

**REPORT FOR THE GENERAL DISCUSSION
SEVENTH TRAINING COURSE ON CORRUPTION CONTROL IN CRIMINAL
JUSTICE**

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INTRODUCTION

The Seventh Corruption Control in Criminal Justice course was conducted under the auspices of the United Nations Asia and Far East Institute for the Prevention of Crime and Treatment of Offenders (UNAFEI) and the Japan International Cooperation Agency (JICA) at the Osaka International Center at Ibaraki City, Osaka Prefecture and at UNAFEI headquarters in Fuchu City, Tokyo Prefecture from 18 October 2004 to 11 November 2004. Several lectures were given by UNAFEI Professors and Visiting Experts from Hong Kong, Australia, and Canada. Study tours were also made to the Osaka Prosecutors' Office, Hiroshima Prosecutors' Office, Ministry of Justice and the Tokyo District Court, among others. During all of these activities, the participants were able to make their queries and comments.

The participants each had the opportunity to present their individual country reports focusing on the present situation of corruption in their respective countries, as well as the current measures taken against corruption.

As a result of the foregoing, four General Discussion sessions were conducted for two days, the results of which are embodied in this Final Report.

Paradigm Shift

History reveals that the idea of corruption has not always been an open topic. Discussions on corruption are usually made in whispers and in secret to prevent possible persecution, ostracism, and alienation. Consequently, tyranny and corruption characterized most governments and corrupt government officials enjoyed the fruits of corruption without obstacle.

The last three decades have seen a radical shift in the perception of corruption. The social malaise has come to be recognized and the general public has become aware, not only of its existence, but more importantly, its adverse effects on society. The fear and anxiety that came with discussion of corruption in the open slowly melted in the sunshine of public awareness. Significantly, peoples of the world grew to abhor corruption.

The present course marks a gigantic step in the paradigm shift the world is presently experiencing.

WEAKNESSES IN ANTI-CORRUPTION MEASURES

Legislation

Most of the participating countries have corruption punishable by the Penal Code only. A great majority of the participants believe that their laws are sufficient to criminalize corrupt acts. The problem, however, is in the actual implementation of those laws and the corrupt officials in government.

Investigation

1. Investigation Authorities

Most of the participating countries have specialized investigative authorities against corruption.

The majority of the participating countries do not appear to have functionally independent agencies which are capable enough to be relied upon. It seems that the investigators and prosecutors in these countries do not deal with corruption properly. This is because their anti-corruption agencies may be open to informal influence by high-ranking officials that constitute several levels of hierarchical bureaucracy. If their investigators or prosecutors do not adhere to the decision of their superiors they may risk losing their jobs.

2. Investigative Tools

- i. Most participating countries do not have the power to conduct wiretapping which is inadmissible in evidence while the majority of the participating countries have access to bank accounts during the investigation stage.

ii. Almost all participating countries have the power to conduct compulsory investigation (arrest, search, etc.) as well as use undercover agents and the power of entrapment. Most of the participant countries do not have judicial bargaining.

3. Reporting from the Public

Most participating countries do not have measures for anonymous complaints, thus complaints against officials for corruption are quite rare due to fear of reprisal. Not much protection is given to whistle-blowers.

Trials

It appears that a minority of the participating countries have a judiciary that enjoys the trust of the general public. The judiciary in the other countries is not sufficiently independent to make fair judgments in corruption cases. Sometimes even the judiciary itself is corrupt.

Lack of Political Will

The majority of the participating countries experience lack of political will in stamping out corruption in their respective measures against negative bureaucratic behaviour. Political will to eradicate corruption can be described as the readiness and willingness on the part of the government and the citizenry as a whole do so. It cannot be denied that, unfortunately, the governments of the participating countries consist mostly of officials who belong to the old paradigm wherein corruption was still considered as normal bureaucratic behavior. This old school of thought obviously is crumbling in highly developed countries of the world but is still predominant in developing countries.

Due to the prevailing culture of corruption in governments of developing states, it is quite natural that their citizenry would adhere to such an arrangement. Obviously, they are left with no choice but to be part of such a culture lest they be ostracized as social deviants.

Lack of a Code of Ethics

The majority of the participating countries do not possess a code of ethics. A code of ethics serves as a general guideline for government officials and employees to observe in the course of their official duties and functions. It is usually embodied in legislation. It underlines moral uprightness, official honesty and transparency, an appropriate standard of living, and such other matters related to clean and honest governance at the personal level. This may be viewed as closely linked with lack of political will as, naturally; a government characterized by rampant corruption would not be minded to draw up a code of ethics.

A country where a code of ethics is wanting surely cannot have effective measures to fight corruption as there would not be a crucible on which corrupt activity is measured and identified.

Low Salaries of Government Officials and Employees

Again, all the participating countries, save for Japan, have low salaries for their government officials and employees. In Japan, every year, the salaries of public servants are compared and adjusted to those of employees in the private sector. This process is automatic. Unfortunately, such is not the case for the other participating countries. The average take-home pay of an ordinary government employee in a typical developing country is barely enough to answer for their periodic expenses such as, but not limited to, food, clothing, shelter, education, electricity, and telephone bills.

The low salary of government employees was identified as one of the main causes of corruption. Due to the scarcity of funds, government employees are often forced to engage in activities that are not entirely accepted as correct bureaucratic behavior. It is not uncommon that an ordinary policeman or a clerk in the vehicle licensing agency in a developing country would not think twice about receiving, worse, even demanding, a certain amount from traffic rules violators or applicants for renewal of vehicle registration.

It is, however, posited that the low salary of government employees is *non sequitur* and should not be underscored as a major cause of corruption since corruption is even more rampant and on a larger scale when it comes to high-ranking officials. Also, it cannot be said that the low salary of government employees is part of a vicious cycle revolving around corruption. Public servants suffer low salaries due to a corrupt government that, in turn, suffers lack of public funds to raise the salaries of government employees due to erosion of public funds lost to corruption.

Lack of Education Concerning Corruption

Education is undoubtedly a very important factor in the fight against corruption. The general public must be immersed in the knowledge of the existence of corruption, its pernicious effects on society and the economy, and, most of all that corruption does not pay.

A great majority of the participating countries have no education with regard to corruption. As a result, the masses have accepted corruption as a normal occurrence in their culture and social life. Such a situation creates the defeatist impression that nothing can be done about corruption. In some countries, corrupt officials occupying high-ranking positions are bestowed respect by the poor and uneducated people.

Lack of Cooperation Between the Citizens and the Government in Anti-Corruption Measures

It is a fact that no measure against corruption can be entirely successful without the active cooperation of the public. Anti-corruption agencies should have the full cooperation of the citizenry. This is not true in the participating countries.

The general public does not cooperate with anti-corruption measures because of the fear of possible negative repercussions and because of the loss of trust and confidence in the government. Hence, citizens are in a lethargic state and do not report corrupt practices and instead turn a blind eye on shenanigans in government. Even victims of corrupt acts suffer in

silence rather than live a life of endless paranoia of what might happen to them if they report the corrupt act.

Lack of Personnel in Anti-Corruption Agencies

Anti-corruption agencies in some of the participating countries are lacking investigators and prosecutors. Consequently, investigators and prosecutors handle more than the number of cases they can effectively handle.

This is also related to the low salary of investigators and prosecutors. Most often, the best lawyers do not find it practical to pursue a career in government, especially in a high-risk, thankless, and low-paying job in anti-corruption agencies. Consequently, the anti-corruption agencies are undermanned which is a major obstacle in the war against corruption.

Lack of Training

Anti-corruption agencies also suffer from a lack of training in basic skills in anti-corruption measures in investigation and prosecution. Most often, investigators and prosecutors merely learn the rudiments of investigation and prosecution in the course of their work. Thus, we see a scenario where an inexperienced neophyte investigator or prosecutor handles cases of corruption resulting in the eventual dismissal of the case due to lack of training.

The weaknesses of a lack of personnel training are caused by a lack of budgetary support. Most governments in developing countries still do not regard corruption as a major problem. Again, we have a vicious cycle consisting of a lack of resources to fund effective anti-corruption machinery which is itself caused by a cash-strapped corrupt government.

SOLUTIONS

Legislation

More vigilance, involvement, awareness, and strategy on the part of anti-corruption agency officials and more political will should be harnessed.

The participating countries stated that their Penal Codes or special laws on corruption do not specifically define the term – corruption, but define crimes of corruption. All agree that the definition of corruption itself is not necessary in the Penal Code. All participants have the same understanding regarding public officials. The laws of most participants` countries do not have differences in penalty corresponding to the official rank of the public official. However, in practice a higher penalty is imposed on higher ranking officials according to the discretion of the Court.

Investigation

To make the specialized agencies independent constitutionally, structurally, functionally and financially. Financially means a fixed budget e.g. ICAC Hong Kong which enjoys 0.3% of the annual budget. Legislation allowing wiretapping and access to bank accounts in the investigation of corruption. The right to privacy must be balanced with the interests of the state and public welfare in accordance with the doctrine of police power.

The requirements for access to the transaction records of banks and financial institutions should be liberalized and made easier for investigation to prosper.

Reporting from the Public

Anonymous complaints should be allowed and report centres should be established to receive these complaints. Protection should be given to whistle-blowers by means of legislation (safe houses, bodyguards, etc.) for serious cases.

Trials

The system of appointment of judges should be transparent and based strictly on integrity and skill. In the course of the training, it was found that the judiciary system of Japan has been working successfully, and this experience helped the participants to bring some positive ideas for their respective judicial systems. For example, in Japan, the applicants for the position of judges

are trained by the Legal Training and Research Institute and chosen by the Supreme Court which nominates them to the Cabinet. The Cabinet almost always approves such nomination in practice.

Education

As mentioned above, education is the primary tool to instill the necessity of a clean and honest government for the attainment of a socially just society. The norms of conduct that tolerated corruption as an accepted way of life can only be removed by education.

Education should come in the form of school orientation as well as media advertisements depicting the undesirable effects of corruption on the society as a whole, and on the individual, in particular.

Legislation of a Code of Ethics for Government Officials and Employees

Legislative bodies should enact laws embodying a code of ethics to be strictly enforced by anti-corruption agencies and the courts. This code of ethics should be completely disseminated to all public servants and seminars and workshops should be held to ensure that all public servants are aware of this.

Adequate Opportunity for the Mass Media to Investigate and Report Corruption

In many countries, depending on their institutional structures, mass communication should be equipped with adequate opportunities to inquire into government transactions and to detect corruption objectively. Reporting corruption to the public is an effective deterrent on government officials and employees from committing corruption as no one would want to be known as a corrupt official. In fact, this deterrent comes even before actual conviction for a crime in a court of law.

A Sound Recruitment System for Public Servants Based on Merit, Skill, and Integrity

An independent Civil Service Commission should be in place to oversee the recruitment and promotion process of government officials and employees. It should be independent so as not to be unduly influenced by the powers that be. Recruitment and promotion should truly be based on exact measurements of merit, integrity, and skill.

Higher Salaries for Government Officials and Employees

An effective incentive for government officials and employees to forget about corruption is a salary that would best cover their expenses for decent and comfortable living conditions. This should include provisions for education of their children to provide them with a bright future.

Higher Mandatory Budgetary Allocations for Anti-Corruption Agencies and Measures

Anti-corruption measures cannot be truly effective without the budgetary support of government. As mentioned above, a fixed budget commensurate to a reasonable percentage of the annual budget should be allocated for anti-corruption measures.

This will ultimately solve the problem of the low salaries of investigators and prosecutors, the lack of investigators and prosecutors, and their lack of training.

Domestic and International Training of Investigators and Prosecutors in Anti-corruption Agencies and Justice Departments in the Skills, Techniques, and Strategies in Anti-Corruption Activities

With financially viable anti-corruption machinery, training of investigators and prosecutors, both domestic and international, is possible. This will spurn a truly effective campaign against corruption with personnel specially trained in the field of anti-corruption measures. As a result, ICAC Hong Kong and ICAC Australia may be replicated in our countries.

International Cooperation in the Field of Anti-Corruption Measures

Participation in international conventions such as the U. N. Convention Against Corruption is a must if we want to see a holistic approach against corruption. The provisions in these international instruments should serve as a model for all anti-corruption legislation. Further, international cooperation in terms of extradition, transfer of persons, and transfer of proceedings would surely produce a favorable impact on the fight against corruption.

In Addition, informal international help measures should also be resorted to for a flexible and quick response against corrupt officials who have fled the country and are seeking refuge in a foreign land.

CONCLUSION

Fighting corruption is a lonely and risky job; lonely, because societies in developing countries still cling to the myth that corruption is an accepted way of life, and risky, because the persons being investigated and prosecuted occupy positions in the government. It is just and proper that considerable significance must be afforded to anti-corruption measures. This is to protect the very government from itself and avert the moral degradation and economic crisis that is indubitably caused by the cancer of corruption. It's a tough job but somebody's got to do it.

The participants of this course have to do it. The investigators and prosecutors in the anti-corruption agencies have to do it. And the citizens also have to do it. To complete the paradigm shift, every single individual in society must do his share in eradicating corruption. At the end of the day, no one is spared from being a victim of this social scourge.

Corruption is the effect of the mistaken notion of short-cuts to financial success. Corrupt officials don't want to wait in line, don't want to work hard for their compensation, and don't want to live simple and honest lives. One finds truth in the adage that money is the root of all evil. Siddhartha Gautama, otherwise known as Buddha, said that desire leads to suffering. As long as we desire material wealth and the good life, we will continually suffer since nothing in this material world can ever satisfy our wants. In short, desire takes away our freedom.

It is our duty to keep our peoples free. Freedom from corruption is our goal. This can only be achieved by strong political will, an educated citizenry, and an effective anti-corruption campaign. Sending corrupt officials to jail will send a clear message to all that corruption does not and will not pay. This will have the effect of deterrence on the part of government officials and employees who are minded to commit corrupt acts.

Only with this environment will the government regain the trust and confidence of its people. Only then shall we enjoy the fruits of a truly just society.