

## GROUP 4

### EFFECTIVE MEASURES TO DETECT, INVESTIGATE AND PROSECUTE HIGH-PROFILE CORRUPTION

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## I. INTRODUCTION

In the process of detection, investigation and prosecution of corruption crimes, whistle-blowers, witnesses and accomplices play an indisputable role. It should be highlighted that in the cases related to high-profile corruption, the above-mentioned subjects have become more vulnerable, and the need of effective protection guaranties acquires a crucial importance.

Despite the existence of the legislative provisions and toolkits aimed at protection of witnesses, accomplices, as well as whistle-blowers, the effective measures to encourage them to report corruption and to facilitate their cooperation with criminal justice authorities remains an issue for the group member countries.

Taking into consideration the above-mentioned, the group has agreed to select two interrelated subtopics, which are “Effective measures to encourage reporting from witnesses, accomplices, whistle-blowers, etc. and to ensure credibility of their testimony” and “Effective measures to facilitate witness and accomplice cooperation with criminal justice authorities”.

## II. ISSUES AND CHALLENGES

### A. Effective Measures to Encourage Reporting from Witnesses, Accomplices, Whistle-blowers

Participants from Armenia, Japan, Kazakhstan, Nepal and Pakistan stated that appropriate legislation on whistle-blower protection is in place in their countries, while the representative of Viet Nam stressed the absence of specific law on whistle-blower protection. The participant from Thailand touched upon the point that although there are no specific laws on whistle-blowers, the “Witness protection act” is also applied to whistle-blowers. Regarding the legal provisions on protection of witnesses and accomplices, the participants stated that legislation of their respective countries provides regulations on witness and accomplice protection; nevertheless, in some countries there are loopholes and gaps.

#### 1. Challenges and Issues of Encouraging Reporting

Taking into consideration the fact that almost all issues and challenges are equally applicable to whistle-blowers, witnesses and accomplices, the group has agreed to discuss the challenges and issues together. So, the following issues and challenges were identified by discussion of the group.

##### *(a) Social bonds*

As one of the main challenges, the participants indicated social bonds. According to the representatives from Japan, Armenia and Kazakhstan, whistle-blowers, witnesses and accomplices are often constrained by public opinion. In this regard, the main challenge is related to the fact that the neighbours, relatives, colleagues, etc. will be aware of their reporting, which is not preferred; therefore, most of them restrain themselves from reporting.

*(b) Social acceptance/lack of awareness*

All participants stated that one of the main challenges to reporting corruption is either social acceptance or lack of awareness, which are closely interrelated. As regards social acceptance, it should be highlighted that the citizens of Kazakhstan, Armenia and Pakistan share the opinion that it is not socially acceptable to report corruption they witnessed. However, citizens of Viet Nam, Thailand and Japan find that it is highly acceptable to report corruption.

Another main challenge on which all participants agreed, and which is related to social acceptance, is the low level of awareness and anti-corruption education. The lack of awareness concerns equally low level of knowledge of legislation, citizens' rights in case of reporting and measures implemented by the governments.

*(c) Political pressure/intervention*

Participants stressed that the process of detection, investigation and adjudication of high-profile cases is very often marked with political intervention and influence which becomes a discouraging issue for people to report. As an example, in Pakistan, if the complaint is against politicians, the portfolio can be used to initiate prosecution against reporters. In case of Viet Nam, the suspected politician can indirectly affect those who have reported against them by using relations, their secrets, or by bribing them.

*(d) Threats—physical and economic*

All participants agreed that yet another of the main challenges to the reporting of corruption is the fear which manifests itself in two main forms: physical threats or economic pressure. As an example of threats of physical violence, 30 witnesses were killed in Pakistan by the order of one of the leaders of a political party. In Japan and Armenia, people are more worried about their economic situations, such as being laid off, dismissed, etc.

*(e) Lack of trust towards the authorities*

Some participants (Armenia, Kazakhstan, Pakistan and Viet Nam) raised the issue of inefficiency of the investigation process which can be caused by different factors such as lack of capacity, resources and specialization of investigators, lack of motivation-(perks/allowances, promotion), absence of contemporary technologies, as well as involvement of law-enforcement agencies in corruption in the process of investigation. Participants from Pakistan stressed the issue that lengthy trials are discouraging people from reporting corruption.

*(f) Lack of motivation*

Participants from Kazakhstan and Pakistan stated that for whistle-blowers a reward mechanism exists, but in Kazakhstan the reward is not sufficient for the whistle-blowers to entice them to report. Moreover, the mechanisms of reward, including the time period, are not efficient, which creates grounds for lack of motivation.

*(g) Fear of punishment*

As regards accomplices, the participants agreed that the main challenge is the fear of being punished in case of reporting corruption. In this regard, in many countries no mechanism is in place to encourage reporting of corruption.

2. Challenges and Issues of Ensuring Credibility of Testimony

The group discussed and agreed that the main challenges of the credibility of testimony of witnesses and accomplices are as follows:

*(a) False statements to avoid or mitigate punishment*

This challenge mainly relates to the accomplice. The other interrelated challenge which is applicable for both witnesses and accomplices is false statements to incriminate an innocent person.

*(b) Changing testimony*

The participants agreed that changing testimony occurs for two principal reasons: one of them is the intentional change which can be caused by influence, business, political, family relationships, and the other is an unintentional change.

## **B. Effective Measures to Facilitate Witness and Accomplice Cooperation with Criminal Justice Authorities**

The participants have agreed that the challenges related to the facilitation of cooperation are closely related to those already discussed above. The participants agreed that the main challenge is in the phase of testifying, taking into consideration the fact that the court is public, and witnesses sometimes do not prefer to testify because of fear and/or social bonds.

## **III. SUGGESTED SOLUTIONS AND BEST PRACTICES**

It is not easy to fight against corruption as it is carried out secretly between bribe givers and takers where both parties get benefits. Hence, the transaction is always top secret. There are a lot of attempts made at the local (country) level and the global level. The best practices to solve the issues raised above are stated below.

### **A. Solutions and Practices to Encourage Reporting**

To encourage reporting is a big challenge. Therefore, all participants agreed that the main solutions to overcome the lack of social bonds, as well as social acceptance challenges, are the implementation of wide awareness-raising campaigns and educational programmes. The latter can include active announcement of success stories on corruption cases using news media, advertisement of reporting by involvement of respected and influential people, clear messages from high-level officials aimed at encouraging reporting and announcing zero tolerance, and dissemination and promotion of anti-corruption education since childhood. As examples, the zero-tolerance principle of Nepal and the anti-corruption educational modules in Armenia and Kazakhstan can be mentioned.

The participants agreed that the best practice to resolve the political intervention is to create a Joint Investigation Team (JIT), which is successfully practiced in Pakistan and Nepal. Similarly, Hong Kong ICAC's practice can be useful, which applies institutional and functional independence, especially the existence of the Operations Review Committee composed of regular citizens with different backgrounds in charge of oversight of ICAC and thereby decreasing the risk of influence

Participants discussed the practices of their respective countries to solve the threat challenge. In this regard, strong guaranties of protection shall be in place for encouraging persons to report. The participants have agreed that, first of all, relevant legislation is required to protect whistle-blowers, accomplices and witnesses. Moreover, for whistle-blowers guarantees of anonymity and confidentiality shall be in place. As an example, in Armenia, Nepal and Pakistan, an electronic platform for anonymous reporting is in place which enables hiding the IP address of the whistle-blower. As regards the economic threats, a prohibition of unfair treatment towards whistle-blowers and the right of restitution and reimbursement of salary in case of dismissal are in place in Japan, Armenia and Thailand. For witnesses and accomplices, the participants agreed that in case of existing legal provisions, strong mechanisms for implementation, such as ensuring personal security, taking the protected person to another place of residence, altering appearance, changing the workplace, etc., shall be ensured.

Participants also stated that the most effective way to create trust towards law-enforcement agencies is by raising the accountability and showing concrete results, as well as by strengthening their capacities, by organizing systematic training and motivating the concerned officers. Concerning the issue of lengthy trials, the group agreed that a mechanism of prioritizing cases is required.

The participants agreed that one of the most effective means to encourage people to report is providing sufficient motivation. In this regard, some of the participants suggested a monetary reward mechanism. For instance, in Pakistan a new law on whistle-blowing has been recently adopted which provides for monetary rewards for whistle-blowers (20% of the recovered sum). The same provisions are in place in Kazakhstan. Nevertheless, the participant from Kazakhstan has suggested to increase the percentage of the reward to make it more attractive. The other group of participants stated that the motivation to report should not be the monetary value, but the sense of public duty. And in this regard, educational and awareness-raising measures should be systematically organized. The participants agreed on the solution that one of the effective measures to encourage accomplices to report without fear of punishment is to consider the adoption of measures that encourage cooperation with law enforcement, such as cooperative agreements in Japan.

### **B. Solutions and Practices to Ensure the Credibility of Testimony**

Concerning the challenge of credibility of testimony of witnesses and accomplices, the participants stated that detailed analysis of provided testimonials and data including documents, email, audio, video by means of using digital evidence, can be practiced. The relationships between witness, defendant and other related persons are to be identified. Participants also have agreed to introduce the system of Japan, which makes use of witness screens and video-link systems in order to prevent the witnesses and accomplices from being influenced by the defendant and the public in court. Similarly, the participants agreed that in all countries in this group, in order to ensure the credibility of testimony, a mechanism for incrimination of false testimony exists. Some of the participants have suggested to cross-check the credibility with the use of lie detectors. In order to overcome the unintentional challenges, the group has agreed to introduce speedy trial systems.

### **C. Facilitating Witness and Accomplice Cooperation with Criminal Justice Authorities**

In order to facilitate accomplice cooperation, some participants stated that there should be exemption from criminal liability. In that sense, participants have agreed to consider the use of the experience of the United States and the United Kingdom with respect to plea agreements, plea bargaining, deferred prosecution agreements, as well as Japan's introduction of cooperative agreements. The group also agreed that for particular cases a mechanism on interrogating the witnesses and accomplices in the court without disclosing his identifying information should be introduced. For this point also the participants agreed that putting up a screen and video-link system in order to prevent the witnesses and accomplices from being influenced by the defendant and the public in court should be applied.

## **IV. CONCLUSION**

In this way, solutions and best practices were identified through group discussions. However, systematic measures shall be taken in every country to ensure practical enforcement of suggested solutions. It is also recommended to adjust and update measures regularly in order to cope with the changing situation.