

GROUP 2

CORRUPTION IN DEVELOPING COUNTRIES AND ITS POSSIBLE SOLUTIONS

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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...