
REPORTS OF THE PROGRAMME

GROUP 1

METHODS OF INVESTIGATION FOR IDENTIFICATION AND TRACING OF THE PROCEEDS OF CORRUPTION AND INTERNATIONAL COOPERATION

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I. INTRODUCTION

This report is the result of the joint effort of all members of Group Workshop 1. Members of Group 1 started their first session on 17 November 2017. Mr. Harsha was elected as Chairperson and Mr. Fujioka as Co-Chairperson while Mr. Skora was elected as Rapporteur and both Ms. Mariyam and Mr. Christian were elected as Co-Rapporteurs. The Group was required to choose a topic which carries the theme of 20th UNAFEI UNCAC Training Programme. After many discussions, all the members agreed to the topic of “Methods of investigation for identification and tracing of the proceeds of corruption and international cooperation”.

II. INVESTIGATION AND TRACING OF THE PROCEEDS OF CORRUPTION

A. Methods of Investigation

1. Whistle-Blowers

Usually witnesses of corruption and the laundering of proceeds do not feel secure to report cases to relevant authorities. In certain countries people feel reluctant to report corruption based on the belief that no action will be taken against the corrupt and that the one who reports would face retaliation. For instance, in the Maldives, the assistant bank manager who disclosed bank statements regarding a huge corruption scandal in 2016 was prosecuted for leaking confidential information. He was convicted despite his defence of being a whistle-blower and that he disclosed the information in good faith; his defence was not accepted by the courts, possibly due to political reasons.

2. Anonymous Letters, E-mails and Phone Calls

Anonymous reports are very important for intelligence gathering purposes but should never be fully relied upon in tracing proceeds of corruption as information from anonymous sources may be unreliable. However, these sources must not be disregarded and if possible, information from various sources should be gathered in a single database so it can be searched efficiently and used to corroborate where more reliable evidence is found later.

3. Witness Testimony

Like whistle-blowers, witnesses in general are rare for corruption cases. Also, it was pointed out that in some countries that rely heavily on witness testimony (e.g., Nepal) there is a large number of acquittals due to witnesses changing their testimony in the course of the investigation and lack of other forms of evidence to support the case.

4. Interrogations

Criminals involved in laundering proceeds of corruption can sometimes reveal their activities during

interrogation. However, this is not very useful or to be expected in most cases since suspects are usually advised by their lawyers to remain silent. In fact, in certain countries (e.g., Brazil) the right against self-incrimination is broadly interpreted by the supreme courts to an extent that suspects lying or giving false information during interrogations would not be considered as obstructing justice.

5. Plea Bargaining

Possibly the most essential and effective method for tracing proceeds of corruption is obtaining information from those involved in the corruption, who would have knowledge of how the money was moved and how properties were concealed. This method has been in use for several decades in the United States and other countries. However, plea bargaining is a rather new concept for other countries such as the Maldives or is yet to be implemented in some countries such as Japan which will introduce a procedure similar to plea bargaining in 2018.

6. STRs and Other FIU Documents

STRs and similar records are very important to the investigation of proceeds of corruption as financial institutions, registries and other institutions and corporation that deal in large sums can inform the authorities immediately when money is laundered. FIUs play a very important part in the discovery and disgorgement of illicit proceeds from criminal organizations for this very reason.

7. Bank Records

Basic financial statements and other banking documents can provide investigators with hard evidence of money laundering or just enough to trace the proceeds of corruption. However, in certain countries (e.g., Thailand) people can open several accounts in different banks in order to make several smaller transactions from different accounts instead of one large transaction so as to avoid detection and getting reported to the FIU. Also, officers in central banks do not have time to check all the KYC forms sent from the banks, and any person can have several bank statements and credit cards.

8. Tax Reports

Like bank records, tax reports are very useful for the investigation of proceeds of corruption and as evidence of the crimes connected since such reports are usually based on hard evidence and/or provided by the suspects themselves. However, this is another area very prone to the interference of the officials involved in making sure the reports are properly written and filed.

9. Media

The media is not only essential in raising public awareness of corruption but can also be very important in providing information on the whereabouts of the proceeds of corruption.

10. Controlled Actions

Controlled operations are one of several special means of investigation. When investigators are able to monitor and record money deliveries from beginning to end, it provides better evidence and broad insight into the criminal organization.

11. Undercover Operations

Undercover operations such as police or informant infiltrations, although possible, should be used only by the very experienced and trained.

12. Physical Surveillance

Monitoring meetings and the general ways of living of the suspects and family members can be very important in determining the locations of proceeds of corruption.

13. Electronic Surveillance

The increase in the use of smartphones and computers connected to the Internet makes electronic surveillance of suspects and family members very important, even though many programmes nowadays use some kind of encryption to protect communications.

14. Wiretapping and Examination of Call Records

Although still useful, the increase in the number of smartphones and the ease of use of encrypted

conversation applications results in only the sloppy or careless being caught discussing proceeds of corruption on the phone. On the other hand, examination of call records is still very useful to establish relations between people under investigation.

15. Search and Seizure and Proper Analysis of Material Seized

With the large amount of information being stored in smartphones and computers in recent years, search and seizures of such objects are extremely important. However, the huge amounts of data to be analyzed pose a challenge to investigators.

B. Challenges

1. Lack of Free Media

In some countries the media is not free. The media is an important tool in the fight against crime and must be free to be able to access and provide information to the public so as to pressure authorities. In Nepal, the recent Panama and Paradise Papers have forced requests through diplomatic channels since several members of parliament were on the lists that were released.

2. Lack of Political Will

The main difficulty in some countries is the lack of political will to fight corruption. In some countries this leads to many difficulties, such as challenges in the implementation of UNCAC provisions and fulfilment of its basic requirements in asset recovery. There needs to be proper legal and institutional mechanisms for it and also for international cooperation.

3. Lack of Focus on Asset Recovery

Investigators tend to focus on obtaining evidence to secure a conviction for an offence of corruption and focus less on tracing assets and obtaining evidence for recovery.

4. Low Level of Public Trust in Agencies Dealing with Corruption

In some countries there is a low level of public trust in the organizations that deal with corruption.

5. Cash-Based Economies

In some countries such as Tanzania, a cash-based economy makes it difficult to trace tainted financial transactions.

6. Lack of Know-How, Training, Special Techniques or Tools by Investigators and Prosecutors

Lack of know-how and training in modern investigation techniques results in ineffective investigations, and it is necessary that investigators learn how to effectively utilize the tools already in place. Furthermore, in certain countries such as Nepal and Maldives, the bodies tasked with investigating corruption and tracing proceeds do not have forensic or technical capabilities to conduct and make use of special investigative techniques. Those authorities only utilize traditional methods of investigation and when forensic or special investigative methods are required, corruption investigation authorities need to seek the assistance of other local or international authorities.

7. Political Appointment of Investigators, Prosecutors and Judges and Other Political Influences

In some countries commissioners are appointed on the basis of political ties instead of qualification, and even though they can be independent and may not be answerable to anyone, their political appointments usually still have influence over them. On the other hand, the grassroots are usually not independent from political influence, and that influence on the investigative, prosecutorial and judicial bodies is one of the most serious threats to the fight against corruption.

8. Culture of Impunity and Immunities for Certain Public Officials

Some countries have a culture of impunity for powerful figures and politicians and also of bribes by people in order to cut the red tape in government institutions, and a lack of accountability among the law enforcement authorities and other government institutions. Furthermore, corruption investigation bodies in some countries do not have jurisdiction over certain officials such as members of parliament.

9. Lack of Coordination Between Investigators and Prosecutors

Sometimes investigators conclude and forward serious cases of corruption for prosecution without prior

consultation with prosecutors which in some instances results in evidence being insufficient to prove all elements of the crime. A crucial technique of the Japanese police is to meet with prosecutors at the commencement of investigations and obtain their guidance, as prosecutors are equipped with necessary legal knowledge. While police just obtain guidance from prosecutors in some cases, in more complicated cases police and prosecutors conduct a joint investigation. It is crucial for investigators to obtain guidance from prosecutors to proceed with investigation in order to build an effective case for trial.

10. Non-Mandatory Confiscation of Proceeds after Conviction for Corruption

In some countries such as Japan, judges are required to order confiscation of the bribe if the bribe-taker is convicted of obtaining a bribe. However, in some other countries it is not mandatory for the judges to make an order for confiscation of a bribe or proceeds of corruption even upon a conviction, and authorities are required to seek asset recovery through other legal avenues.

11. Separation of Jurisdiction for Corruption and Asset Recovery

In some countries such as Maldives and Nepal, the asset recovery process is handled by agencies other than the investigative/prosecutorial bodies that deal with corruption.

12. Action against Investigators and Prosecutors in Case of Acquittals

Investigators in certain countries such as Laos face a penalty when the case they investigated results in an acquittal. Such a rule would unfortunately result in investigators being reluctant and afraid to initiate investigations for fear of job security since the political authority is the final governing body.

13. Conviction-Based Confiscation

While obtaining a conviction in corruption offences is a huge challenge due to various factors, some of which are discussed above, failure to obtain a conviction is an obstacle for asset recovery due to confiscation being conviction based in several countries. In order to secure evidence and for efficiency, it is important that money laundering is investigated simultaneously with the predicate corruption offence.

C. Proposals

1. Corruption Reporting Centres

Easily accessible corruption reporting centers independent of investigation and prosecution authorities should be established for the public to lodge complaints of corruption and obtain notices of progress of the cases they report. Such centres need to be less stringent and more public friendly as most public members are usually discouraged to report cases and obtain information from police or similar agencies due to their stringent administrative procedures.

2. Better Mechanisms for International Review of Independence and Technical Capability of Organizations Tasked with Fighting Corruption

Countries should implement UNTOC and UNCAC recommendations and establish truly independent commissions or investigative agencies, as well as prosecutors and judges. To this end, it is essential for there to be international bodies in place to supervise the independence of such agencies since one country cannot go against corruption alone: it needs the support of the others. Even though UNCAC provides mechanisms to review countries' compliance with the treaty, it is considered insufficient. In order to be considered compliant, countries should have sophisticated tools and trained personnel to investigate corruption and proceeds and also have independence from political interference.

3. Better Coordination Between Investigators and Prosecutors

Prosecutors and investigators should meet and share information on what evidence they have in corruption and asset recovery cases. In cases of serious crimes there should be prosecution guided investigations, so as to show investigators what would be needed in courts to obtain convictions.

4. Specialized and Independent Courts

There should be special courts for corruption cases with independence from political appointments, promotions and transfers and without pressure from powerful public officials, politicians and businessmen. Judges in such courts should receive specialized training in corruption and seizing proceeds.

5. Protection for Investigators

It was agreed that investigators whose cases fail in court and do not lead to convictions should have some degree of immunity as to make sure they are not intimidated from doing their jobs.

6. Public Trials

Publicity of trials is also relevant to provide independence to judges to rule against powerful officials and politicians. The media, both regular and social media, should be encouraged to report on official acts and trials of corruption.

7. Enactment of Legislation to Criminalize Illicit Enrichment and Corruption in the Private Sector, Witness Protection among Other Legislation Proposed in UNCAC

Legislation proposed in UNCAC but made optional for treaty parties should be enacted to facilitate the seizing of the proceeds of corruption.

8. Adoption of Non-Conviction-Based Forfeiture

In countries with only conviction-based forfeiture it is very difficult to trace and seize the proceeds of corruption. Thus, it is crucial for the law to provide for non-conviction-based forfeiture.

9. Promoting a Less Cash-Based Economy

Governments should not encourage cash-based economies as cash transactions are very difficult to trace.

10. Efficient Central Banks and Tax and Customs Agencies

Central banks and tax and customs agencies have a role that is essential for the investigation of the proceeds of corruption. Hence, in addition to investigation authorities, such agencies need to be efficient.

11. Transparency of Government Acts and Expenditures

It is crucial that all public transactions and government activities are transparent in order to eliminate any opportunities for public officials to engage in corruption. Thus, governments must establish systems for easy access to information on public affairs for the public and digitalize government transactions where possible.

12. Demanding Proper Explanation of Origin of Funds for Large Purchases

Buyers should be required to produce a certificate from tax authorities attesting to the buyers' financial capacity when making transactions of large amounts. Title to properties bought without producing such a certificate shall not pass to the buyer, and the buyer shall be liable for an offence under anti-corruption, bribery or illicit enrichment laws.

III. INTERNATIONAL COOPERATION

A. Methods

1. Informal Networks

All countries acknowledge the importance of informal networks for asset recovery: investigator, prosecutor and judicial informal international networks, such as AIAMP, IBER-RED, WACAP, REFCO; informal asset recovery networks, such as RRAG (GAFI-FATF Network for the Recovery of Assets); Carin (Camden Asset Recovery Inter-Agency Network); investigator, prosecutor and judicial attachés in embassies; among several others. It is believed that in the coming years there will be a greater reliance upon such networks, as seemingly local cases are becoming more international every year due to money laundering and international procurement. However, it was pointed out that if there was a common legal framework in all countries, such informal networks would not have to be used, and investigators could apply directly to the courts for assistance. Nevertheless, in the cases of countries that are not a part of UNCAC, such informal networks would remain useful, for it is important to know the systems of these countries in order to make requests, and even then, it is not guaranteed that it will be done.

2. Intelligence Gathering

Reliable information that can be used to initiate formal investigations can be obtained through Interpol and the Egmont Group of FIUs.

3. Formal Requests for Legal Assistance

Formal requests can be made through MLATs, UNCAC, UNTOC, other multilateral treaties and bilateral agreements and are processed by each country's central authorities.

B. Challenges

1. Slow or No Response to Assistance Requests

A major issue highlighted with regard to International Cooperation is that MLA requests are not responded to timely by requested countries, which effectively stops cases from advancing in court.

2. Different Authorities for Legal Assistance Requests and Asset Recovery

Also in some countries there is one central authority for MLATs (e.g., Prosecutor General's Office) but another authority (e.g., the Attorney General) for asset recovery. If this recovery of assets was also inside the structure of the investigative/prosecutorial bodies, it would be more effective.

C. Proposals

1. More Use of Joint Investigative Teams

Since crime has been without borders for a long time now and has managed to contaminate our economies and governments, large parts of our sovereignty are in the hands of criminals. It is also time for investigators, prosecutors and judges to become transnational as well. There is already a system for this underway in Europe, and international treaties already allow for Joint Investigation Teams (JITs), which in a sense are the embryos of the multinational institutions that we need. There should be international bodies of investigators to trace the proceeds of corruption. Countries that rate higher in the fight against corruption should assist in this matter.

2. More Investment in Major Foreign Languages

In order to achieve better integration, the language barrier between investigators, prosecutors and judges from different countries has to be destroyed. If they cannot communicate freely among themselves, it will be difficult to achieve any kind of collaboration. Although it is true that many central authorities have some kind of translation system for documents and requests, this is costly and ineffective. Investigators, prosecutors and judges should receive additional training in English, and new employees should be recruited taking into consideration their ability in a major foreign language.

3. More Spontaneous Collaborations from FIUs

There should be an increase in spontaneous collaboration between countries, especially from FIUs, since those are usually very important in speedily seizing the proceeds of corruption that can be easily transferred from country to country.

4. More Training for Authorities to Use International Collaboration

Many authorities make very little use of the international structure to fight corruption either because they do not know it is in place or due to the belief that international cooperation is a complicated process that will take too much time. However, the increasingly common usage of foreign bank accounts and the use of interposed persons make international cooperation a necessity to track and recover the proceeds of corruption. Therefore, there should be an investment in explaining to the authorities how they can make use of international cooperation and make this process more streamlined for them.

5. Common Legal Framework for Investigating Proceeds of Corruption

There is no formal mechanism to force international assistance. As corruption and money laundering are being committed beyond borders, it is crucial to have a mechanism that compels requests from foreign authorities to be processed and delivered. There should be a common framework so that informal networks do not have to be used and investigators can come directly to courts, such as the international mechanisms in place with regard to intellectual property laws. Due to the differences in criminal justice and basic legal systems of jurisdictions, UNCAC itself left some of its provisions as optional for Member States. However, due to the nature of corruption and money laundering offences, it is crucial to harmonize the corruption and anti-money laundering laws of all countries to ensure effective international cooperation.