- Staff shortage and capacity faced by the ACC.
- Difficulties faced in getting necessary laws or amendments passed through the parliament due to challenges in the political environment.
- Technical assistance requirements.

II. MEASURES FOR DETECTION AND PUNISHMENT

A. Intelligence

1. Measures Used to Generate Leads

To generate the leads and clues of corruption, there is a hotline established at ACC where the public can report acts of corruption anonymously. Although no financial incentives are offered for reporting, in 2014, approximately 600 calls were received.

Apart from the hotline, cases are filed through written letter, by phone, by e-mail, fax or in person, and the informant has the choice of revealing their identity. The commission also has the power to initiate investigation on any suspicion of corruption. As such, some of the issues mentioned in the audit reports and newspapers were investigated. However, information obtained from social media and the Internet were not used as means of intelligence.

In addition, information regarding Suspicious Transaction Reports (STRs) are traced by the Financial Intelligence Unit (FIU), which is located within the Central Bank (Maldives Monetary Authority). It traces and forwards the respective intelligence information regarding STRs to the Maldives Police Service.¹⁰

2. Whistle-blower Protection in the Maldives

Although whistle-blowing is an effective way to generate leads on corruption, due to the lack of protection provided for the whistle-blowers, people are not willing to disclose information. According to the Global Corruption Barometer Survey 2013, 11 percent would not report an incidence of corruption, and of

⁴ Act no. 2/2000, Prevention and Prohibition of Corruption Act 2000.

⁵ Act no. 1/81, the Penal Code.

⁶ Act no. 10/2014, the Prevention of Money Laundering and Financing of Terrorism Act.

⁷ Act no. 13/2008, the Anti-Corruption Commission Act.

⁸ Act no. 1/2015, Extradition Act.

⁹ Act no. 2/2015, the Prevention of Money Laundering and Financing of Terrorism Act.

¹⁰ Article 38 of the Banking Act 2010.

this, 22 percent would not report for fear of the consequences.¹¹ In order to support maximum information disclosure, more needs to be done to ensure protection for whistle-blowers.

Concerning the protection of whistle-blowers, general whistle-blower protection is contained in Article 18 of the PPCA. It stipulates that where the informants wish to remain anonymous, such anonymity should be maintained, and whoever fails to afford such anonymity is punishable by imprisonment, banishment or house arrest for a period less than a year.¹²

Article 41 of the Banking Act and Article 44 of the the Prevention of Money Laundering and Financing of Terrorism Act further provide protection for the directors and staff of banks who report in good faith. Moreover, Article 35 of the Maldivian Civil Service Act provides protection for the employees who report a breach or an alleged breach of that Act, Regulation and Code of Conduct of the Maldivian Civil Service to the Responsible Officer of that institution or to the Civil Service Commission against victimization, or discrimination.¹³

B. Investigation

The complaints lodged at the Anti-Corruption Commission are checked by the members of the Commission to decide whether the complaint falls under the mandate of the Commission, whether it is frivolous, whether it requires corrective action, or whether it warrants investigation.

When the Commission decides that an allegation warrants investigation, a Case File is prepared and assigned to an investigation team which consists of three investigators with auditing or law backgrounds. The leader of the investigation team assigns the case to one of the investigators who will lead the case. The lead investigator has to produce a summary of the case proceedings within seven days. The summary proceedings are discussed within the team. Then, the investigation commences where documentary and verbal evidence are collected.

1. Evidence Collection.

Under the ACCA and PPCA, the Anti-Corruption Commission has the power to obtain admissible evidence by:

- Search and examination of premises of all such bodies that the Commission has the authority over in performing its duties.
- Checking and freezing suspicious bank accounts, confiscation of undue properties and monies through court order.
- Power to summon and obtain witness statements.
- Search and seizure of documentary evidence.
- Require any person or such body as the Commission believes to have information relating to an investigation to produce such information in writing.

As the Anti-Corruption Commission of the Maldives lacks the necessary technical capacity to carry out complex investigations, ACC seeks the assistance of experts where such assistance is needed in collecting evidence or in analysing the evidence. As such, ACC has a Memorandum of Understanding with Maldives Police Services to seek the assistance of police for forensic expertise.

The Banking Act obliges the banks to disclose confidential information upon a written request from a criminal investigative body.¹⁴ As such the investigating agency has the authority to obtain through the Maldives Monetary Authority bank account details and details of transactions carried out through banks

¹¹ Transparency Maldives, Global Corruption Barometer Survey 2013.

¹² Article 18 of the Prevention and Prohibition of Corruption Act.

¹³ Article 35 of the Maldivian Civil Service Act.

¹⁴ Article 42 of the Banking Act 2010.

and also to obtain copies of documents which are required for investigation.

No covert investigation or special investigative techniques such as wiretapping, telephone bugging, geo-location, sting operation, controlled delivery or special computer software are used to investigate a corruption case in the Maldives. However, article 49 and 50 of the Prevention of Money Laundering and Financing of Terrorism Act regulates the use of special investigative techniques, upon court order, to obtain evidence of money laundering and for tracing proceeds of crime. Special techniques foreseen in the Act include electronic surveillance, wiretapping, controlled delivery and undercover operations.¹⁵

2. Challenges Faced at the Investigation Stage.

The Maldives still faces many problems and challenges in terms of investigation. As for the investigations carried out by the Anti-Corruption Commission, the following problems and challenges are faced:

- Maldives is an island nation consisting of many islands which are separate from each other; hence there is always difficulty in reaching the destination with ease.
- Due to geographical barriers, it is difficult to take prompt action when there is a need to investigate a case with urgency.
- Travelling is costly whether by sea or air. Sometimes it is not easy to find transport when required and delays also occur due to weather conditions.
- It is time consuming to obtain a Court order to freeze and seize suspicious bank accounts, confiscate undue properties and funds and to search and seize documentary evidence.

In order to overcome the challenges faced in terms of investigation, assessing the geographical situation of the country and the adoption of effective methodologies is needed, and relevant laws need to be introduced which would allow the Anti-Corruption Commission to issue court orders which are necessary when investigating corruption cases.

3. Investigation Reports.

Upon collection of all the necessary evidence, an investigation report is prepared. Then, the report is reviewed to check whether any legal or evidentiary issues need to be resolved with regard to the case and its facts, and if the report does not suffice, it is handed back to the lead investigator for further inquiry. The final report and the recommendations of the investigator are then submitted to the Commission members for further review, and the case is concluded when the members decide what action needs to be taken. There are three ways in which a case is concluded. If there is sufficient evidence, the case is forwarded to the Prosecutor General's Office; if there is not enough evidence, then the case is closed. Where the investigation has identified administrative or procedural issues that lead to corruption, then the relevant institution is notified and ordered to make amends in the administrative or procedural methods implemented. When the case is sent for prosecution, or notified to the relevant authorities about the changes in administrative or procedural issues, the Commission receives notification of the action taken.

There are no official statistics that state the duration taken on average to investigate a corruption case, as it depends on the cases on hand. The following table shows the number of cases reported and the actions taken during the years 2009 – 2014.¹⁶

¹⁵ Article 49 and 50 of the Prevention of Money Laundering and Financing of Terrorism Act.

¹⁶ Annual Reports of ACC in 2009, 2010, 2011, 2012, 2013 & 2014.

Particulars	2009	2010	2011	2012	2013	2014
No. of cases reported to ACC	254	917	260	1138	1085	597
No. cases initiated by ACC for investigation	-	63	19	156	231	125
No. of cases that ACC decided was beyond its mandate	76	257	41	197	225	243
No. of cases ACC decided to forward to other institutions	22	23	5	13	5	6
No. of cases ACC completed investigation	153	324	134	431	620	783
No. of cases forwarded for prosecution	7	17	6	49	57	35

C. Prosecution

The Prosecutor General's Office was established on 7 August 2008 under Article 220(a) of the Constitution.¹⁷ The Prosecutor General's Office is an independent legal entity with a separate seal, possessing power to sue and be sued, and to make undertakings in its own capacity.¹⁸ The Prosecutor General is to institute and conduct criminal proceedings in respect of any alleged offence, to take over, review and continue proceedings and, at his discretion, to discontinue any criminal proceedings at any stage prior to judgement.¹⁹

Article 25(b) of the Anti-Corruption Commissions Act states that upon completing the inquiry and investigation of a case, the Commission has to send the case to the Prosecutor General's Office for prosecution if the case is one which involves an offence of corruption, and the Commission believes that there is sufficient evidence to obtain a conviction at trial.²⁰

In the current system practiced in Maldives, upon submission of the case for prosecution, the prosecutor objectively assesses whether there is sufficient evidence for prosecution, and whether the case should be prosecuted in the interest of the public. Prosecution guidelines, formulated by the Attorney General, provide the basis to determine the type or gravity of cases that warrant prosecution.

1. Standard Used for Prosecution of Corruption Cases.

Currently, there are three pieces of anti-corruption legislation which are, the Prevention and Prohibition of Corruption Act (Act No.22/2000), the Anti-Corruption Commission Act (Act No: 13/2008) and the new Penal Code (Act no. 9/2014).

Section 1(a) of the Prevention and Prohibition of Corruption Act states that the purpose of the Act is to prevent the offer and acceptance of bribery in addition to the prevention and prohibition of attainment of undue advantage through the use of influence from his/her position, and also the prevention of any such act which can be considered as corruption.²¹ Although this Act does not give a definition of corruption, it gives the power to the Courts to decide whether or not an act not explicitly stated in the PPCA constitutes corruption.

The new Penal Code which came into effect on 16 July 2015 replaced the country's existing Penal Code which dates back to 1968.

The new Penal Code also uses 'Beyond a reasonable doubt' as the standard of proof. This standard of proof is used exclusively in criminal cases, where a person cannot be convicted of a crime unless the judge is convinced of the defendant's guilt beyond a reasonable doubt.

¹⁷ Article 220 (a) of the Constitution states that there shall be an impartial Prosecutor General of Maldives.

¹⁸ The Prosecutor General is independent and impartial, and he shall not be under the direction or control of any person or authority in carrying out his responsibilities and the exercise of his powers. He shall carry out his responsibilities and exercise his powers without fear, favour or prejudice, subject only to the general policy directives of the Attorney General, and on the basis of fairness, transparency, and accountability.

¹⁹ Article 223(c) and (g) of the Constitution.

²⁰ Article 25(b) of the Anti-Corruption Commission Act.

²¹ Section 1(a) of the Prevention and Prohibition of Corruption Act (Act No.22/2000).

2. Prosecution Rate of Corruption Cases.

Although ACC has sent over 160 cases for prosecution since 2011, the number of cases sent for trial by the Prosecutor General's office and successful convictions are very low on corruption cases. In fact, according to the records²² from the Prosecutor General's Office, only three cases of bribery have been prosecuted between 2010 and 2014, and only a single case of undue advantage has resulted in a definitive conviction with all the stages of appeal exhausted. In *Abdul Hameed v PG* (2011), the Supreme Court upheld the conviction by the Criminal and the High Court and the accused was found guilty under section 12 of the PPCA, and was sentenced to one year and six months of banishment for unduly conferring an advantage to another party. He was a serving member of the parliament when the case was heard in the courts, and as result of the conviction he lost his seat in the parliament.

3. Immunity

In Maldives, there is no immunity for public officials from being investigated or prosecuted. However, immunity is provided for diplomatic officials²³ and the president during his term. In the case of the latter, he is accountable by law for any offence committed before or during his tenure, but the People's Majlis (Parliament) may decide to defer criminal proceedings until after the expiration of the term of office.²⁴

4. Plea Bargaining

Plea bargaining is not provided for in the Maldivian legislation, and is not practiced. However, under Section 30 of the new Penal Code, an accomplice is given mitigated punishment or immunity if it is proven that he is made accountable for the conduct of another.²⁵ Under section 1107 of the new Penal Code, cooperation with law enforcement authorities is encouraged to the extent that an offender's sentence can be mitigated if he provides substantial cooperation to law enforcement authorities.²⁶ The mitigation and aggravation of the sentence is based on the sentencing guidelines, depending upon the crime and the offender, to maintain consistency.

In cases of money laundering, penalties may be reduced if the perpetrator provides the competent authorities with information they would not have otherwise obtained.²⁷

D. Trial Procedure and Adjudication

1. Judicial System

Maldives has an adversarial judicial system where the court plays a role primarily that of an impartial referee between the prosecution and the defence. The court does not actively take part in any process of an investigation.

In 2008 a new Constitution was ratified in the Maldives, and it brought a huge change to the judicial system of the country. The Supreme Court established under this constitution is the highest institution of the judiciary. The duration taken for a case to finish the process of adjudication is not uniform and not definitive. So far only one case of corruption has gone through all the stages of adjudication, and it took about three years for the case to finish the whole process. Some cases take the same time to finish through the lower court.

Advancing trials of corruption cases depends on socio-political factors of the case. The political ideology of the person who is tied to corruption plays a huge role in how fast the trial is expedited. Although article 17(a) of the Constitution states that everyone is entitled to the rights and freedoms included in this Chapter without discrimination of any kind, including race, national origin, colour, sex, age, mental or physical disability, political or other opinion, property, birth or other status, or native island,²⁸ it is arguable whether

²² Records were obtained under the Right to Information (RTI) Act via an RTI application submitted to the Prosecutor General's Office.

²³ Section 63 of the Penal Code.

²⁴ Article 127 of the Constitution.

²⁵ Section 30 of the Penal Code.

²⁶ Section 1107 of the Penal Code.

²⁷ Section 61 (b) of the Prevention of Money Laundering and Financing of Terrorism Act.

²⁸ Article 17(a) of the Constitution.

the right of non-discrimination is exercised properly.

2. Standard of Proof for Conviction

Under the constitution for a person to be convicted for a criminal offence it has to be proven beyond a reasonable doubt. Article 51(h) of the constitution states that a person should be presumed innocent until proven guilty beyond a reasonable doubt.²⁹ This is the standard of proof in corruption cases, too, as it is a criminal offence.

3. Conviction Rate of Corruption Cases

Although several cases are submitted to the PG each year, very few of these result in successful convictions. As of 2012, there has been only one major corruption case that resulted in a successful conviction — a case involving a sitting MP, which resulted in the removal from his post as a Member of Parliament.³⁰ Contrastingly, 26 cases involving 52 prosecutions were sent to the PG by the end of 2011.³¹ A parliamentary oversight committee reported in 2012 that the majority of corruption cases forwarded by the ACC to the PG are pending a decision at the PGO,³² and that those forwarded to courts by the PG often face another waiting period while the courts make a decision.³³

4. Pre-trial Procedure

There are no pre-trial procedures for identifying issues, facts or to scrutinize the evidence. However, with the new Penal Code, which came to effect on 16 July 2015, the trial procedures might change so that there will be two separate hearings, one to prove the offence is committed and the other to decide on the sentencing.

5. Witness Protection in the Maldives

To date there are no witness protection laws in the country. However, an amendment to the National Police Act provides for some witness protection measures. In some cases judges have allowed witness statements to be given under special procedures where the identity of the witness is hidden.

III. GOOD PRACTICES AND PROBLEMS IN THE SYSTEM

A. Good Practices

1. Public-Private Cooperation

To promote public-private cooperation in the fight against corruption, the Anti-Corruption Commission has established a confidential reporting channel, a hotline, where anyone can report wrong doing without their identity being disclosed. It also entails prompt disclosure and cooperation with enforcement authorities when violations occur.

Various types of public awareness campaigns, such as media advertisements, seminars and workshops are carried out in all parts of the country every year to promote public awareness on the dangers of corruption. The main aim of these awareness campaigns is to prevent and prohibit corruption in the country.

Much needs to be done to strengthen the public-private cooperation in combating corruption. Based on the statistics of the corruption cases filed, the following are some areas that need improvement in the current system.

- Public sector ethics and procedures: require recruitment and promotions to be based on efficiency, transparency and objective criteria such as merit, equity and aptitude.
- Public procurement: require procurement systems to be based on transparency, competition and

²⁹ Article 51(h) of the Constitution.

³⁰ National integrity system, Maldives 2014.

³¹ ACC Annual Report 2011.

³² "Seventy-two percent of corruption cases pending on PG's table: Nazim" *Haveeru News (web) 15 August 2015* at <<http://www.haveeru.com.mv/news/46420>>http://www.haveeru.com.mv/dhivehi/abdulla_hameed/110061>.

³³ See for example, corruption case of former Minister Abdulla Hameed: "Court orders to arrest and summons Abdulla Hameed" *Haveeru News (web) 15 August 2015* at <www.haveeru.com.mv/dhivehi/abdulla_hameed/110061>.

objective criteria.

- Public sector finance: require appropriate measures to be taken to promote transparency and accountability with respect to, procedures for the adoption of the national budget, timely reporting on revenue and expenditures, accounting and auditing standards, effective and efficient systems of risk management and internal control.

Although the above three measures are already implemented in the Anti-Corruption Commission, there are many government offices that do not follow such a system, leading to corrupt practices in the three areas mentioned.

2. International Cooperation

(i) *Extradition*

Before the enactment of the Extradition Act (Act No. 1/2015),³⁴ which came into force on 5 April 2015, Maldives had very limited experience with extradition. Prior to this act Maldives signed three extradition agreements. They are with Sri Lanka on the 2 of September 1981, with Germany on the 14 of September 1982 and with Pakistan on the 12 of July 1984. The new act ensures smooth cooperation with other nations.

(ii) *Mutual Legal Assistance*

The Mutual Legal Assistance Act (Act No. 2/2015),³⁵ which came into force on 5 June 2015, provides for mutual legal assistance (MLA) on a treaty basis, including for cases involving non-coercive measures. It sets out a general framework to regulate procedures for providing or requesting MLA.

In October 2009, Maldives ratified the Convention on Mutual Assistance in Criminal Matters of the South Asian Association for Regional Cooperation (SAARC Convention). Article 1 of the Convention States that the State Parties to the convention shall, subject to their national laws, and in accordance with the provisions of the convention, provide to each other the widest possible measures of mutual legal assistance in criminal matters, namely investigations, prosecution and resulting proceedings.

Under the Prevention of Money Laundering and Financing of Terrorism Act, it is mandatory for the domestic authorities to provide the widest possible range of cooperation to competent authorities of requesting States. Section 49 and 50 of the Prevention of Money Laundering and Financing of Terrorism Act regulates the use of special investigative techniques, upon court order, to obtain evidence of money laundering and for tracing proceeds of crime. Special techniques foreseen in the Act include electronic surveillance, wiretapping, controlled delivery and undercover operations.³⁶ However, there is no record of identifying, tracing, freezing and confiscation of any proceeds, property or assets.

Maldives has signed the Transfer of Prisoners Agreements with India, Sri Lanka and Russia and proposed Transfer of Prisoners Agreements to Syria, Indonesia, Philippines, Thailand, Bangladesh and Pakistan. However, the latter are yet to be agreed upon.

(iii) *Law enforcement cooperation*

As Maldives is a member of Interpol, Maldives seeks and provides assistance to/from other nations who are a party to Interpol.

In addition, Maldives has provided cooperation with other law enforcement agencies in the region in a limited number of cases. It includes exchange of information, identification of persons and cases of joint investigations. The Maldivian Police have cooperated at the international level, utilizing techniques of controlled delivery in drug-related offences.

B. OTHER PROBLEMS OR CHALLENGES

1. Due to the shortfall in the financial capacity, it affects the performance of ACC in carrying out its

³⁴ Extradition Act (Act No. 1/2015).

³⁵ Mutual Legal Assistance Act (Act No. 2/2015).

³⁶ Act no. 10/2014 - the Prevention of Money Laundering and Financing of Terrorism Act.

functions especially in relation to the challenges incurred due to the geography of the country. The lack of financial resources limits the ACC's capacity to establish an adequate number of regional offices throughout the country. Likewise, financial limitation also results in lack of capacity for adequate public awareness programmes to be carried out throughout the country at times.

2. With the growing number of complaints lodged, and for the effective functioning of the mandate of the ACC there is an imperative need to build the human resource capacity of the ACC by recruiting professional, skilled staff and to provide the necessary training to enhance their skills.
3. Due to the weaknesses in the current Anti-Corruption Commission Act and the Prevention and Prohibition of Corruption Act, a revised bill has been drafted and proposed to the parliament in late 2012. However, due to challenges in the political environment, the bill has not yet been passed.
4. Lack of effective coordination and communication among stakeholders, resulting in a lack of coordinated effort on implementing UNCAC.
5. One of the ACC's mandates is educating and raising awareness among the general public against corruption, but it falls short of achieving this goal due to budget constraints.
6. Lack of a compliance mechanism to evaluate whether the recommendations given by the ACC are adhered to by the institutions.
7. Due to the weaknesses in the legal framework, it is difficult to take prompt action when there is a need to investigate a case with urgency.
8. ACC does not have prosecutorial powers, which lay with the Prosecutor General (PG), who is responsible for instituting and conducting all criminal prosecutions and proceedings on the cases forwarded by ACC. Although a number of cases are being forwarded every year, actions are taken on a very few cases. So it is very important to improve the coordination between ACC and the Prosecutor General's Office, as the effectiveness of the ACC is significantly dependent upon the performance of PG and the courts for successful prosecution.

IV. RECOMMENDATION

1. It is vital to assess the geographical situation of the country and to adopt an effective methodology to combat & prevent corruption.
2. Measures need to be taken to ensure financial stability and predictability for the ACC, to enable it to plan its investigations and awareness activities.
3. Human resources and training opportunities for ACC staff need to be increased, especially in terms of investigative capacity.
4. Establish a review and follow-up mechanism to ensure the recommendations provided are enforced by the institutions.
5. Need to strengthen the coordination between the work of the ACC and other law enforcement agencies, such as the PGO and the judiciary, to increase collaborative efforts. Also, efforts need to be made to build public confidence in institutional cooperation.
6. Preventive efforts need to be planned and implemented with other stakeholders such as local NGOs and businesses in order to use the limited resources most efficiently.
7. Build and maintain international cooperation to transfer information and knowledge, and obtain financial and technical assistance.

CRIMINAL JUSTICE RESPONSE TO CORRUPTION IN SOUTH SUDAN

*Akuei Mayuen Deng Dut**

I. INTRODUCTION

This paper is prepared in response to the requirement of the Japan International Cooperation Agency “JICA” Knowledge Co-Creation Program on the Criminal Justice Response to Corruption. The main theme for the programme is “Effective Anti-Corruption Enforcement and Public-Private and International Cooperation”. The objective of the programme is to share information and experiences of the participants respective criminal justice systems with the view to understanding and appreciating success stories as well as challenges encountered. Participants are therefore required to respond to specific questions posed. This paper is therefore customized to address the questions in the order of their appearance in the pages mentioned above. The paper will conclude with a brief summary of the measures South Sudan is putting in place to overcome challenges and make its fight against corruption robust and sustainable.

However, the paper will begin by giving a brief account of the institutional and legal framework within which corruption is fought in South Sudan. It is believed that this will help the reader in appreciating the strengths and weaknesses of anti-corruption measures in operation in South Sudan. Effectiveness and efficiency of efforts geared at anti-corruption are to a large extent a product of the institutional arrangement in place and the legal framework that governs their operations.

II. INSTITUTIONAL AND LEGAL FRAMEWORK

The South Sudan Anti-Corruption Commission (SSACC) was established under the Interim Constitution of Southern Sudan¹ “ICSS” 2005. Article 147 of ICSS provided for the establishment of an independent and impartial body to be known as “Southern Sudan Anti-Corruption Commission”.

Under ICSS, SSACC’s mandate² was to:

- *protect public property;*
- *investigate cases of corruption in both the public and private sectors;*
- *combat administrative malpractices and;*
- *to administer assets AND liabilities declarations of senior public service officials pursuant to Article 121 of ICSS.*

Giving effect to this constitutional provision, the president of the then-Government of Southern Sudan “GOSS” on June 2006 issued a presidential decree appointing the commission,³ comprising of the chairperson, deputy chairperson and three commissioners. As there was no law in place as guidance, the Commission embarked on developing legislation to address issues of corruption offences, sanctions as well as establish the matters, among others. The idea was to adopt legislation which would be both comprehensive and effective in addressing the vice of corruption. Four years down the line, and after a protracted wait and delay, the Commission settled on the Anti-Corruption Commission Act, 2009.

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¹Post-conflict constitution and a product of the Comprehensive Peace Agreement between the then-Government of Sudan and rebel movement known as Sudan People’s Liberation Movement/Army “SPLM/A”.

²Article 148 (1) inclusive of ICSS.

³The Commission is the policy-making body of SSACC. Apart from the Commission, there is Management headed by the Executive Director.

Under this Act, no corruption offences were created as envisaged by the draft bill. Only some sections of the Penal Code Act, 2008 were carved out and assigned to the jurisdiction of the Commission⁴. The Code of Criminal Procedures Act, 2008 as well as the Code of Evidence Act, 2006 remained unchanged. Matters of procedure and evidence relating to corruption cases are to be determined on the basis of these two pieces of legislation. This proved to be challenging considering that the means and methods of perpetrating corruption have drastically changed, rendering conventional measures of combating crimes obsolete and inefficient. The few attempts made under Section 27 of SSACC Act to relax procedures and evidentiary requirements added little or no value at all to the measures available to the Commission in addressing corruption in its various manifestations. Tasking SSACC with investigations and assigning prosecution of the same to a different agency compounded the challenges faced by the Commission.

To address some of these challenges the Commission advocated for reforms to the legal framework with the view of achieving effectiveness and efficiency in its methods of work. The review of the constitution after independence came in handy for the Commission. Its efforts culminated in the addition of prosecutorial powers to the existing mandate⁵

To operationalize the new mandate and address the challenges it had faced under the previous legal dispensation, SSACC developed a bill⁶ and pushed it forward for enactment. The Bill is currently with the Ministry of Justice undergoing review and scrutiny before being transmitted for adoption and enactment.

The Bill is in essence an amalgamation of pieces of legislation. It is divided into parts with each part dedicated to address a different aspect of the Bill. Issues of establishment, corruption and financial crimes, whistle-blowers and witness protection, evidence and procedures, prosecution of corruption crimes and adequate investigative powers have been addressed with elaboration. The Bill benefited from wide consultations among different stakeholders inside⁷ and outside the country⁸. It tried to adopt and adapt international best practices in curbing corruption. It is yet to be seen how the Bill will pass the test of enactment.

III. UNCAC APPLICATION IN SOUTH SUDAN

South Sudan acceded⁹ to the United Nations Convention Against Corruption “UNCAC” in November, 2013. UNCAC entered into force for South Sudan on 22 February 2015¹⁰. However, South Sudan is yet to carry out necessary formalities to ensure compliance with its obligations under this convention. A self-assessment exercise to identify gaps and adopt measures of addressing same is still under consideration. A multi-disciplinary task force is envisioned to be established soon to carry out a gap analysis exercise and recommend appropriate legal, institutional and administrative reforms necessary to meet South Sudan’s obligations under UNCAC.

IV. CORRUPTION DETECTION MECHANISMS

In generating corruption reports SSACC adopts a variety of approaches. These include face-to-face reporting¹¹, statutory reports by public officials¹², open media sources¹³, official reports¹⁴, official databases¹⁵, anonymous reporting, intelligence production, complaint boxes and inter-agency information sharing.

⁴See the definition of Corruption under Section 5 of SSACC Act, 2009.

⁵Article 144(1)(b) of the Transitional Constitution of the Republic of South Sudan, 2011 (TCRSS).

⁶South Sudan Anti-Corruption Corruption Bill, 2011.

⁷Governmental agencies as well as civil society organizations.

⁸Some sisterly countries and UNODC.

⁹South Sudan Instrument of Accession, dated 27 November, 2013.

¹⁰United Nations Secretary General letter number: C.N.65.2015.TREATIES-XVIII.14 (Depository Notification), dated 26 January 2015

¹¹There are “Corruption Reporting Guidelines” to guide the prospective corruption reporters on what and how to report corruption allegations.

¹²The “Duty to Report” Section 34 of SSACC Act, 2009 obligates public officials who have knowledge of corrupt practices to report the same to the Commission. Failure to report constitutes an offence punishable with imprisonment, fine or both.

¹³Including newspapers and social media.

¹⁴Such as audit report and periodic institutional reports produced by public and private agencies.

A person who reports a proven corrupt practice to the Commission is immune from any prosecution arising from that report¹⁶. However, if the corruption report turned out to be false, frivolous or groundless, then the person making such a report commits an offence and shall, on conviction, be sentenced to imprisonment, fine or both¹⁷.

As per SSACC experience, corruption complaints raised through face-to-face interaction seem to carry the day in terms of volume. This is made possible in part because of the widespread geographical scope of SSACC. SSACC is present in each and every capital town of the ten states of South Sudan. Just to give an example, in 2010 sixty-six corruption allegations were reported to the Commission. Out of this number, 51 (77%) cases were reported face-to-face¹⁸.

V. WHISTLE-BLOWERS AND WITNESS PROTECTION MEASURES

To safeguard and cushion informers and witnesses of corruption practices from reprisals, the SSACC Act has adopted a provision clothing this category with immunity from actions or proceedings against them, disciplinary actions included, provided they acted in good faith¹⁹. This sounds simple and straightforward. However, in practice it sounds different. In a practical example of this provision SSACC found itself helpless with little or no guidance. A public servant reported a case to SSACC which the later believed to have been made in good faith. One way or the other the person against which the report was filed and who happened to be the direct supervisor of the reporter unveiled the identity of the reporter. He took disciplinary measures against the reporter. SSACC believed that the charges against the reporter were concocted just to punish him for having reported to the Commission. With this conviction in mind, SSACC wrote to the supervisor asking him to reverse the action taken against the reporter, but to no avail. With no guidance regarding the binding effect of its decisions in such a situation SSACC watched helplessly while the reporter regrettably suffered under the weight of stiff sanctions imposed upon him in what he and SSACC believed to be retaliation. SSACC needs to seal such loopholes by legislative reform or adopting policies and innovative measures to counteract such and similar challenges.

Section 47 empowered the Commission to make such rules and regulations as may be necessary for the effective and efficient implementation of the provisions of the SSACC Act. It is envisaged that this will enable the Commission to fill in the gaps that are left under this Act. Practical matters such as physical security of the informers and witnesses as well as relocation and change of identity, if the need be, are part of the bigger picture contemplated under these arrangements.

However, as is the case with most if not all matters under the SSACC Act, these provisions are yet to be tested through case law. Lack of vibrancy in challenging the Commission's acts and omissions coupled with lack of dedicated corruption adjudication tribunals partly contributes to this state of affairs²⁰.

VI. INVESTIGATION TECHNIQUES

Investigation of corruption offences in South Sudan follows the normal criminal procedures. The use of special investigative techniques is constrained by both legal parameters and technical capacity of the agencies involved in the fight against corruption.

In terms of the legal framework SSACC Act gives little guidance on the use of innovative techniques such as wiretapping, bugging, undercover operations and computer software. There is no specific mention of the use of such measures in the SSACC Act. However, Section 27(1) of this Act gave Chairs of an Investigation Committee latitude in deciding the manner of conduct of investigation of corruption allegations.

¹⁵ Examples include the assets and liabilities declaration database, official registries such as the registry of land titles and the companies registry.

¹⁶ Section 34 (2) of SSACC Act, 2009.

¹⁷ Section 34 (4) of SSACC Act, 2009.

¹⁸ Source: South Sudan Anti-Corruption Commission Annual Report 2010.

¹⁹ Section 44 (a) of SSACC Act, 2009.

²⁰ Corruption offences are treated like any other criminal offences in terms of criminal procedures. There are no special provisions. The Code of Criminal Procedures Act, 2008 applies in all cases of corruption investigation, prosecution and adjudication.

This discretion is subject to fairness and cost effectiveness as shall be directed by rules and regulations under this Act²¹.

In the absence of specific rules for investigation, Section 8 of the Code of Criminal Procedures Act, 2008 “CCPA” mandates the use of its provisions in the conduct of investigations. Under the CCPA, intrusive measures against privacy and property are strictly regulated. A warrant is required from either the Public Prosecutions Attorney or a judge in the absence of the Public Prosecutions Attorney. If the prescribed procedures are followed and a chain of custody is observed, the evidence acquired through such techniques is admissible.

Proactive measures of investigation such as sting operations are vital in disrupting corruption and exposing it. Section 25 of the SSACC Act gives it the power to initiate proactive investigations if it “...has a reasonable suspicion that a corruption offense has been or is about to be committed...” Although there is no specific mention of certain measures, the Commission has always employed sting operations as part of its available tools to investigate corruption. Unfortunately, the cases in which this tool was used were resolved administratively. Again it is yet to be known how the courts will react to their use.

Wisdom dictates that “prevention is better than cure”. With this in mind SSACC has always strived to catch up if not be ahead of corruption perpetrators. Corruption has developed in nature and means of its commission. ‘Traditional’ ways of combating it are rendered less and less effective with the passage of time. SSACC is therefore committed to adopting the international best practices that have proven tough on corruption. Sting operations and controlled delivery are among the options on the table.

Technical arrangements pose a great challenge. SSACC is ill equipped to make proper use of the measures which require high-tech capacity. Relevant equipment and appropriate training are lacking, and this funnels into poor-quality and delayed investigations. SSACC experience with investigation of corruption offences has shown that there still is a big space ahead to cover before ushering in quality and timely investigations. The time frame of instigating corruption cases ranges depending on the complexity of the case and availability of pertinent resources. Some cases have taken less than a month to complete while others took more than a year.

To overcome this SSACC had invested in personnel and institutional capacity building in addition to legislative reforms. Study tours and exposure of its staff to the international best practices is one of the tools SSACC has adopted to inform its actions and legal framework. This training opportunity comes at an opportune time for SSACC. It is believed that the knowledge acquired from such a high-level gathering of academicians and practitioners with a wide range of knowledge and experience would enrich SSACC’s endeavour to better position itself in the fight against corruption.

VII. PROSECUTION OF CORRUPTION AND RELATED CASES

Under ICSS and the SSACC Act the Director of Public Prosecutions in the Ministry undertakes the prosecution of corruption cases investigated by SSACC. These two laws are silent regarding the role of the Commission in the prosecution of cases it investigated. In case of absence of the Prosecution Attorney, the Police are assigned by Section 183 of the CCPA to conduct prosecution.

Public Prosecutions Attorneys enjoy great latitude in bringing or sustaining prosecutions. Section 217 of the CCPA empowers the prosecution to withdraw charges when it considers that there are no sufficient grounds. More so, practice has shown that the Minister of Justice enjoys discretion transcending the availability of sufficient evidence to make prosecution of the accused more likely than not. In some cases, the Minister of Justice has withheld his intervention or indeed carried on with prosecution when he is of the opinion that public interest so dictates. This far-reaching discretion with limited or no check and balance. More interestingly SSACC invoked public interest to ask the President of the Republic to stop prosecution against a person accused of corruption.

²¹ Section 47 gives the Commission the power to make rules and regulations for the efficient and effective implementation of the Act. But so far no rules and regulations have been adopted by the Commission.

With the new legal dispensation under ICSS, SSACC is entrusted with prosecution of corruption cases. In the pending enabling act, SSACC tried to address practical issues it faced including matters of discretion in prosecution. Indeed, in preparation SSACC has developed a prosecution policy highlighting its stand on the same. The official adoption of the Prosecution Manual which incorporates this policy is just awaiting the enactment of the Bill.

Production of concrete data has always been a challenge. This is partly because prosecution of corruption cases under the current legal framework rests with the office of the Director of Public Prosecutions (DPP). Experience of the cases so far submitted by SSACC to the office of the DPP suggests that SSACC has no role to play after submitting the case. This has made it almost impossible to know whether its recommendations for prosecution have been accepted or rejected by the DPP. More so, there are no mechanisms in place to enable SSACC to update its records of cases submitted to the DPP office.

The CCPA provides for immunity for accomplices in cases exclusively triable by the High Court or punishable by imprisonment for a term which may extend to seven years. Section 199 of the act under review determines the Public Prosecutions Attorney to be the relevant authority to tender the pardon. The finding as to whether the accused has complied with the terms of the pardon is an exclusive prerogative of the Court trying the case. In case of affirmative compliance, the accused may be acquitted.

Plea bargaining is not yet an option for prosecutors under the existing criminal justice legal framework. It will need a serious construction of the legal framework to argue for plea bargaining. However, the good news is that plea bargaining is one of the tools the Bill has suggested for prosecution of corruption. It is premature at this stage to discuss how it will play out in practice as the Bill is still being considered for enactment. With the strong political will demonstrated by the leadership of the country and wide support for the effective combating of corruption from the general masses and civil society organizations as well as the development partners, hopes are high that this time around South Sudan may have a strong legal framework to effectively and efficiently fight corruption.

VIII. TRIAL PROCEDURES IN CORRUPTION CASES

South Sudan is largely a common law jurisdiction; its trial system is adversarial. It is not quite clear though how this dispensation affects speedy trials. However, many other factors have a negative bearing on the time it takes to determine a case before the criminal courts in South Sudan. Chief among these are: the huge case load, limited number of judges and limited training, especially training on adjudication of corruption case. As a remedy SSACC in its Strategic Plan has provided for training of judges²² as part of capacity building for the staff, institutions and agencies engaged in combating corruption.

CCPA dictates a certain threshold of evidence to prevail in criminal cases. Section 6(b) of this Act stipulates that "every accused person is presumed innocent until his or her guilt is proved beyond any reasonable doubt". This has made it extremely difficult to obtain convictions in corruption cases as methods of perpetrating corruption have outmatched the traditional investigative techniques. The new measures introduced by the Bill are partly meant to increase the rate of conviction through relaxing the evidentiary threshold, especially in non-conviction-based asset recovery and an explained asset forfeiture.

Trial procedures for criminal cases including corruption adjudication are arranged in a way to identify issues and ascertain evidence in support of the charges being preferred against the suspect. It is imperative to charge suspects before arraignment in courts of law. This is only possible through weighing evidence and ensure prospects of conviction before venturing into trial. All these procedures are done at the investigations stage under the guidance of the Public Prosecutions Attorney.

The importance of witnesses in successful anti-corruption cases cannot be underestimated. With this in mind the relevant legal framework in the country has attempted to create an environment conducive for willful and effective engagement for persons who have witnessed or taken part in corruption. Blanket immunity is found in Section 44 of the SSACC Act, which shields informers and witnesses from legal actions or proceedings. On a practical note, anonymous reporting is acceptable and encouraged. However,

²² South Sudan Anti-Corruption Strategic Plan: Key Objective 2(7)(h).

the potential of these measures is underutilized. Lack of elaborate guidance as well as non-availability of material resources to support these measures, stands as an obstacle in the face of their potential.

IX. GOOD PRACTICES

It is a widely held conviction that corruption leaves no stone unturned in its quest to control each and every possible resource of the community. In a baseline corruption survey conducted by SSACC in 2010 it was never a surprise for the findings to reveal that corruption is prevalent and that no sector of the economy or section of the community is immune from its scourge. More so, the anti-corruption model adopted by South Sudan is a multi-agency model under which different aspects of the fight against corruption are assigned to different agencies. In South Sudan, no one agency controls the fight against corruption. However, SSACC plays a central role in streamlining efforts and synergizing plans and actions geared towards it. To discharge this role SSACC has made it a Strategic target to forge partnership working with all the stakeholders and role players domestically and beyond our borders²³. At the top of these stakeholders is the private sector. SSACC acknowledges that the private sector can act as passive or active agents of corruption, or they can ensure healthy competition based on ethical criteria making them a determining factor in the pursuit of effective anti-corruption policies. With this in mind SSACC has actively engaged the private sector in an awareness creation programme as well as building their capacity to tackle corruption in their back yards. Moreover, SSACC has in the Bill introduced debarment and the liability of legal persons for acts of corruption. These measures are meant to instill integrity in the business community and enlisting it in the combat of corruption.

To compliment these measures SSACC is set to rejuvenate its engagement with the civil society. Fortunately, more and more entities are showing interest in the fight against corruption. Monitoring public transactions and naming and shaming is one of such area. It is no longer a business as usual for businesses to indulge in corruption, especially in public contracts. A new and keen eye is watching over.

As proceeds of corruption often find their way outside the country, South Sudan has been active in joining hands with its global partners in ridding corruption of its benefits and ensuring perpetrators of corruption have no safe haven to hide. On this note SSACC has been proactive in pursuing all avenues of cooperation at the international level. It extended and received assistance using different tools of cooperation. Chief among these is agency-to-agency cooperation, diplomatic channels and using regional and international networks²⁴. Recently, and through informal cooperation, South Sudan was able to freeze and later on through diplomatic channels retrieve about \$8 million.

Despite these success stories, SSACC is still far from utilizing the potential offered by the other avenues of cooperation. Bilateral and multilateral conventions and domestic mutual legal assistance legislation are but some of the instruments that SSACC needs to consider exploring.

X. EVALUATION AND RECOMMENDATIONS

By way of summary, it is fair to conclude that the criminal justice system in South Sudan still has a long distance to cover before achieving effectiveness in combating corruption. In the context of the current legal and institutional arrangements, corruption is hard to detect and punish. The mandate to combat corruption is scattered among a number of agencies with limited investigative and prosecutorial powers and is poorly equipped to effectively address corruption. Most importantly mechanisms to coordinate and streamline actions are either ineffective or, to put it mildly, not made use of. Each agency seems to be working in isolation from the others. This is true for SSACC, the Ministry of Justice, the Police as well as the Financial Intelligence Unit (FIU) and the rest of the agencies with the mandate to combat corruption in one way or the other. This fact has mutilated anti-corruption interventions.

To add salt to the injury, proper mechanisms in terms of legal and policy frameworks to cultivate and sustain public-private partnership on the one hand and between domestic and international partners on the other hand are still in their infancy stage. Corruption is continuously evolving and mutating, attacking

²³ South Sudan Strategy, 2010: Strategic Goal no 5, page 38.

²⁴ SSACC is an active member of IAACA EAAACA and its offspring, ARIN EA, just to mention a few examples.

every individual person, country or section of the community. Going after it alone without support and action from others makes it difficult if not impossible to bring under control. Sadly enough this seems to be how corruption is being tackled in South Sudan.

To overcome some of these challenges an overhaul of the criminal justice system in respect of the way it tackles corruption is strongly called for. Measures to consider include:

- Corruption methods are diverse and ever changing. It is therefore imperative to be innovative in the measures of addressing it. Fortunately, enough international good practices are there as guidance. In the context of South Sudan corruption is treated ordinarily. This has to change. It is time to acknowledge that corruption is a special crime with huge, devastating effect on different aspects of life. Legislative measures must be put in place to deal with all its manifestations, forms and effects. Corruption should not pay. Rather it should inflict harm on those who perpetrate it. With this in mind South Sudan should consider expanding the criminalization of corruption. New offences should be created to seal much if not all possible loopholes in the current legislation. Examples include criminalizing illicit enrichment.
- Make corruption easy to detect, investigate and prosecute. Measures that should be considered include relaxing the evidentiary threshold, giving the law enforcement agencies relevant powers to collect evidence and preserve the value of criminal assets. The current SSACC falls short of enabling the Commission to arrest suspects, seize evidence and present or make ex-party application with the view of preventing the suspect from dissipating assets if he or she catches wind or in one way or the other is alerted on investigations.
- Invest in capacity building for staff and institutions involved in combating corruption.
- Corruption touches everyone. Absolutely it affects all, individuals and sections of sections of the community. It is far reaching in devastation. International borders are no barrier to corruption. Joint and collective efforts internally and regionally are therefore vital if controlling corruption is something to go by. The current legal and policy framework in South Sudan fall short of robustly tackling corruption. National mutual legal assistance legislation, acceding to relevant regional and international instruments, and joining more anti-corruption networks domestically, regionally and internationally.

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²⁵ Laws mentioned herein are accessible at the South Sudan Ministry of Justice website.

CRIMINAL JUSTICE RESPONSE TO CORRUPTION IN THAILAND

*Silawan Panom**

I. INTRODUCTION

Corruption causes serious damage to the country in all aspects. Forms and methods of corruption are quite complicated and have both domestic and foreign connections as a result of advances in technology. Every country has struggled with the problem of corruption. Therefore, the cooperation of international organizations has formed for the purpose of taking serious action against corruption. The United Nations Convention Against Corruption 2003 (UNCAC) was born from the efforts of the international community that recognize the seriousness of the problem of corruption. The United Nations General Assembly is aware of the severity and danger of corruption, which has a huge impact on society and which is extremely dangerous for the stability and development of the country. UNCAC was adopted for that reason. The measures prescribed in UNCAC are expected to solve the problem of corruption effectively, in order to be an important mechanism in preventing and combating corruption and to set minimum standards as guidelines for countries to use as a framework for policy formulation, enactment, and to assist both the domestic and international levels.

II. THE UNITED NATIONS CONVENTION AGAINST CORRUPTION AND DOMESTIC ANTI-CORRUPTION LAW

Thailand is a state party of the United Nations Convention Against Corruption 2003 (UNCAC) and ratified the Convention on March 1, 2011, becoming effective on March 31, 2011. Currently, Thailand has amended the Organic Act on Counter Corruption B.E. 2558 (2015) in accordance with UNCAC on important issues, which is an international standard. In addition, the amendment is to provide effective mechanisms for preventing and combating corruption in both the public and private sector. Important amendments of the Organic Act on Counter Corruption are as follows:

A. The Periods of Prescription

The periods of prescription shall not run if the accused fled during the prosecution or court hearings, including when the defendant fled after the conviction of final judgement.¹ This amendment is not an extension of limitation periods in corruption cases, but it is the exception in case the offender escapes. The previous law had already provided this; however, the new law was amended to cover all stages in criminal proceedings such as procedures of fact finding, prosecution, court trial and after conviction.

B. Defining Offences for Legal Entities Associated with the Corrupt Officer

The new law provides for offences in such cases since entities are often beneficiaries of the bribes. The amended provision states that entities are guilty if their employees or agents bribe, whether Thai or foreign officials, and such kickbacks are made for the advantage of the company. In addition, entities without sufficient internal control measures to prevent bribery are punishable by appropriate monetary fines because a legal entity cannot be imprisoned.² Such penalty is a financial sanction through which the state is compensated for the damage by the return of the company's unlawful advantages to the state.

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¹Organic Act on Counter Corruption B.E. 2542 (1999), Section 74/1, as amended by the Organic Act on Counter Corruption B.E. 2558 (2015).

²Organic Act on Counter Corruption B.E. 2542 (1999), Section 123/5 paragraph 2, as amended by the Organic Act on Counter Corruption B.E. 2558 (2015).

C. Penalties for Bribery Offences

The new law defines imprisonment from five years to twenty years or life imprisonment, or capital punishment and fine of one hundred thousand to four hundred thousand baht in cases of Thai government officials, foreign government officials or officials of international organizations demanding, accepting or agreeing to accept any benefit.³ Nevertheless, the death penalty has already been imposed for such bribery offences under the Penal Code, Section 149.⁴ The current provision establishes additional offences, foreign government officials or officials of international organizations, and increasing fines.

D. Bribery Offences of Foreign Government Officials and International Organization Officials⁵

According to the amended law, foreign public officials or officials of international organizations are guilty if the official demands, accepts or agrees to accept for himself or another person property or any other benefit to perform or not to perform his mission, whether such exercise or non-exercise of his functions is wrongful or not, under the provisions of Section 123/2. The crime shall be punished as mentioned in the previous section. Another offence is Section 123/3: whoever, being a foreign public official or official of an international organization, exercises or does not exercise any of his functions in consideration of property or any other benefit which has been demanded, accepted or agreed to be accepted before being appointed as an official in such post. The crime shall be punished with imprisonment of five to twenty years or life imprisonment and a fine of one hundred thousand to four hundred thousand baht. These offences are established in accordance with UNCAC as well as to promote international cooperation in the prosecution of corruption under the Dual Criminality principle.

E. Value-Based Confiscation

Legislation has made forfeiture in corruption cases more efficient by covering the replacement property that has been acquired due to a distribution, supply, transfer, or conversion of property, including untraceable assets. The court can determine the value of the property and order the payment or forfeiture of other property equal in value.⁶

Thailand ratified UNCAC on March 1, 2011 and entered into force on March 31, 2011. Due to internal political problems, there were delays in the implementation of domestic law to comply with the obligations of the Convention. However, the government of Thailand made a serious attempt to resolve the problem in order to amend the legislation consistently with UNCAC.

II. INTELLIGENCE AND INVESTIGATION IN CORRUPTION CASES

A. Intelligence

Intelligence is very important in order to gain information related to corruption allegations and other serious crimes. Several kinds of covert investigation have been constituted to deal with severe crimes, for example, the Narcotic Control Act B.E. 2519 (1976) as amended B.E.2545 (2002). A special provision under Section 14 of the said Act authorizes competent officials to access information such as wiretapping. However, it must follow reason and necessity:

- (1) There is a reasonable ground to believe that a narcotics offence has been or will be committed;
- (2) There is a reasonable ground to believe that information will be received relating to the commission of a narcotics offence from the accessing of such information;

³Organic Act on Counter Corruption B.E. 2542 (1999), Section 123/2, as amended by the Organic Act on Counter Corruption B.E. 2558 (2015).

⁴Penal Code, B.E 2499 (1956), Section 149.

Whoever, being an official, member of the State Legislative Assembly, member of the Changed Assembly or member of the Municipal Assembly, wrongfully demands, accepts or agrees to accept for himself or the other person a property or any other benefit for exercising or not exercising any of his functions, whether such exercise or non-exercise of his functions is wrongful or not, shall be punished with imprisonment of five to twenty years or imprisonment for life, and fine of two thousand to forty thousand bath, or death.

⁵Organic Act on Counter Corruption B.E. 2542 (1999), Section 123/2 - 123/3, as amended by the Organic Act on Counter Corruption B.E. 2558 (2015).

⁶Organic Act on Counter Corruption B.E. 2542 (1999), Section 123/6 - 123/8, as amended by the Organic Act on Counter Corruption B.E. 2558 (2015).

- (3) May not be used when another procedure is more suitable or effective.

Although the Organic Act on Counter Corruption does not authorize such extraordinary powers, those who wish to provide information on corruption can notify directly the Office of the National Anti-Corruption Commission (NACC). Thailand has no whistle-blower protection law, but the informant is protected by the Organic Act on Counter Corruption. Taking a person as a witness, as defined in the said, Act is an effective instrument to encourage and strengthen anti-corruption. An alleged culprit or a person alleged to have committed an offence with state officials, may be taken for the purpose of being a witness. A person who was taken as a witness has to testify and to provide information or material of facts on the corruption offence. The witness statement will be used as evidence, whereby the adjudication will take place on the basis of such statement. If the NACC deems it advisable to take anyone as a witness, such person may not be prosecuted for the offence in accordance with rules, procedures and conditions considered by the NACC.⁷

One of the important measures under the Organic Act on Counter Corruption to strengthen corruption prevention and suppression is to protect an accuser, injured person, a witness, or a whistle-blower that provides any information on corruption offences or unusual wealth. In such cases, the NACC may provide measures to protect those persons. The NACC shall inform concerned agencies to provide measures to protect those individuals who are witnesses, and they shall be provided protection under the law of witness protection in criminal cases. Moreover, the alleged culprit or person alleged to have committed an offence with a state official as a witness may be taken for the purpose of being a witness. This is an effective instrument in suppression of corruption cases under this Act.⁸

The witness protection procedures are under the Witness Protection Act B.E. 2546 (2003). There are two types of witness protection: general measures⁹ and special measures.¹⁰ Both of these measures provide protection in cases where there is reason to suspect that the witness would be in danger, and potential harm exists from giving information to the authorities to prosecute offenders.

General measures are protection measures which may include arrangements for a safe place for a witness; change of name/family name, domicile, identification, and information that would reveal the identity of the witness as appropriate; and the personal status of the witness and nature of the criminal case. Special measures are as follows:

- (1) A new place of accommodation;
- (2) Daily living expenses for the witness or his/her dependents not exceeding 1 year, with extensions as necessary for 3 months each time, not exceeding 2 years;
- (3) Coordination with the relevant agencies in order to change the first name, family name and information that may contribute to knowledge of the personal identity of the witness, including arrangements for a return to original status;
- (4) Action to help the witness have his/her own career, and training, education and other means of proper living for his/her life;
- (5) Assistance or action on behalf of a witness for his/her lawful rights;
- (6) Arrangements for a bodyguard service for a necessary period of time;
- (7) Other actions to assist and support a witness with security as appropriate.

⁷Organic Act on Counter Corruption B.E. 2542 (1999) (As amended), Section 103/6.

⁸Organic Act on Counter Corruption B.E. 2542 (1999), Chapter 9/1, as amended by the Organic Act on Counter Corruption B.E. 2558 (2015).

⁹Witness Protection Act B.E. 2546 (2003), Section 6, Paragraph 3.

¹⁰ Witness Protection Act B.E. 2546 (2003), Section 10.

B. Investigation

Besides wiretapping, another effective measure is an undercover operation to obtain information about the offence. NACC can arrest persons who committed offences relating to the submission of bids for government agencies. If hearing this evidence is helpful to do justice in a situation that might cause harm to the rights of the people, the court is able to hear such evidence according to the Criminal Procedure Code (this issue will be discussed in the prosecution section).

Basically, the period to investigate corruption cases depends on the complexity of the case. The problems in fact-finding procedure are a long period of time in each step of fact inquiry. Every procedure in NACC fact inquiry regards the rights of the alleged person, which is the essence of the Constitution of the Kingdom of Thailand. Therefore, fact inquiry would be conducted strictly according to the procedure.

III. LITIGATION PROCESS OF CORRUPTION CASES

A. Prosecution

Thailand's major agencies for preventing and combating corruption are the National Anti-Corruption Commission (NACC) and the Public Sector Anti-Corruption Commission (PACC). This paper will mention corruption cases investigated by NACC. When receiving reports from the NACC, the prosecutor will consider whether or not the accused has committed an offence as defined in the Organic Act on Counter Corruption. However, NACC has power to initiate the prosecution on its own motion. It can be said that both the Prosecutor-General and the NACC Commission has power to prosecute corruption cases.

Thai Criminal Procedure does not define the type of acceptable evidence or evidence that is prohibited to bring to the trial. As for the principle of legal evidence, all kinds of evidence, whether physical evidence, documentary evidence, witnesses, or expert witnesses, which can affirm that the defendant is guilty or innocent, can be cited as evidence unless prohibited by law.¹¹ One important provision is the Exclusionary Rule: any evidence that occurs correctly but is obtained wrongfully, or provided by the information made or received illegally, shall be excluded from the trial, unless the acceptance of evidence is beneficial to justice rather than a disadvantage affecting the criminal justice system or fundamental human rights.¹² This article is on the basis of two important public interests: the protection of rights and freedoms of citizens (Due Process). The purpose is to maintain peace and order in society (Crime Control), so these are exceptions to hearing evidence obtained illegally.

Standards of prosecution for public prosecutors are in Section 143 of Criminal Procedure Code.¹³ The prosecutor's decision to prosecute or not does not prove the guilt of the accused. This is the stage of investigation and there is sufficient evidence to prove guilt in court. The accused is guilty as charged or not guilty as determined by the court. The law does not require a prosecutor to file a case when considering that the accused is guilty or not guilty.

About the prosecution rate for corruption cases, with regard to statistics for suppression of corruption of NACC in the years 2007 - 2014, the total number of cases that have been conducted is 34,528 cases, and the number of cases completed is 25,012 cases. These cases include allegations which do not establish *prima facie* cases and cases that are filed with the public prosecutor. Additionally, cases at the Supreme Court's Criminal Division for Holders of Political Positions decided during the years 2007 - 2014, that were announced in the Royal Gazette are as follows:

- (1) offences of corruption, malfeasance in office or malfeasance in judicial office; 7 cases

¹¹ Criminal Procedure Code B.E. 2477 (1934) (As Amended), Section 226.

¹² Criminal Procedure Code B.E. 2477 (1934) (As Amended), Section 226/1 Paragraph 1.

¹³ Criminal Procedure Code B.E. 2477 (1934) (As Amended), Section 143.

(1) In the case where the non-prosecution opinion has been rendered and the public prosecutor agrees with such opinion, he shall issue the non-prosecution order, but in the case where the public prosecutor disagrees with such opinion, he shall issue the prosecution order and inform the inquiry official to take the alleged offender to be prosecuted.

(2) In the case where the prosecution opinion has been rendered and the public prosecutor agrees with such opinion, he shall issue the prosecution order and bring the case against the alleged offender to the court, but in the case where the public prosecutor disagrees with such opinion, he shall issue the non-prosecution order.

- (2) offences relating to submission of an account showing particulars of assets and liabilities; 54 cases
- (3) request for the property to devolve on the State; 2 cases

Although Thailand has no provision about plea bargaining, Thai courts have used plea bargaining for a long period of time, for example, a plea-bargained confession about the penalty, as stated in Section 78¹⁴ of the Penal Code and Section 176¹⁵ of the Criminal Procedure Code.

B. Trial Procedure

Criminal Prosecution in Thailand involves both an inquisitorial and adversary system. Inquiry officers¹⁶ and prosecutors¹⁷ seek evidence under the inquisitorial system, whereas Thai Court procedure is based on the adversary system. On the contrary, corruption trials in the Supreme Court's Criminal Division for Holders of Political Positions and the Criminal Court are based on the inquisitorial system, where the judge questions witnesses by themselves unlike at a general trial.

The estimated duration of adjudicating corruption cases in court does not take long due to the continuing trial. The delays in the proceedings of corruption cases is in the process of the initiating agencies. There are a very large number of cases, and the complexity of each case is different. The countermeasure addressing this problem are planning to investigate and collect the evidence effectively, and administrative systems must be concise in order to shorten the time.

The standard of proof for conviction is beyond a reasonable doubt, which assures justice for the defendant, according to the principles and provisions of the law as discussed above in.

IV. OTHER GOOD PRACTICES AND PROBLEMS

One of the significant cases concerning international cooperation in the prosecution of a major corruption case by the NACC is the former governor of the Tourism Authority of Thailand (TAT). The case began in the United States, involving investigation by the Federal Bureau of Investigation (FBI) and prosecution under the US Foreign Corrupt Practices Act against Mr. Gerald and Mrs. Patricia Green on charges of giving bribes to Mrs. Juthamas Siriwan, former governor of TAT, in order to obtain the right to organize the Bangkok Film Festival. Green was sentenced by the US Court for six months' imprisonment and house arrest for another six months and was required to pay restitution of US\$ 250,000. Mrs. Juthamas Siriwan and her daughter are currently being prosecuted by the courts of the two countries. The achievement of this case is collaboration between the USA and Thailand on the details and information of the case.

¹⁴ Penal Code, B.E. 2499 (1956), Section 78.

Whenever it appears that there exists an extenuating circumstance, whether or not there be an increase or reduction of the punishment according to the provisions of this Code or the other law, the Court may, if it is suitable, reduce the punishment to be inflicted on the offender by not more than one-half.

Extenuating circumstances may include lack of intelligence, serious distress, previous good conduct, the repentance and the efforts made by the offender to minimize the injurious consequence of the offence, voluntary surrender to an official, the information given or the Court for the benefit of the trial, or the other circumstance which the Court considers to be of similar nature.

¹⁵ Criminal Procedure Code B.E. 2477 (1934) (As Amended), Section 176.

In the trial of a case, if the accused pleads guilty to the charge, the Court may give judgment without taking any further evidence, provided that if the minimum punishment in the case where the accused pleads guilty to the charge is imprisonment from five years upwards or heavier, the Court must hear the witness for the prosecution until it is satisfied that the accused is guilty.

In the case of several accused, and only some accused have pleaded guilty to the charge, the Court may, if it thinks fit, dispose of the case for those who refuse guilt in order that the prosecutor may institute the prosecution against such accused as another case within the period fixed by the Court.

¹⁶ Criminal Procedure Code B.E. 2477 (1934) (As Amended), Section 131.

The inquiry official shall gather all types of evidence as possible in order to know the facts and other circumstances concerning the offence alleged, and to find out who the offender is and prove his guilt or innocence.

¹⁷ Criminal Procedure Code B.E. 2477 (1934) (As Amended), Section 143 (n. 4).

V. EVALUATION AND RECOMMENDATIONS

The justice system to prosecute corruption in Thailand within the existing domestic legislation and amended law according to UNCAC has strengthened measures to combat corruption that will have a positive impact on the prosecution of corruption cases, which are complex and pose difficulties for the acquisition of evidence. Witnesses and co-perpetrators can provide information on corruption with confidence that they will be protected. However, for the protection of the informant in good faith, criminal penalties should be imposed, as well as civil remedies, for those who retaliate against witnesses or informants.

VI. CONCLUSION

Preventing and combating corruption requires effective legal provisions. Special measures as well as the new provisions of the Organic Act on Counter Corruption comply with UNCAC. These measures and procedures not only enhance the work of investigation and inspection of corruption cases, but also are directly beneficial to those who took part in the anti-corruption efforts. Especially at present, corruption is taking place within the country, and it is a transnational crisis that has affected the world community. Therefore, the major key to achieving successful outcomes in the fight against corruption is effective legislation and cooperation at the country and international levels.

EFFECTIVE ANTI-CORRUPTION ENFORCEMENT AND PUBLIC-PRIVATE AND INTERNATIONAL COOPERATION

*Ulugbek Melisovich Usmanov**

I. UNCAC

Corruption is a major systematic problem and a characteristic not only for some localities in Uzbekistan but also for most countries of the world. In this regard a high priority in recent years, set at the state level in Uzbekistan, was the fight against corruption. The concept of corruption is determined by the Law “On Combating Corruption”, under which it is an abuse of power, bribery, bribe-taking, commercial bribery or other illegal use of a natural person of his official position contrary to the legitimate interests of society and the state in order to obtain benefits in the form of money, valuables, other property or property-related services, other property rights for themselves or for third parties or the illegal provision of such benefits specified person by other individuals, as well as the commission of these acts on behalf of or for the benefit of a legal person. Uzbekistan has joined and signed the UN Declaration of “Implementation of the UN Convention against Corruption”, and now we are doing our best to adopt implementing legislation in the Republic of Uzbekistan. For this reason, Uzbek authorities teach students and schoolchildren about corruption and how we can combat it. In that way seminars have been organized, such as a seminar at the University of World Economy and Diplomacy. A lot of doctoral students and undergraduates attended it. The seminar, which took place on 20 June 2015, was attended by senior officials of the General Prosecutor of the Republic of Uzbekistan.

What is important to understand is that anti-corruption measures should work and protect not only business but also the ordinary people’s interests. For example, Uzbekistan has implemented measures to establish legal guarantees of the rule of law, ensuring the rights and freedoms of citizens during searches and seizures. In particular, this is due to the adoption of the Law “On operative-search activity”, which came into force on 25 December 2013. The law regulates the proper implementation on the territory of Uzbekistan of search operations and the admissibility in court of evidence gathered by such methods that comply with the provisions of the UN Convention against Corruption. Other measures have implemented important changes in the structure of the prosecution to ensure the improvement of mechanisms for the development and coordination of comprehensive measures to combat corruption, and monitoring and supervision of their implementation should be done. In the structure of the General Prosecutor’s Office of Uzbekistan, the General Directorate for Supervision of compliance with legislation was created. The reason is the presidential decree “On measures to further improve the enforcement of the law” on 24 July 2014.

Still, it is important to understand that in order to operate in different states and jurisdictions it is necessary for businesses to familiarize themselves with the laws, traditions and customs of the place they want to operate in. Some aspects and norms might be traditionally and legally welcomed or even common practice in one country; however, at the same time it might be absolutely unacceptable or even considered as illegal in another one. In my opinion, regulations against bribery or corruption are a perfect example. For instance, both Canada and Australia are well known for very specific anti-bribery laws; at the same time, it is difficult to compare them with Uzbekistan and those countries having the same traditions, so it would be better to compare a country having similar traditions as Uzbekistan.

On September 26, 2014, Uzbekistan adopted a law “On social partnership”, which allows us to develop measures to improve the methods and mechanisms of cooperation between state institutions and public organizations. On May 5, 2014, Uzbekistan adopted a law “On the openness of state power and administration.” The law aims to ensure access of individuals and legal persons to information about the activities of state authorities, increasing the responsibility of state authorities and their officials for their decisions. In

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addition to government authorities, the requirements of openness were also extended to companies. On July 2, 2014, a decree was issued by the Cabinet of Ministers "On measures to further improve the system of corporate governance in joint stock companies", according to which the companies were required to list certain types of information on their corporate websites. On 3 December 2014, a new law was adopted "On the complaints of physical and legal entities", which recognized the possibility of appeals of citizens and legal persons to public authorities in electronic form. The electronic message must be in the form of an electronic document, confirmed by a digital signature and having other details of the electronic document, allowing him to be identified. The adopted rules established a mandatory requirement to disclose information on public expenditures. For these purposes, on January 1, 2014 the Budget Code of the Republic of Uzbekistan came into force. It was adopted in order to improve budget legislation to ensure transparency and the budget process. On April 15, 2014 a decree of the President of the Republic of Uzbekistan "On measures to further improve the procedures relating to business activities and the provision of public services" was issued, providing measures to further simplify and reduce the cost of licensing arrangements and issuing permits, and providing greater freedom of entrepreneurship. Pursuant to the decision of the President of the Republic of Uzbekistan "On approval of the development plans of the legal and other measures aimed at implementing the reference rules law", providing replenishment laws 136 reference rules and thus eliminating "white spots" and gaps in the legal framework. As of December 2014, 48 legal acts were accepted. In order to improve the regulatory and legal framework for combating corruption, measures aimed at simplifying regulation, were adopted in various sectors, particularly banking, tourism, etc. The new measures also provide for the development of a law "On administrative procedures".

Uzbekistan is on the way to adopting almost all of the UNCAC statements; however, there are still difficulties, for instance, absence of international experience. That means almost all responsible institutions like the Ministry of Internal Affairs, the General Prosecutor's Department, the Institute of Judges and others have theoretical material and reports; however, we do not have much practical experience, which very often makes it hard to identify corruption schemes or groups of people. It is not that difficult to identify social corruption; however, when we speak about huge companies, investigations become difficult. Uzbekistan has adopted almost all of the resolutions of UNCAC, but some of the problems Uzbekistan faces are corrupted and non-interested people in some governmental institutions, who are not ready to lose their bribes and connections, making their lives easier and richer.

II. INTELLIGENCE

Meanwhile, legislative, administrative and other measures should be done in terms of attracting state and municipal employees, as well as citizens to participate more actively in the fight against corruption, which will result in the formation of negative public attitudes towards corrupt behaviour. What needs to be done now in Uzbekistan should be strengthening the creation and improvement of the system and the structure of mechanisms of public control over their activities; it is important, especially in the beginning not just to proclaim the laws, but control their functionality. Many people suppose that government has all sources to realize all anti-corruption institutions and authorities could affect everything. I am afraid, I do not completely agree with that statement, as those people forget that government's main resource is the people, individuals like you and me. Many years ago there was a motto used by some countries: "Ask not what your country can do for you, ask what you can do for your country!" Time changes and I assume that now we have to ask ourselves: "What can we all do for our state?" Here one of the important steps could be the introduction of anti-corruption standards, and the example of Japan and its standards could be used. A unified system of prohibitions, restrictions and permissions should be established to ensure the prevention of corruption in this area works and satisfies the interests of people from different backgrounds, whether they are farmers, factory or council workers or military servants. Another true fact is that each member of the society and community should know his or her role in the cooperation. We have to understand clearly that one of the priorities should be unification of the law of state and municipal employees, persons holding public positions in all institutions of the Republic of Uzbekistan must understand equality in front of the law, and once people see that it works, they will work harder for the interest of the whole nation. People should see that "shadow" times have passed and governmental officers work, serving and protecting people's ideas, providing access to information on the activities of the bodies of state power and local authorities.

Showing my own experience in fighting corruption, I used to divide corruption investigations into two

parts: investigating past corruption offences and investigating current corruption offences.

A. Investigating Past Offences

The investigation of past offences usually commences with a report of corruption and the normal criminal investigation technique. A lot of things will depend on the data given by the informant and from other sources; the case should be improved and designed to obtain direct, corroborative and undoubted evidence. The successful ending of such investigation is on the meticulous approach taken and made by the investigators, detectives and prosecution department on time and coordinately to make sure that nothing has been missed; otherwise, judges will not accept the evidence and the case will fail. The specific spheres in my practice sometimes could include detailed checking of the suspicious or doubted bank accounts and company activities, collecting information from different sources to corroborate any similarities or corrupt transactions and so forth.

B. Investigating Current or Present Corruption Cases

Such investigation will be able to provide a better and greater scope for ingenuity. Besides the conventional methods noted above, an active strategy should be preferred more often, with a view to get and catch the corrupted individual or corporation. Surveillance and telephone intercepts should be conducted against the suspects and suspicious meetings should be monitored. Some special cooperative parties can be established to set up meetings with a view to entrap, i.e., conduct sting operations against, the suspects. Undercover operations can also be used for having more detailed information, infiltrating a corruption syndicate. The prerequisites to all these proactive investigation methods are professional training, adequate operational support and comprehensive supervisory systems to ensure that they are effective and in compliance with the rules of evidence. These methods are widely used in Uzbekistan.

Working in the MIA against corruption, our department understood that the investigating officers must not know the offender, or have any contact with offender's side. That is the key moment, otherwise a conflict of interest appears, and sometimes it involves investigators becoming a part of the corruption. In the Republic of Uzbekistan, there is a judicial directive to allow a reduction of two thirds of the sentence of those corrupted individuals who are ready to provide full information to the General Prosecutor's Office, or any related institution if the person provides evidence against the accomplices in court. The MIA provides special facilities to enable such "resident informants" to be detained in MIA's premises for the purpose of debriefing and protection.

C. Witness Protection Measures in Uzbekistan

MIA has experienced cases where crucial witnesses were found and information about them came into the hands of the wrong people, with two even murdered, before giving their evidence. There should be a comprehensive and modern system to protect crucial witnesses, including 24-hour armed protection, safe housing, new passports with the new identities and details and, of course, relocation to another city or even country. Some of these measures require legislative backing. Unfortunately, we do not have special laws for protecting informants; however, on the ministry level we use some measures to protect our witnesses and provide protection to their families, including armed security during the trial period. Sometimes they are taken to secret protected places. But it should be clearly understood that this requires financial support. The police themselves cannot provide a wide spectra of protective measures. Government has to provide more funds for the secret apartments and houses, increasing the payment to the marshal's department of the MIA, so, they would not be interested in selling information to third parties, but would be interested in their job and duty. Those officers must receive sufficient salaries in order to serve the interests of Uzbekistan. The question I always hear is: "Where are we supposed to take money for these measures?" And the answer is very simply from the syndicates; if we arrest corrupted accounts and illegal operations where money is involved, that means we can use their money and funds against them. The most important thing is to provide the General Prosecutor's Office and Judges with three important things: 1. independence, 2. financial support and 3. power. These measures are not yet used in Uzbekistan; however, our government is trying to increase salaries of judges, and moreover, unlike 20 years ago, nowadays it is becoming a very important and respected profession. The candidates for prosecutor or judge positions have a tough selection procedure. Those judges provide police and investigators with more authority in investigations and some operative measures against corrupted organizations or individuals.

III. INVESTIGATION

The undercover investigation allows us to enter almost any organization or syndicate, so there we meet other people and work with those whom we find to be reliable people, those who can provide us with valuable information or introduce us to other important people who can provide us with information or evidence of crime or corruption. Usually we have an action plan or strategic planning as it is called. There should be agents involved, those who are familiar with the sphere we investigate, or, as they can also be called, independent specialists. Police officers and investigators might not always be familiar with the financial world, know jargon of bankers or how to deal on the hedge funds and stock exchanges. Thus help and advice of those professionals sometimes is important. Sometimes we offer types of deals to the people already imprisoned so they can assist us with solving the crime or finding the evidence of crime. When the operation begins, we identify people working on the project; we never know what case each of us is working on. There is a limited number of people having access to the cases. We start with phone call recordings, mails, and emails, and we try to find out everything about the organization, identify whether people of the company use specific slang or jargon; if they do, then we try to translate their codes and phrases. For that we have special agents. We try to get as much evidence as we can, including photo and video materials, providing the proof of guilt. The use of non-consensual pen registers and trap-and-trace equipment in an investigation is something we have to do, due to the limited value of the information provided. Moreover, because trap-and-trace devices request mostly telephone and mobile company assistance and help, all measures and software programmes used during the trace period should use special language limiting; at the same time we have to analyse and choose some specific time frames, we have to prepare our specialists for the work, sometimes it can happen after working hours and of course we have to be concentrated. That also becomes complicated when the offender changes the mobile phone and buys a sim card under a different person's name. Because we do not have advanced voice recognition technologies it becomes pretty difficult to get the data.

Email research and analysis involves recording information contained on the outside of emails for instance, something saved on the hard drive or transportable memory cards. We used to have some Trojan viruses which we have sent via email and after opening it we could have access to the whole computer. However, technological developments and safety regulations, including the antivirus market has expanded and that costs a lot of money for such Trojan projects.

We also investigate the correspondence coming through post offices. This investigative type has proved invaluable in search of the flow of money in many different types of fraud and cheating investigations. However, one problem appears when with working with mail: all the mail is registered by clerks working for the post office and the willingness of those clerks sometimes is really low, because, as practice shows they could also be involved in corruption. They do not understand why they should cooperate with the Prosecutor's Office or the police. They have their benefits given to them by the offender, and they are happy to receive them. They understand that their future depends on the offender. Moreover, sometimes they are just afraid that they can also be imprisoned; thus, they continue their activity unwillingly. So, in such a way we have to provide them with the written guarantees of safety. This practice is not working in Uzbekistan. We used to have oral promises, but the clerks understand that after some period of time the investigator or officer can be changed, which means the guarantees will not be in force any longer. So, they do not cooperate. In such a way we have to find a person or undercover detective to work as a clerk at the office. We faced problems that even though we try to do our best, offenders find out about the undercover officer, and in that case they may either provide us with the wrong information, or just stop their activity temporarily.

There are also difficulties and complications that appear, especially when we have to deal with off-shore companies. It is almost impossible to get any information from those jurisdictions about Uzbekistan account holders. So, up to now we do not know how to get information for instance from Seychelles, Lichtenstein, Luxemburg or Panama. Our Ministry of Foreign Affairs tries to deal with the governments of those jurisdictions, but most times that is unsuccessful, and the procedure takes time, which is valuable in investigations. That means we do not get the desired result, and already waste time, which affects the general investigation process period. Once we understood that many states are not willing to help us, we have decided to control our internal situation, so, nowadays, banks in Uzbekistan restrict sending more than US\$5,000 a month for individuals and controls operations of huge companies. Many human rights or-

ganizations say that we restrict the freedom of the citizens, which is not true, because, we help our citizens and the country itself, we secure our national interests, and so that means we protect our Constitution.

After data is collected we provide it to the General Prosecutor's Office, and they decide whether or not that information is enough to open a case. If it is enough, they inform the offenders about the case. If not, then we either continue collecting information or stop the investigation, until we are sure again that something suspicious has happened in the company or organization.

The investigations, depending on the difficulty and people involved in the corruption, can last from 3 months and sometimes up to 12 months. But that strictly depends on the evidence we have and the progress of the work. If we meet some small corruption case, and we cannot find any evidence of it within a month, then most likely the Prosecutor's Office will not provide us permission to continue the operation, because we spend much more for the investigation itself, rather than a benefit we can provide to the society. Another thing we should always remember is that we do not spend our own pocket money for all the measures, but rather tax payers' money.

Some of the most persuasive and undoubted evidence for the court and prosecutor in a public corruption case is where it has been proved that the person or any official representative received financial benefits from the offender, so in that case the person becomes an accomplice of the offender. To find this we have special access to the officials and their family members' accounts. If they received sufficiently huge amounts, if we find out that they are buying luxuries, or if they send their children to study at very expensive universities and pay for it on their own, then of course, our conspirators or agents could have reasonable questions. And of course, in most cases those officials cannot explain where they got the money from, which becomes evidence for the trial process.

Surely, we carefully chose the methods and the strategies of proving receipt of unlawfully earned funds including specific items. When that comes to the trial process and when the authorities have a witness who will prove that he or she provided, paid or gave bribes to a public official in the name of a third party — some kind of a middleman, or the person has paid the bribes directly to the person working at the governmental office, so called bribe-paying businessman, this fact we used to call "specific item", which is evidence which will make the person pay a tax charge. Sometimes we use different methods by the way of specific schemes of proof such as net worth, total spending, tax declarations, and bank details that show whether the exact amount of taxes was used and whether it requires tax declaration. But sometimes, we have to investigate people close to the offender. For instance, a person who is suspected to be a bribe-taker has a wife, who is actually a housewife, and suddenly we find out that his wife earns a salary from the company she has never worked at. And the salary is US\$7,000-8,000, plus bonuses; of course we do understand that people are not paid that much money for clerical positions. So in that case we have a lot of questions for both husband and wife.

The most difficult situations happen when the witnesses change their opinions or do not want to speak in the court. Then we understand that there was psychological pressure on the witness or their families on behalf of offender's side.

IV. PROSECUTION

In Uzbekistan, after we gather all the required information it is passed then to the prosecutor's department. From the beginning, we have tried to provide our prosecutors as much autonomous status as possible. These reforms and innovations have created and established an autonomous and strong office of public prosecutors, set up legal assistance services, and a new code of penal procedures, replacing an old Soviet system with an adversarial system. The General Prosecutor's Office (GPO) is the independent department in terms of investigating and prosecuting any unlawful and criminal activities, including corruption and bribery. Its leader is the General Prosecutor, who is chosen by the President of the Republic of Uzbekistan and confirmed by the Parliament of the Republic of Uzbekistan. A special department in the GPO deals with corruption.

The Anti-Corruption GPO department has specially trained employees who are working in two areas:

legal and banking; accounting and financial analysis. Those officers provide information and their analyses to the General Prosecutor on whether they believe a case should be started or not. There are different factors that play roles in their decision, one of them being press. Mass media nowadays plays a crucial role in our society, and some reporters do their own investigations, which allow the public to be informed of and interested in cases. And of course, that makes the GPO pay attention to those mass media investigations and react properly. They must be very careful, because if the article presents just the author's opinion and does not have any evidential support, then the author of the article will have serious problems at court. The GPO experts provide the GP with the structural analysis of the most difficult corruption cases and provide advice. The principal crimes related to corruption are described and explained in the Criminal Code, such as embezzlement, misappropriation and using of public funds in an inappropriate way, bribe taking and giving to/by national or international public officials and governmental officers, abuse of functions, and illicit enrichment. There are different measures for corruption which were written in the Criminal Code of Uzbekistan, and after UNCAC was ratified the General Prosecutor has a direct President's Order to create measures to address the corruption in all spheres of everyday life. Those penalties include imprisonment, disqualification from the office and government positions with penalties. Additionally, if the accused has no strong violations of laws or convictions, he or she will usually be given a second chance, but will be an object of tests and research.

Uzbekistan has shown a stable progressive way in fighting corruption, so in such a way we have decreased the general level of corruption from the general percentage of 35% to 20%; however, we do understand that it is not enough, and we will have to train our investigators by exposing them to international experience in anti-corruption measures. This can be done thanks to seminars such as JICA's programmes. The corruption rate has remained steady for the past 15 years. A criminal investigation procedure provides for the GPO to open the case and organize the investigation and after that the GP is provided with a maximum period of two years to find the evidence of the crime. However, that period can be shortened by the judge taking into consideration the complexity and difficulty of the case. Before the investigation is declared, prosecutors, trained staff and other GP officers must take into consideration all the complex issues during the case.

Some samples during anti-corruption cases include standard practices such as creating and proclaiming a special structure for the investigation. In that case, prosecutors sometimes cooperate with police officers and investigators; however, sometimes it seems that there is an absence of coordination that feels like there is an absence of trust between the forces. Investigations are very simplified sometimes by the ready access to a great range and accessibility of property, tax and other related on- and off-line services. Unfortunately, very often it becomes that the offenders have more developed technological support than the MIA, and in that case we have to work very carefully together with the GPO.

The GPO can also sanction an operation including work with embassies and consulates of the Republic of Uzbekistan abroad. The legislation of Uzbekistan also provides witnesses with guaranteed protection, search and seizure, and taking witness testimony in Uzbekistan. Even though those laws are not that perfect and strong, still we try to develop them, and as it has been stated before, there are some measures taken by the MIA in those cases. I am not familiar with the GPO's immunity process and deals with informants, but as far as I know we have some measures to provide immunity. However, it is known that the witness should provide a really valuable piece of information to have a deal.

The GPO will also need the Court's support in cases where access to top secret administrative or office information is needed or when such a request has been denied by the responsible authority, and if bugging or wiretapping in certain cases are required. Undercover officers or investigators and controlled deliveries could work without authorization in corruption cases; however, these procedures are allowed and authorizations are more easily obtained in drug-related crimes and money-laundering cases.

V. TRIAL PROCEDURE

When it comes to the trial of a corruption case, government attorneys have to be careful about their decision-making process of the penalty, charging, trial tactics, and the opportunities for the defence of the defendant.

Within the period of time of the investigation of public corruption, GPs and investigators will have to make many charging decisions. Especially they will have to identify who will be in charge, how it will happen, how much will be charged and the period of when the charge should be enforced.

During the trial process the conviction percentage of corruption nowadays is about 20% out of the general percentage of cases. Within the process period, the witness is under the protection of the MIA. All the evidence is carefully kept and there is a special process of numeration and listing them. If that has not been done in an appropriate way, the court would not accept them.

When the offender is arrested the arresting investigator reads the rights to the offender. Usually, before the trial starts the GP looks through all the evidence and when it is clear that the case can be built up, he or she starts the case. During the trial all the evidence is shown and the witnesses provide their testimony. Taking into consideration all the investigatory aspects, we could call the system an inquisitorial one. Depending on the complexity of the case, the trial process can run from two months up to six months; sometimes new evidence appears, which can affect the whole case.

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GROUP 1

EFFECTIVE ANTI-CORRUPTION MEASURES

Chairperson	Mr. KUSHIMOV Nurkhat	(Kazakhstan)
Co-Chairperson	Mr. MARUYAMA Jun	(Japan)
Co-Chairperson	Ms. DIOMANDE Nanan Assiata	(Côte d'Ivoire)
Rapporteur	Mr. Mahmoud Hassan BAKRY	(Egypt)
Co-Rapporteur	Mr. Edwin Ocharo RIOBA	(Kenya)
Co-Rapporteur	Ms. Silawan PANOM	(Thailand)
Members	Mr. Md Manzur MORSHED (Bangladesh)	
	Mr. Tulsi Ram ARYAL	(Nepal)
	Mr. USMANOV Ulugbek Melisovich	(Uzbekistan)
	Mr. HONDA Shuichi	(Japan)
Advisor	Prof. HIROSE Yusuke	(UNAFEI)

I. INTRODUCTION

Group 1 started its discussion on 30 October 2015. The group elected Mr. KUSHIMOV as chairperson and both Mr. MARUYAMA and Ms. DIOMANDE as co-chairpersons while Mr. BAKRY was the rapporteur and both Ms. PANOM and Mr. RIOBA acted as co-chairpersons. The group chose effective anti-corruption measures and the way to prevent corruption from the point of view of law enforcement bodies as subjects to discuss, and divided the discussion into subtopics (generating leads, investigation, prosecution, trial, prevention).

II. GENERATING LEADS

We discussed the subject of generating leads, and we agree there are similar measures to generate leads in our respective countries like complaints, informants, confession, whistle-blowers, surveillance, mass media, and information derived from investigations of other cases.

According to our experience, we found that there are some problems in generating leads. For example, some related to culture, the lack of awareness among the public (they do not know their rights and duties) and they are afraid of pressure from authorities and have poor education. They are afraid to be witnesses because of the possibility of threats to their security. There is a lack of trust between people and authorities in most developing countries, and they are afraid of becoming victims. As we mentioned above, since there is a high ratio of uneducated people some do not know how to access authorities or make complaints.

Additionally, there are some other problems related to the system that corruption crimes are characterized to be secret crimes, meaning there is no victim and the criminals are powerful and have high influence on others. They can hide any clues that would generate leads to discover their corrupt acts. Unfortunately, the law enforcement bodies that are established to fight these crimes suffer from low levels of professionalism. In addition to that, investigation of these crimes and trial procedures take a long time. Sometimes politicians interfere in those investigations and trials using different means.

We recommended some measures to solve these problems starting from building awareness by holding conferences among the public (students, private and public sectors, etc.) that corruption badly affects their economic, political and social lives. We have to keep the identity of the informers and witnesses secret to ensure their security so that they are not afraid of making complaints. Paying the informers to obtain information is a good measure to generate leads, but we agreed that payment should be made after the conviction, and it has to be publicized to encourage others to inform without mentioning names and putting certain criteria about the amount of money that should be paid to the informers. Establishing Whistle-blower Protection Laws will be useful to encourage informers; a legal status can be given to the whistle-blower that will offer to him physical protection and stability in work, and this legal status will be given to the employee upon the request of the investigator to the prosecutor or the judge, but if a dispute happens

between the employer and the employee (whistle-blower), and the employee claims that the employer breached the law, this dispute will go first to the labour committee and any party can appeal the decision of this committee to courts while the burden of proof will be on the employer. If the employer is found liable, the employer will face criminal and civil charges. Another way to encourage complaints and informants is to accept anonymous complaints or informants, but they must be detailed and must be reviewed carefully.

III. INVESTIGATIVE MEASURES: EFFICIENCY, ADEQUACY, AND PROPORTIONALITY

A. Problems in Investigation

All participants agreed that there are several problems in investigation such as bank secrecy and private sector secrecy. This is because banks and financial institutions always claim that they have a duty to protect the information of their client.

The next problem is limitation of undercover measures. Some countries have some limitations on undercover operation such as Egypt, where recording is only allowed in public areas. In Japan, wiretapping is only allowed in the investigation of organized crime cases.

Other problems include limited numbers of investigators and financial resources and difficulties in accessing or gaining information such as telephone logs and delay of receiving information from experts. It was also mentioned that in some countries there is a problem of limited jurisdiction; for example, the investigation agency cannot investigate the private sector.

B. Points of View in Group Work Discussion

During the discussion, the Group considered the necessity of issues such as collecting crucial evidence, shortening the period before prosecution and the protection of human rights.

C. Recommendations

1. Sting Operations

One of the effective measures to deal with corruption cases is the sting operation. This is an undercover measure where the investigator acts as if he is a part of the crime, aiming to set up the corrupted criminal. This strategy is controversial due to concerns that it may be used for entrapment. The group agreed that investigation in corruption cases by using sting operations is useful under certain criteria, for example, in bribery cases. However, this operation should be conducted under the supervision of a judge to prevent abuse of power. This measure should be used in exceptional circumstances when there is no other effective overt investigation to gain information and evidence.

2. Integrity Tests

Another effective measure is integrity testing. In this operation an undercover officer makes a random visit to the government department in search for services and observes the officers for indications of corrupt activity where there are repeated allegations of corruption in a government department.

This test should be applied to public offices only under the authority of a judicial warrant. Some participants mentioned that there should be no need of warrants because of the high ethical requirements for public officials, and the public officials should be required to sign a waiver accepting that such test may be conducted before becoming a public official. Some participants stated that this test should be used for administrative penalty.

3. Deterrent Punishment for Delaying of Expert Reports

If experts delay their reports, they should be punished.

4. Deposition

Questioning the witness in the presence of the defence and prosecutor and investigator about his statement. Following the deposition, all of the aforementioned parties should sign a document indicating they do not have any other questions for the witness. This aims to protect the witnesses and prevent wasting their time.

5. Online Interrogation

When witnesses are far from the investigation office or have difficulties coming to the office, investigators should use this measure to interrogate the witnesses.

6. Specialized Investigators

Investigators who specialize only in corruption cases.

7. Expedited Investigations with Safeguards

After the accused accepts his or her guilt, investigators do not have to investigate the criminal cases completely before prosecution. Some participants are against using this measure because it is difficult to find whether or not the person who confessed is a scapegoat.

8. Plea Bargaining

The aim of plea bargaining is to make the investigation process faster and to collect leads and other information.

IV. PROSECUTION

Members expressed concern over prosecution of corruption cases, saying that the main problem was political interference. Some members explained that the minister of justice influenced the prosecution of corrupt public officers.

Some of the members explained that the prosecutors in their countries were independent and their recommendations were not influenced by political considerations.

Members discussed the challenges and proposed the following:

- I. Creation of strict guidelines to prosecute corruption matters. However, some members raised concerns that strict guidelines would affect the discretion of the prosecutor.
- II. Members also recommended that the prosecutor should publicize the reasons in cases where he has elected not to prosecute,
- III. Some of the members also proposed that there should be an avenue for affected persons to challenge the decision of a prosecutor in cases where he has declined to prosecute.

V. TRIAL

The group noted that some countries had adversarial systems while others had inquisitorial systems of justice. However, it was unanimously agreed that there was no absolute adversarial or inquisitorial system among modern judicial systems.

Members also noted that the absence of a witness protection programme was an impediment to successful prosecution because some witnesses were reluctant to testify, owing to fear of their security.

The group also noted that most of the trials in corruption cases are lengthy and complex and that the judiciary was understaffed and had a huge backlog of cases.

Members discussed these challenges and proposed the following:

- I. The group recommended the creation of special anti-corruption courts to address corruption problems. The creation of specialized courts would address the huge backlog as the presiding officers would only deal with corruption matters. Additionally, the creation of the courts would ensure that there is an adequate number of judges to handle corruption cases.
- II. Members also proposed that there should be extensive pre-trial procedures to facilitate disclosure before trial in order to facilitate speedy disposal of cases.

- III. The group also proposed that petty offences should be handled by lay judges to avoid congesting the higher courts.
- IV. The group also proposed that there should be a functioning witness protection programme to provide for the security of vulnerable witnesses. The group noted that successful prosecution can only be done where witnesses are confident of testifying in court.
- V. Mediating agreements. Some members noted the benefits of solving the small cases with the help of mediating agreements.

VI. PREVENTION OF CORRUPTION

All the participants of the group agreed that the most important part of the anti-corruption activity is prevention. Many countries focus too much on the criminal justice measures in fighting corruption, whereas such measures, if taken without proper prevention measures, proved to have little efficiency.

Most of the countries represented in the group experience challenges in ensuring the full independence of the judicial system and prosecution. This could lead to political influence over the trial of particular cases and damage other anti-corruption initiatives.

The participants also noted that there are challenges in the process of recruitment, promotion and career management of civil servants. It was noted that some of the countries did not have objective criteria for recruitment, promotion, transfers and career management of civil servants leading to favouritism and nepotism, which creates possibilities for corruption to thrive.

There are also problems in transparency of public procurement, which leads to significant risks of corruption in this field and prevents people from being provided with the desired quality of services.

Another challenge is the lack of the control of the financial activity and spending of the political parties. The parties tend not to disclose the donations from businesses and wealthy individuals. It can serve as a reason for future corruption if the receiving party wins the election, in which case the contributor will expect favourable treatment and lucrative public contracts.

The next cause of corruption in many developing countries is that the relationship and interaction of governmental agencies with the general population is not very well regulated. This gives the corrupt officials wide latitude to abuse their discretion in their own favour.

Having discussed the problem, the group came up with the set of recommendations which, in our opinion, would address them.

1. To ensure **judicial independency** we propose the following:
 - appointment of the judges should be done by the judges themselves (ex. general assembly),
 - The procedure to remove judges should be divided into two parts. The investigation of the wrongdoing of the judges should be conducted by the judiciary itself; however, the right of the final decision should be allocated to the highest political authority of the country (ex. to the parliament in the parliamentary republics and to the president in presidential republics),
 - Other measures to provide independence are financial autonomy, direct protection by the law.
2. For **prosecution to be politically independent**, we think, it is necessary to separate the prosecution office from executive branch of the government. The office should enjoy the privileges of judicial authority. Additionally, the strict and detailed guidelines on the matters of prosecution, especially of the corruption cases, should be introduced to avoid political interference. Financial autonomy and direct protection by the law are also desirable measures.
3. It would be good to conduct **recruitment of public officials** through a separated centralized agency which would recruit on behalf of all government ministries. The centralized agency (Civil Service Commission) would also set standards of recruitment, promotions and training of civil servants.

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To enhance transparency in recruitment and promotions, some of the participants expressed the view that it would be appropriate to promote officers after passing exams and evaluation (internal, external, mixed evaluation, 360 evaluation, etc.). Other members felt that civil servants should be given results or their work evaluations which was the basis of why the officer was not promoted.

4. **For transparency in public procurement** members of the group agreed that the following measures could be useful
 - All procurement should be published with details on a specialized website,
 - To enhance transparency, members proposed the introduction a single on-line web service for all public procurement,
 - To introduce a leniency programme, which encourages companies to inform the authorities about cases of bid-rigging by providing immunity to that company,
 - Companies or individuals who enter into contracts with government agencies should have the duty to disclose an account showing income and expenses of the project under the contract to the public,
 - The members proposed the creation of an external agency to monitor and audit expenditure of public funds,
 - The reports on the audit should be published within 30 days after the completion of the audit.
5. The transparency of **political parties' funds** could be achieved through introduction of mandatory detailed financial reporting, which should be submitted to the Election Commission for audit and should be made available for the general public. Some participants expressed the opinion that the maximum cap on the sum of the donations for political parties should be introduced.
6. To **eliminate the conditions of corruption** in interactions between government and the public, the following principles and mechanisms could be established:
 - No (or minimal) contact between state officials and the population to avoid human inference (one-stop shop in provision of public services, e-government system, e-procurement),
 - No (or minimal) discretion and strict guidelines for exercise of the discretion (standard for provision of public services / strict timing, guidelines for every position of civil servants).
 - Transparency and disclosure of all information (online queues for limited public services etc.)
7. Some participants proposed that the countries might consider tightening the monitoring of financial standing of public officials and their families
 - Everybody agreed that there should be annual reporting of income, spending and assets by public officials and their families and that these reports should be checked on submission.
 - However, the opinion divided (50% agree, 50% disagree) on shifting the burden of proof on the public official to prove the legality of his/her income.
8. Some participants also suggested that public hearings could ensure the accountability of local government and low ranking local officials.
9. In order to ensure the efficiency of the anti-corruption strategy, internal control mechanisms should be in place. Firstly, an internal report of all government agencies about the measures taken to prevent corruption and their efficiency should be required. Secondly, there should be external evaluation by separate and independent agencies, which could also make recommendations on further improvement. Both reports should be made open to the public.

GROUP 2

CORRUPTION IN DEVELOPING COUNTRIES AND ITS POSSIBLE SOLUTIONS

Chairperson	Mr. Afzal Abduganiyevich Nurmatov	(Uzbekistan)
Co-Chairperson	Mr. Niaz Hassan	(Pakistan)
Rapporteur	Mr. Jose Palacios	(Honduras)
Co-Rapporteur	Mr. Sakai Hideomi	(Japan)
Co-Rapporteur	Mr. Parviz Chorshanbiev	(Tajikistan)
Members	Ms. Fathimath Haifa	(Maldives)
	Mr. Phuntsho Choki	(Bhutan)
	Mr. Soe Naung Oo	(Myanmar)
	Ms. Oikawa Hiromi	(Japan)
	Ms. Olha Ivashchenko	(Ukraine)
Advisor	Prof. Ayuko Watanabe	(UNAFEI)

I. BASIC ORGANIZATION OF THE GROUP

The group started its discussions on Friday, October 30, 2015. The group in its first meeting, elected by consensus Mr. Afzal Abduganiyevich Nurmatov from Uzbekistan as Chairperson, Mr. Niaz Hassan from Pakistan as Co-Chairperson, Mr. Jose Palacios from Honduras as Rapporteur, Mr. Sakai Hideomi from Japan as Co-Rapporteur, Mr. Parviz Chorshanbiev from Tajikistan as Co-Rapporteur.

II. SPECIAL THANKS

To the United Nations Asia and Far East Institute, to all its staff, director, deputy director, professors, officers and the rest of the personnel of UNAFEI, for providing the knowledge, materials and special treatment for all the participants of this 18th UNAFEI UNCAC Training Programme. Also, special thanks to the Japan International Cooperation Agency for providing the opportunity, logistics, and special treatment for all the participants of this programme. Special thanks to all participants and visiting experts/lecturers.

III. INTRODUCTION

We have agreed that corruption is a disease that exists all over the world, in all countries, in the public and private sectors, in developing countries and in first world countries. However, it is in developing countries where corruption is most rampant and causes the worst consequences. This is because the funds stolen by corrupt officials do not reach those who are most in need. Those citizens are in dire need of food, education, medicine, housing, jobs, etc. Therefore, it is necessary to adopt, sign and implement all practices established in the United Nations Convention against Corruption (UNCAC).

IV. POLICE AND LAW ENFORCEMENT

The investigation process is not only where we can find the tools to obtain leads for future prosecutions of corruption, but also it is the basis of every corruption trial. If there is no reactive or proactive investigation, no useful leads can be obtained; therefore, no indictments can be presented before the courts. Also, if the investigation is defective, the prosecution will have no useful tools and the court will dismiss the accusation. And as we witnessed in the Prefectural Police of Hiroshima, a well-equipped police department, with all the necessary tools, can investigate, capture and present the accused before the prosecution, knowing with a high degree of confidence, that this person will be convicted.

V. PROSECUTION

The prosecution system has to be independent from any external influence; their members need to

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have the effective knowledge and academic level necessary; they also have to be supported by a professional and prepared police organization, in order to prepare, organize and present the proper indictments before the judicial system. Furthermore, we had the unique opportunity to visit the Kyoto Prosecutors Office, where we got to know great techniques to apply in our own countries.

VI. TRIAL

After a successful prosecution, it's time for the judges to do their job, and that is, impartially control and supervise the participants, may we call them prosecutor and defence. The most important element, analysing the evidence presented, and therefore judges issue a judgement according to what the law establishes. We had the great opportunity to visit the courthouse in Kyoto, Japan, where we witnessed the procedures and special techniques they use at trial. This will be very useful in the future law enforcement application of the law in our countries. However, as a conclusion, we can establish that the judge has to be able, trained and impartial when applying the law.

VII. CORRUPTION PERCEPTION INDEX OF TRANSPARENCY INTERNATIONAL AND THE COMPARISON OF OUR COUNTRIES (2012-2014)

COUNTRY	YEAR 2012	YEAR 2014	DIFFERENCE
HONDURAS	133	126	+7
PAKISTAN	139	126	+13
BHUTAN	33	30	+3
MYANMAR	172	156	+16
MALDIVES	*	*	*
TAJIKISTAN	157	152	+5
UKRAINE	144	142	+2
JAPAN	17	15	+2
UZBEKISTAN	170	166	+4

- CPI Index of Maldives: in 2011, Maldives appeared 134th in the CPI index out of 183 countries. But during the last 3 years, the CPI index of Maldives was not calculated due to the unavailability of data from a minimum of three expert sources, usually from international organizations with expertise in governance and business climate analysis.

VIII. BEST PRACTICES AND RECOMMENDATIONS

There is a series of best practices that we have to procure to apply in our own countries in order to tackle corruption in a more efficient manner. This training programme has been a great opportunity to analyse and study most of them. The following are some of the most efficient and useful, according to our conclusions:

A. Effective Application of the Universal Human Rights Declaration of 1948

Most countries signed and ratified the Universal Human Rights Declaration of 1948; however the majority of them do not effectively implement this important convention. Therefore, we can verify the vast violation of human rights in those countries; among these transgressions we can identify the violation of the right to vote, freedom of communications, education, health, association or gathering. This situation causes fear among the citizens; therefore, the government leaders and other public officials use this opportunity to commit corruption crimes.

B. Education and Culture as Basic Pillars in the Battle against Corruption

If the population of a country has a low level of education, as a necessary consequence, the corruption levels will be elevated. As an example, we have observed that developed countries with elevated levels of education, have positive positions in the Corruption Perception Index of Transparency International. We consider that, every country should increase its literacy rate. To do this, the educational budget should be increased, in order to hire more qualified teachers, to build more schools, so that more children can have access to education. Also, we have concluded that obliged anti-corruption training should be conducted from the first stage of the education process and continue to the post-graduate studies. A person with a higher level of education is less inclined to become a corrupt public or private official. Everyone should be accountable for their actions and should be equal in the eyes of the law.

C. Transparency of All Public and Private Institutions

If there is no transparency in all the framework of all public and private institutions, then there is a risk of corruption. Therefore, we believe that every public and private institution and their officials should disclose the necessary information on their websites. Obviously there is information that should not be shared, e.g., security and confidential. However, the citizens have a right to know what is happening in these institutions.

D. Freedom of Mass Media, Newspapers, TV, Radio, Internet, Etc.: The Voice of the “Citizen”, Beware of Blackmail

The citizens of a country need to exercise their right of freedom of speech. This can only be possible if the country has free mass media, obviously including newspapers, television, radio, Internet, etc. We have to take the necessary steps to avoid unlawful censorship. Mass media controls and supervises public and private officials, thus avoiding corrupt practices. Beware of blackmail that could be performed by corrupt media.

E. Improve the Selection Process of Public Officials: 1) Education, 2) Transparency, 3) Competition, 4) Examination and Qualification, and 5) Background

It is necessary to take measures to improve the selection process of public officials, in order to avoid future corruption practices. Education is a key factor; the nominee has to have the necessary educational level for the position he or she is applying for. The selection process of the public officials has to be transparent, so that every citizen can have the right to know who is being designated as a public official. The selection process has to include knowledge, psychometric and psychological examinations to ensure that the nominee has the abilities and capacities for the position. Last, but not less important, is the background investigation of the nominee; he or she has to have a clean history.

F. Accountability of All Public Officials, Evaluations and Declaration of Assets

All public and private officials are accountable for their actions. We have to make sure that in our own countries and the institutions in charge of the accountability of individuals work in an effective manner. In other words, detect and report to the police or prosecutor’s office any irregular asset activity by a public official. His or her assets have to be in equal relation with their income. An annual report has to be provided in an obligatory manner as well at the beginning and at the end of the contract period.

G. Judges’ Accountability

Judges have to be accountable for their incorrect or unlawful actions. Each one of countries has a different procedure to investigate and possibly punish a judge that has behaved in the above-mentioned manner. However, as a study group, we have concluded that the judge’s impeachment procedure currently being applied in Japan is definitely a good practice to propose and execute in each of our countries. In this 18th UNAFEI UNCAC Training Programme, we had the invaluable opportunity to study, analyse and visit the Judge Impeachment Court located in Tokyo, Japan.

A judge’s independence is necessary to hold a fair and full trial without receiving influence from the state or other power, as well as to ensure the constitutional principle of judicial independence. However, because of the principle of popular sovereignty, there must be a way to deprive judges of their status if they commit misconduct. Therefore, if a judge betrays the people’s trust, the Judge Indictment Committee can file an indictment against the judge before the Judges Impeachment Court. Both institutes are part of the Japanese National Diet.

H. Independence of Government Branches as a Basic Element

We believe that independence among the different branches of government is elemental: the executive, whose president is and has to be elected by the citizens, has to be able to administrate the government, but cannot influence or interfere with the rest of the powers or branches. The legislature also has to be elected by the citizens; it is they who have to decide on their representatives of the respective districts or sectors of their territory. The judicial system is in charge of the administration of justice.

I. Improve Salaries of Public Officials, to Cover Basic Necessities, to Optimize Efficiency of the Employee and Motivation, Remember Minimum Wage Inequality

The salary of a public official is an essential element and directly related to the possibility of said official being inclined to commit a corrupt act. To prevent possible corruption crimes, public officials have to be well paid, enough to cover their basic necessities. The public official has to be motivated by training programmes; if he or she has excellent performance or if seniority is a factor, this official has to earn more than others that have not obtained these qualities. Almost every country has the minimum wage system; however, we consider that the motivation factor has to be applied.

J. The Rotation of Judges, Prosecutors, Police Officers and Other Public Officials

If a public official stays for a prolonged period of time in the same position, then he or she is more inclined to become corrupt. The reason for this phenomenon is that, these officials become too familiar with the common procedures; therefore they are able to find effective corruption schemes. Another reason is the lack of motivation that this situation creates for them. Therefore, after a prolonged discussion, our group has concluded that the rotation of the public officials every three to five years becomes a good practice to prevent corruption.

K. Random Case Distribution at Trial

There is a risk of corruption at the moment that a case or an indictment is assigned to a judge. Obviously the reason being that the person in charge of assigning a case can receive a bribe in order to deliver the indictment to a particular judge. Therefore, the group concludes that this assignment has to be conducted randomly using software with the necessary security measures, thus eliminating the risk.

L. Efficient Covert Operations: Wiretapping, Controlled Delivery and Sting Operations

As enforcement actions, particularly as covert operations in corruption-related investigations, the most efficient are wiretapping, controlled delivery and sting operations, in that order. We believe that the investigation process has already begun, because of a complaint, denouncement, whistle-blower or because the information has been leaked by any other source. If this information is corroborated with any other kind of evidence, then it is correct and effective for the corresponding law enforcement official to request the judicial authority to proceed with the wiretap or to request the communications log history, in order to verify the already provided information. If the suspicions or the information are confirmed, then, on a case-by-case basis, it would be effective to prepare a controlled delivery, using any available means necessary to preserve evidence. This may include wiring the witness or agent, using audio-visual equipment, decoys, etc. Through this procedure, as law enforcement officials, we are assuring that the evidence acquired during the investigation process will not only be admissible at trial, but will be useful as well.

M. Foreign Private Corruption

Tackling private corruption including that which is happening in foreign countries, but committed by our nationals, is extremely important. A well-elaborated internal and overseas investigation is the basis for a successful trial. Key anti-corruption instruments, such as the U.S. Foreign Corrupt Practices Act of 1977, the U.K. Bribery Act of 2010 and Japan's Unfair Competition Act are tools that we can use to prevent private corruption acts from happening in our countries and abroad.

N. Whistle-Blowing Protection Law

Correct and lawful whistle-blowing inside public and private institutions is an excellent way to detect corrupt individuals. That is why we have reached the conclusion that it is necessary for our countries to adopt whistle-blower protection programmes.

O. The Independent Commission Against Corruption (ICAC) of Hong Kong

We have analysed in this current anti-corruption training programme the results obtained by the Inde-

pendent Commission against Corruption (ICAC) of Hong Kong and have concluded that the results obtained by ICAC are the most efficient reached by any other corruption commission. ICAC's success is due to the three-pronged strategy implemented by that commission. First, the enforcement sector—Operations Department (OPS), which uses almost 70% of the commission's budget—is occupied in the reactive and the proactive activities of the organization. Basically, it actively pursues public and private corrupt officials, by receiving anonymous and non-anonymous complaints. The corresponding investigation has begun through compulsory and noncompulsory methods. The commission's agents receive testimony, conduct covert operations, such as wiring of witnesses or undercover agents. Requests for wiretapping, as well as, arrest warrants, search and seizures before the corresponding judicial authority, and many more covert and overt effective investigation measures are used in order to verify if a corruption crime has been committed. If it has, then the final report has to be elaborated, and it is presented to the prosecution office, so the corresponding indictment can be elaborated and the judicial stage can begin. Second, the commission has a second sector, the prevention prong—the Corruption Prevention Department. The agents here have the obligation to analyse and investigate where corruption can proliferate in the public and private sectors. The agents should then provide efficient recommendations in order to strengthen those already mentioned weaknesses, in order to prevent corruption from happening. Third, the educational approach—Community Relations Department, the commission has agents in charge of developing and carrying out educational programmes aimed at all sectors of the Hong Kong society, for example, educational programmes for schoolchildren, university students and the public and private sectors. The purpose of this third and last approach is to create a non-corrupt culture, so that in the future, the enforcement sector will be reduced significantly. As a group, we have learned that the Independent Commission Against Corruption (ICAC) of Hong Kong is so efficient because of the political will that existed at the moment of its creation, as well as the holistic and multidisciplinary method it utilizes as a whole, and finally but definitely not less important is the compromised behaviour and culture of each and every one of the agents of this unique commission.

P. International Cooperation

We believe that international cooperation is essential in the process of tackling corruption. It is necessary to begin, maintain and increase relations with the rest of the countries of the world. INTERPOL (ICPO) is essential to international law enforcement; this global organization coordinates global actions, which is vital for the world's police and judicial system, through initiatives including the Global Focal Network for Asset Recovery, assists law enforcement bodies in returning stolen public funds to victim countries, coordinates working meetings between member countries in order to facilitate investigations that cover more than one jurisdiction; provides training through the Interpol Global Programme on anti-corruption, financial crimes and asset recovery. International corruption requires a multi-sector and cross-border response such as Interpol's close work with the World Bank, UNODC, UNDP, US Department of State, OECD, FATF, Egmont Group, etc.

UNCAC sets out an international framework invaluable in the fight against corruption and serves as a guide to many Interpol initiatives.

One of the effective international instruments to fight against corruption is the activity of the Group of States Against Corruption (GRECO). This organization improves the capacity of its members to fight corruption by monitoring their compliance with anti-corruption standards through the dynamic process of mutual evaluation and peer pressure. GRECO also provides a platform for sharing the best practices in the prevention and detection of corruption.

IX. CONCLUSIONS

We conclude that awareness and prevention along with enforcement are vital elements for eradication of corruption from society. Each law should be implemented in true letter and spirit (efficiently applied) and no one should be exempted from it. Everyone should play his or her role instead of simply preaching. A simple life culture is also necessary to put an end to this evil.

In addition, if anti-corruption authorities want to perform their duties, exposure of big corruption cases which are connected to powerful figures in politics is very important because the actions of anti-corruption authorities should be based on the citizen's trust and support. To increase trust and support of the citizens,

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anti-corruption authorities should prove their effectiveness by exposing big corruption cases. If anti-corruption authorities arrest only lower public officials or expose only small corruption cases, the citizens will conclude that anti-corruption authorities are bullies and will never trust the said authority.

Power in Justice, let us start...

GROUP 3

EFFECTIVE MEASURES FOR COMBATING CORRUPTION FROM DETECTING LEADS TO TRIAL—A COMPARATIVE ANALYSIS OF DOMESTIC LAWS

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I. INTRODUCTION

The Chairman guided the meeting to decide on the topics to discuss, and after thorough deliberations on the proposed topics, the meeting resolved to focus on the following topics:

1. Corruption detection and methods of generating leads;
2. Effective measures for corruption investigation;
3. Prosecution and trial of corruption cases.

These topics were chosen because of their importance in any effective response to corruption.

II. GENERATING LEADS

The Group first reviewed methods of detecting corruption in the respective countries, which are summarized in the tables attached hereto and marked as Annexes I and II. The following points contain some of the information derived from the table:

- In generating corruption reports, investigation authorities in all the countries in the Group had adopted direct complaint mechanisms such as hotlines, emails, petitions, in-person reporting and they also detect corruption through open media sources
- Among the nine countries, Maldives and Kyrgyz Republic do not have a mechanism to generate leads through asset declaration
- Presently, the most useful measures for generating leads in Thailand are reports of the Office of the Auditor General, and this measure is also used in all other respective countries other than Egypt
- Other than Laos, all other countries collect and examine suspicious transaction reports from Financial Intelligence Units to generate leads
- Inter-agency information sharing is also a measure to detect corruption in the respective countries other than Kyrgyz Republic and Laos
- Direct detection of the evidence of a crime by investigators, prosecutors or public officials are also

used to generate leads in the countries such as Japan, Maldives, Bangladesh and the Kyrgyz Republic; however, in South Sudan it is an obligation and a constitutional duty to inform the public officials or report any illegal activities

Best Practices

After deliberation, the following were identified as ideal measures which the respective countries should consider adopting:

- It is needless to say that any investigative bodies should receive information by a variety of means to hear from as many people as possible, and investigative bodies should collect and examine a variety of materials such as media reports, FIU reports, etc.
- Regardless of the number of investigative organizations, the information exchange between ministries which receive information is essential not to miss leads
- Furthermore, reporting obligation to investigative bodies for public officials in case of becoming aware of corruption will enhance efficiency of collecting information, because gathered information can be used to generate useful leads
- There is need for legislation that establishes whistle-blower or witness protection

III. CORRUPTION INVESTIGATION

Thorough and comprehensive investigation is critical to successful prosecution. In the countries of the Group, substantial efforts are invested in finding out adequate answers to what, who, when and how corruption offences occur. All the countries use all forms of traditional methods of corruption investigation with varying degrees as to the control mechanisms.

However, some countries have found it necessary to use special measures to investigate corruption, the reason being that corruption by its nature is a secretive crime, most often committed by mutually satisfied parties. Unless agencies responsible for combating corruption have access to the use of special measures, corruption will continue to wreak havoc unabated. More so, corruption offenders usually do their business with a flair of sophistication, rendering obsolete the traditional methods of revealing its occurrence and damage.

Chief among the special measures to investigate corruption are: controlled delivery, undercover operations, use of informants and surveillance, both physical and electronic. Some countries of the Group use some of these measures.

As for the other countries, these measures are considered intrusive and infringe on the fundamental rights and freedoms which are heavily guarded by the constitution. Their use is therefore a last resort when other less intrusive measures prove less effective, especially in serious crimes. A balance between effectiveness in combating corruption and respect of rights is therefore required when using these measures.

As a safeguard even the countries that use these measures put in place restrictions on their use. Internal control, prosecutorial and judicial scrutiny as well as requiring express provisions of the law are but some of the control measures used.

Best Practices

The key word in investigation of corruption is effectiveness of the means and methods used in gathering enough evidence to prove or disprove the existence of corruption. Each jurisdiction should strive to strike a good balance between being innovative one the one hand and not encroaching too much on protected rights, such the right to privacy of dwellings and communication, which are universally recognized rights. Among the innovative measures to consider are: controlled delivery, use of informants, the use of undercover agents, wiretapping, surveillance, and sting operations, among others.

IV. PROSECUTION AND TRIAL

A. Prosecution

1. Collecting Information

In most countries, prosecutors have the authority to initiate prosecution of corruption cases (Egypt, Japan, Maldives, Kazakhstan, Kyrgyz Republic, and Lao PDR). In Thailand, prosecutors indict cases in the name of the Attorney General with his/her approval. In South Sudan, the South Sudan Anti-Corruption Commission (SSACC) has the authority for prosecution according to the constitution. But the Director of Public Prosecution also has authority to prosecute corruption cases. Only in Bangladesh does the Anti Corruption Commission (ACC, established in 2004) possess sole authority to prosecute.

In most countries except South Sudan, the prosecution bodies have more discretion about whether to prosecute or not. Such bodies are also free to adopt or to dismiss the prosecutor or staff member of the ACC (in the case of Bangladesh). Adequate legal qualification is required to be a prosecutor or a staff member of the ACC in all the countries.

In most countries except Japan and Maldives, prosecution bodies indict cases when there is sufficient evidence to support the reasonable prospect of a conviction. In Maldives, a prosecutor should indict defendants in cases which can be proved beyond reasonable doubt. In Japan, prosecutors indict defendants when the offence can be proved beyond a reasonable doubt and it is necessary to prosecute. Since the prosecutor has wide discretion not to initiate prosecution in Japan, there is a system to review a prosecutor's decision not to prosecute, that is, the Committee for the Inquest of Prosecution. Victims or complainants can apply to the committee to review the prosecutor's decision of non-prosecution. Members of the committee are randomly selected from voter registration lists, and those 11 citizens will see all the evidence and decide whether prosecution is proper or not. If the committee decides twice that prosecution is proper, then the court appoints a private attorney(s) to prosecute the case. Most countries except Bangladesh and South Sudan have a review system for non-prosecution.

2. Best Practices

At first glance, it seems ideal for combating corruption that the anti-corruption commission with investigation authority is also empowered to initiate prosecution and to pursue the case through trial. However, to make this model work in reality, there should be enough human and other resources in the commission. Many of the anti-corruption agencies are relatively new after their establishment, and therefore it would be effective to have a system in which the commission would coordinate closely with prosecutors who take the role to prosecute the cases and to attend to the trial. There should be also a review system for the prosecution, and it would be useful to have a system like Thailand, where non-prosecution decisions are scrutinized by a committee consisting of members from the anti-corruption commission and the prosecutors' offices.

B. Trial

1. Collecting Information

In most countries except Bangladesh, corruption cases are adjudicated through the ordinary judicial process. In Bangladesh, corruption cases are handled only by special judges, appointed from ordinary judges, who have authority to engage in the trial within their territorial jurisdictions. For fair and speedy trial, in Thailand, Japan and Kazakhstan, the pre-trial conference procedure is used, and the court may apply it to corruption cases. Through the pre-trial conference procedure, parties should prepare and clarify their allegations, and thereafter the court arranges points of arguments and the plan for the upcoming trial.

As for witness protection, the judge can order the police to take appropriate measures to protect witnesses in Egypt and Bangladesh (but rarely used). In Maldives, Kazakhstan and Kyrgyz Republic, judges can also conceal the background of witnesses from the suspect or the defendant. In all countries, there are no special rules of evidence that are only applied to corruption cases. But as for the statement of co-offenders, South Sudan deems such statements obtained as admissible. In Egypt, at the stage of prosecution, the prosecutor can ask the judge to mitigate punishment or acquit a witness who provided testimony.

2. Best Practices

Because of the complexity, it normally takes a long time for corruption cases to come to final judgement. It is therefore in the interest of speedy and fair trial to adopt some innovative and effective adjudication mechanisms. Measures to consider include the use of special courts, specialized training for judges, the use of pretrial procedure, and post-trial witness protection, among others.

Method of Generating Leads for Corruption Investigations

	Thailand	South Sudan	Egypt	Japan	Maldives	Bangladesh	Kazakhstan	Kyrgyz Republic	Laos
Methods of Generating Leads	Complaints	Complaints	Complaints	Complaints and accusation	Complaints	Complaints	Complaints	Complaints	Complaints
	Assets Declaration analysis	Assets Declaration Reports	Assets Declaration Reports	Assets Declaration Reports only for diet members	Assets Declaration Reports	Assets Declaration Reports	Assets Declaration Reports	Assets Declaration Reports	Assets Declaration Reports
	Audit Reports	Audit Reports	Audit Reports		Audit Reports	Audit Reports	Audit Reports	Audit Reports	Audit Reports
	Media Reports	Media Reports	Media Reports	Media Reports	Media Reports	Media Reports	Media Reports	Media Reports	Media Reports
	Suspicious Transaction Reports from FIU	Suspicious Transaction Reports from FIU	Suspicious Transaction Reports from FIU	Suspicious Transaction Reports from FIU	Suspicious Transaction Reports from FIU	Suspicious Transaction Reports from FIU			
	Inter-agency information sharing	Inter-agency information sharing	Inter-agency information sharing	Inter-agency information sharing	Inter-agency information sharing	Inter-agency information sharing	Inter-agency information sharing	Inter-agency information sharing	Inter-agency information sharing
		Whistleblowing	Whistleblowing	Whistleblowing	Whistleblowing	Whistleblowing	Whistleblowing	Whistleblowing	Whistleblowing
				informants	informants	informants	informants	informants	informants
		Statutory Reporting		Direct detection of the evidence of a crime by investigator, prosecutor or the public officer	Direct detection of the evidence of a crime by investigator, prosecutor or the public officer	Information received during the investigation of predicate offences of money laundering prevention act	Information received during the investigation of predicate offences of money laundering prevention act	Direct detection of the evidence of a crime by investigator, prosecutor or the public officer	Direct detection of the evidence of a crime by investigator, prosecutor or the public officer
								Reports of the public officials	Reports of the public officials

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Annex II

Special Methods of Generating Leads

	Thailand	South Sudan	Egypt	Japan	Maldives	Bangladesh	Kazakhstan	Kyrgyz Republic	Laos
Reporting Obligation	No	Yes. Anti-corruption legislation obliges public officials to report corruption. Failure to do so attracts punitive sanctions.	No	Yes by law - Public officers are obliged to report police, etc. - No plea Bargain - Mitigation of punishment is practiced by prosecutors and judges.	Yes. Anti-corruption legislation obliges public officials to report corruption. Failure to do so attracts punitive sanctions.	No	Yes	Yes	No
Mitigation System	Yes. Some mitigation	Some mitigation during trial	Yes		No	No	Yes	No	No
Anonymous accusation	No	Is practiced by the Anti-corruption Commission.	No	Yes	Yes	Yes	No	No	No

Investigative Methods and Powers

	Thailand	South Sudan	Egypt	Japan	Maldives	Bangladesh	Kazakhstan	Kyrgyz Republic	Laos
Search and Seizure	Request made directly to the Judge	No warrant for search. Warrant needed for seizure and freezing of properties. But if the suspect absconds, the warrant of attachment and often seizure is obtained for the Senior Public Prosecution Attorney not the court.	Normally a warrant is needed. But the suspect is fought red handed no warrant is needed. However, he should be brought before the Prosecutor within 24 hours of arrest.	Warrant before making search and seizure.	No search warrant from court is needed in public areas. Search of private property, a warrant is needed. Application is made by the prosecution and executed by the police.	No permission from court. But to get information from bank accounts permission from judge is needed.	Warrant is needed form a prosecutor.	Warrant is needed for seizure and search. The warrant is obtainable from the court.	Warrant needed from a prosecutor.
Arrest/ Detention	Also need a judicial warrant. Forty-eight hours to bring the suspect before the court. Maximum detention is eighty four days. Application made directly to the Judge by NACC.	72 Hours. This is the practice of law enforcement agencies. However, the Constitution provides for 24 hours.	A warrant is needed with the exception of when a suspect is caught in the process of committing a crime. In this case no warrant is needed but the suspect must be brought before the judge within 4 Days. The maximum detention period	With a warrant. 72 hours for police and the prosecution. Forty-eight hours for police and twenty-four hours for the prosecutor. If the arrest is made by the Prosecutor then it has forty-eight hours only. Generally ten days for initial detention liable for one more extension only. This makes the total detention days twenty.	Detention period is 24 Hours. Maximum initial period fifteen days liable to extension with a judicial warrant.	No warrant required to arrest.	72 hours without warrant. Extension is made to the court through Public Prosecution Office. Maximum detention period is 18 months. This measure is scrutinized by the court.	Arrest for forty-eight hours extendable to one year maximum by court order.	Warrant needed from a Prosecutor and not a judge. 24 hours for Police. Prosecution has up to three months.
Proactive	Sometimes in serious crimes.	Positive. This kind of investigation is done to disrupt corruption from happening.	Negative.	Negative	Some times.	Negative	Not available for corruption cases.	Positive	Negative
AGNECY	National Anti-Corruption Agency (NACC)	SSACC. Has monopoly over corruption cases investigation.	No Specialized agency. Only Specialized Public Prosecution Offices. Administrative Control. Illicit gains Authority. FIU and then National Coordination against corruption.	Police/Prosecution	Police/ACC have monopoly over investigation over corruption cases.	ACC	ACA/other agencies can investigate corruption but should refer the files as soon as possible to the ACC	ACC of National Security Committee/ Prosecutor Office.	Anti-corruption Authority/ Police

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Annex IV

		Special Investigative Measures							
Type of Measure	Thailand	South Sudan	Egypt	Japan	Maldives	Bangladesh	Kazakhstan	Kyrgyz Republic	Laos
Controlled delivery	Undercover operations are used	Not expressly provided for under the law and are therefore not safe to use as the evidence obtained through them might be illegal and therefore not admissible.	Controlled delivery, wiretapping, physical and electronic surveillance and informants are used to enhance effectiveness in collecting evidence during investigations.	Some special investigative techniques. Controlled delivery, among others is used to crack criminal networks. However, their use does not extend to corruption cases	Not used on the context of ACC. Only police can use these measures.	Controlled delivery Sting operations (trap case)	Controlled delivery, Wire-tapping (telephone, computer), Bugging (person, place), Penetration of office, house or other places, Physical control of a person or place.	Controlled delivery, Wire-tapping (telephone, computer), Bugging (person, place), Penetration of office, house or other places, Physical control of a person or place.	Controlled delivery, undercover operations and wiretapping are used by police officers according to Public Security Act.
Undercover Operatives, Sting operation and bugging.									
Wiretapping									
Physical and Electronic Surveillance									
Informants									
Human Rights Challenges	Intrusive on protected rights	Right to Privacy is one of the inviolable and fundamental rights under the constitution. Any infringement on this right must be in accordance with the express provisions of the law.	Egypt's constitution protects fundamental rights and freedoms. Any infringement of these rights must be in accordance with the express provisions of the law.	Infringe on some fundamental human rights such as the right to privacy	Fundamental rights are protected under the constitution.	Fundamental human rights are preserved under the constitution and the anticorruption law.	These measures are intrusive and infringe much on the right to privacy.	Constitution protects the right to privacy	The constitution ensures basic human rights.
Procedures and safeguards against human rights infringement and abuse, if any		If these measures are to be used a judicial warrant is needed. Moreover and because of their intrusive nature they should be used as a last resort and in serious crimes. Article 22 of the Constitution	If these measures are to be used a judicial warrant is needed. Evidence admissible if used upon a judicial warrant.	They are used in serious crimes only and subject to judicial scrutiny.	Judicial warrant is needed in their use.	Use with permission from judge or court	Their use is subject to judicial oversight and are restricted to serious crimes only.	Judicial scrutiny is required	Police activities using special measures are supervised by prosecutor. Prosecutor's permission is required.
Effectiveness in generating useful evidence		Not tested. However, it has the potential of unraveling evidence considering that corruption is a secretive crime in nature and requires secretive and special methods to discover and gather evidence of its existence.	The use of informants is the most effective.	Not tested in relation to corruption.	The use of informants is specifically effective in getting evidence.	Effective in generating useful evidence.	Proved effective and countering corruption through facilitating evidence gathering	Proved effective in generating evidence.	Proved effective

Prosecution of Corruption Offences

	Thailand	South Sudan	Egypt	Japan	Maldives	Bangladesh	Kazakhstan	Kyrgyz Republic	Laos
Authority	Attorney General	Anti-Corruption Commission/Director of Public Prosecution	Prosecutor	Prosecutor	Prosecutor General	ACC	Prosecutor	Prosecutor	Prosecutor
Independence in appointment	Positive (subject to consent of the parliament)	Members are appointed by the President of the Republic subject to approval of the National Legislative Assembly (Parliament)	Positive	Ministry of Justice appoints	Positive (subject to consent of the parliament)	Independent (Appointed by the President, nominated by five members Committee)	Positive (appointed by Parliament)	General prosecutor is nominated by President and parliament should approve the appointment	Positive (Prosecutor General is appointed by Parliament) prosecutors are nominated by Prosecutor General
Independence in removal	Positive (subject to consideration of the parliament)	Removal by the President or the National Legislative Assembly	Positive	Positive (dis-qualification committee stipulated in the prosecution office law)	Positive (subject to consideration of the parliament)	Positive (Parliament)	Positive (Parliament)	General prosecutor is nominated by President and parliament should approve the appointment	Positive (Parliament)
Independence in decision in each case	Positive	The Constitution and the law provides for 'functional' independence.	Positive	Positive stipulated in the prosecution office law	Positive	Positive	Positive	Positive	Positive (prosecutor is independent by law)
Financial independence	Positive	No financial independence.	Positive	Budget of Ministry of Justice	Positive	Positive	Positive	Positive (Own budget)	Budget is decided by Government
Element and Criteria	Sufficient evidence	Sufficiency of evidence to sustain reasonable prospect of conviction.	Sufficient evidence	The case can be proved beyond reasonable doubt. The necessity to prosecute is also considered.	The case can be proved beyond reasonable doubt	Sufficiency of evidence to sustain reasonable prospect of conviction.	Sufficient evidence	Sufficient evidence	Sufficient evidence
Check system	Joint Committee (NACC, Attorney General), then NACC can prosecute	No check system	Attorney General (acc. to hierarchy)	The committee for the inquest of prosecution	No check system	No check system. The decision of ACC to prosecute is final	Upper Prosecutors Court	Upper Prosecutors Office Court	Supreme Prosecutors Office Court
Others (qualification for the prosecutors or the member of the commission)	LL.B.+Bar exam+2 years' legal experience and exam for prosecutor recruitment	LLB and 1 year training in legal training institute for prosecutor	LL.B. and 1 year training in National Judicial Centre	Same bar qualification and training at LRTI as judges and defence lawyers	LL.B.for prosecutor, LL.B. and 4 years experience for Prosecutor General	Attorney of 10 years in practice	LL.B. and 5 years' experience in prosecution office	LL.B., exam and training in prosecution office	LL.B. and training in the institute of justice

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Annex VI

Trial Procedures for Corruption Offences

	Thailand	South Sudan	Egypt	Japan	Maldives	Bangladesh	Kazakhstan	Kyrgyz Republic	Laos
Judges and Judicial process for corruption offences	If defendant is a politician-9 judges panel of Supreme Court	Ordinary judges and ordinary judicial process	Ordinary judges and ordinary judicial process	Ordinary judges and ordinary judicial process	Ordinary judges and ordinary judicial process	Special court	Ordinary judges and ordinary judicial process	Ordinary judges and ordinary judicial process	Ordinary judges and ordinary judicial process
Disclosure of evidence	All documents are submitted to the court	All documents are submitted to the court	Negative	Partially	All documents are submitted to the court except the statements which prosecutors want to hide that identify the person.	All documents are submitted to the court	All documents are submitted to the court	All documents are submitted to the court	Negative
Special proceedings for fair and speedy trial	Pre-trial conference procedure	Negative	Negative	Pre-trial conference procedure	Negative	Negative	Pre-trial conference procedure (20 days maximum)	Negative	Negative
Witness protection	Physical protection (rarely used)	Negative	Judge can order police to take appropriate measures to protect witness	No witness protection	Judge can conceal the background of witness from suspect or defendant	Judge can order police to take appropriate measures to protect witness	Judge can conceal the background of witness from suspect or defendant	Positive	Negative
Rule of evidence (Is there something special about corruption cases?)	No difference	No difference	No difference	No difference	No difference	No difference	No difference	No difference	No difference
Statement of co-offender	Nothing special	Admissible	At the stage of prosecution, prosecutor can apply to judge to give mitigation or acquittal to the witness to take a testimony	Nothing special	Nothing special	Nothing special	Nothing special	Nothing special	Nothing special

APPENDIX

COMMEMORATIVE PHOTOGRAPHS

- *161st International Training Course*
 - *18th UNAFEI UNCAC Training Programme*
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The 161st International Training Course and the 25th Anniversary Seminar of the United Nations Standard Minimum Rules for Non-custodial Measures



Left to Right:

4th Row

Mr. Shojima (Staff), Ms. Iwakata (Staff), Mr. Ozawa (Staff), Prof. Moriya, Prof. Akashi, Mr. Miyagawa (Staff), Prof. Watanabe, Ms. Irie (Japan), Mr. Schmid (LA), Mr. Ando (Staff), Ms. Sato (Staff), Ms. Oda (Staff), Ms. Hando (Staff), Ms. Odagiri (Chef), Mr. Kato (Kitchen Staff), Ms. Yamada (Staff)

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The 18th UNAFEI UNCAC Training Programme



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Mr. Kato (Kitchen Staff), Ms. Odagiri (Chef), Ms. Iwakata (Staff), Ms. Oda (Staff), Ms. Yamada (Staff), Mr. Ozawa (Staff), Mr. Endo (Staff), Ms. Hando (Staff), Ms. Ema (Staff), Mr. Miyagawa (Staff), Ms. Yamamoto (JICA)

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Mr. Nurmatov (Uzbekistan), Ms. Diomande (Cote d'Ivoire), Ms. Kuruji (Japan), Mr. Sakai (Japan), Mr. Honda (Japan), Mr. Bakry (Egypt), Mr. Rioba (Kenya), Mr. Watanabe (Japan), Mr. Dut (South Sudan), Mr. Hassan (Pakistan), Mr. Sangsinsay (Laos), Mr. Uddin (Bangladesh), Mr. Oo (Myanmar), Mr. Tiravanichpong (Thailand), Ms. Oikawa (Japan), Mr. Morshed (Bangladesh), Mr. Refai (Egypt)

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