
REPORTS OF THE SEMINAR

GROUP 1

IDENTIFYING AND PUNISHING CORRUPT OFFENDERS

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I. INTRODUCTION

Group 1 started its discussion on 28 January 2008. The group elected by consensus Ms. Ortega as Chairperson, Mr. Iwayama as Co-chairperson, Mr. Sousa as Rapporteur and Ms. Shoji as Co-rapporteur. The group, which was assigned to discuss “Identifying and Punishing Corrupt Offenders”, agreed to conduct its discussion in accordance with the following agenda:

- 1) Measures to encourage persons or bodies that have useful information on corruption to supply the information to, and co-operate with, investigative and prosecutorial authorities;
- 2) Pro-active measures to collect information and/or evidence;
- 3) International co-operation.

II. SUMMARY OF THE DISCUSSIONS

A. Encouraging the Supply of Useful Information and Co-operation with Investigative and Prosecutorial Authorities

The discussion began with all participants sharing information about their countries’ measures regarding the topic.

Mr. Alharbi stated that in Saudi Arabia there is a law that allows a reward for anyone who provides information on corruption and is willing to testify; however, despite the reward, people are afraid to co-operate due to possible negative repercussions. He also stated that there is a free phone line which the public can call with any information on corrupt activities. All participants agreed that offering cash rewards is not necessarily an effective measure to encourage the desired co-operation, since it acts as an inducement.

The group also agreed that education is a very important weapon to be used to encourage witnesses. Mr. Sousa explained that in Brazil, citizens are informed of available hotlines and are urged to complain or to report corruption related cases through advertisement campaigns, media, seminars, etc. Some participants stated that in their countries they don’t have these hotlines, which becomes a problem, since the citizen is not informed of how, to whom or where he or she should report or complain.

The discussion proceeded and the visiting expert, Mr. Lo, brought to the group’s attention some enlightening information regarding the Hong Kong experience in fighting corruption. According to Mr. Lo, Hong Kong has successful witness and whistle-blower protection programmes. He also stated, though, that these are very expensive tools.

Mr. Phiphia said that his country doesn’t provide such programmes, because the government doesn’t have enough resources, while Ms. Ortega noted that in Chile there is a witness protection programme and also that sentences can be reduced for witnesses who co-operate with the investigation. Mr. Iwayama stated

that in Japan there is no legal provision for a witness protection programme, although some witness protection measures, e.g. keeping the informant's identity confidential, can be taken in corruption cases. He also stated that the immunity of witnesses from prosecution is a good measure to be adopted. The group agreed that witness and whistle-blower measures are needed in the battle against corruption, and that each country should adapt them according to its resources and peculiarities.

All participants agreed that the media has an important role in this battle, and should be properly explored.

1. Summary of the Recommendations

- (i) Determination and will of the States Parties to the UNCAC to fight corruption is needed; therefore, they need to adopt certain good practices to prevent this phenomenon, such as:
- Education programmes and campaigns, starting with school children and the community in general;
 - Investment in advertisement and publicity which highlights the damage caused by corruption.

All these measures will help to encourage the reporting of offences, and therefore will allow authorities to more easily identify the corrupt offender.

- (ii) Encourage the reporting of offences through:
- Implementing witnesses protection measures, in those countries where it is possible to finance them;
 - Providing hotlines for reporting;
 - Implementing whistle-blowing protection;
 - Accepting anonymous reports;
 - Offering immunity in certain cases;
 - Implementing the obligation for a public servant to report offences discovered in the performance of his or her duties;
 - Adopting procedures such as plea bargaining.

B. Pro-active Measures to Collect Information and/or Evidence

According to most of the participants, media information can be used as evidence to initiate an investigation.

Mr. Madhav stated that in Nepal, the agency responsible for the investigation of corruption cases conducts detailed surveillance based upon the information provided by the many associated organs and enterprises. Most participants stated that in their countries, although such kind of information is also provided, specific agencies are responsible for uncovering traces of illegal activities.

In Japan, Mr. Iwayama explained that in the traditional way, information gathered during an investigation can be used as a trigger to begin other corruption investigations. He asked for the opinion of the other participants, and all agreed that this was a common way to start an investigation in corruption cases.

While discussing the use of special techniques to collect evidence, Mr. Iwayama elaborated that, although there is a legal provision for the use of wiretapping, it is not applied in corruption cases. Mr. Alharbi stated that in Saudi Arabia, although wiretapping can be used during the investigation, it can't be used as evidence in trials. However, in some countries, wiretapping is commonly used and is efficient in collecting evidence regarding corruption investigations. Mr. Sousa, Mr. Phiphia and Ms. Ortega provided some practical examples of the utility of the measure in their countries. Mr. Iwayama stated that some amendments or revisions in the law would be necessary prior to the use of this tool in Japan.

Ms. Shoji added that since the use of these tools breaches the privacy of individuals, certain care should be exercised in authorizing their use. Most participants stated that in order to obtain the related warrant, credible evidence must be provided.

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Some of the participants stated that other special investigation techniques are used effectively in corruption cases in their countries, such as undercover agents, informants, search and seizure, etc. These measures however are available with a warrant provided by a judge. Mr. Alharbi stated that in Saudi Arabia, these measures require the authorization of the Minister of the Interior.

Mr. Madhav added that in his country, the agency responsible for the investigation of corruption cases can not investigate directly in the private sector.

Regarding the lifting of bank secrecy and investigation of the incomes and assets of the corrupt offenders, as other measures used to collect evidence, Mr. Phiphia and Mr. Alharbi stated that although they can have free access to information regarding incomes, assets and bank account records, sometimes it is useless for the investigation, since the offenders don't deposit their money in local banks. Mr. Iwayama stated that although in Japan it was difficult to trace data concerning banking accounts, once the information was obtained, it could be significant or indispensable to prosecute corruption cases. Mr. Sousa, Mr. Alharbi and Ms. Ortega stated that their respective countries don't face such kinds of problems and that there are surveillance agencies responsible for keeping all records regarding bank transactions, which makes it easy to identify suspicious activities. This measure was specially appreciated by the other participants.

Another important tool used in the investigation of corruption cases is an expert's report, which can be used as evidence in most of the participating countries. These experts are usually public officials. It is important to quote that in Japan some police officers and public prosecutors are trained in accounting or financial matters. If any additional technical information is needed, experts can be interviewed.

In some of the participants' countries, only high-ranking officers are requested to declare their assets. In others, all public servants are requested to declare assets and financial transactions. It is important to note that in some of the represented countries, the declared information is accessible by the public, but in all of them, it can be accessed by the authorities responsible for the investigation of corruption cases. All the participants agreed that this is an important tool to achieve transparency.

1. Summary of the Recommendations

(i) Enhance traditional investigative techniques, such as:

- Obtaining information from the media;
- Obtaining information from other corruption cases;
- Obtaining information from informants;
- Search and seizure;
- Lifting of bank secrecy;
- Surveillance;
- Experts' reports.

(ii) Adopt special investigative techniques, such as:

- Undercover agents;
- Wire tapping;
- Electronic surveillance.

(iii) Promote transparency through:

- Assets and income declaration by all public servants;
- The appointment of Ombudsmen;
- Encouraging civil society's participation;
- Obliging public servants to provide requested information regarding investigations.

All these techniques should be used or considered in the investigation of corruption cases, in accordance with each country's legal regime and peculiarities.

C. International Co-operation

The participants decided to address only the problems regarding the obtaining of evidence and information of bank accounts in other countries.

The discussion started, with the agreement of the participants, on the importance of international co-operation in every step of the battle against corruption.

Mr. Madhav stated that legal instruments are needed in order to obtain proper international co-operation, so Nepal and neighbouring countries have to ratify the UNCAC as soon as possible. Mr. Iwayama stated that Japan seeks international co-operation through the diplomatic route. The other participants shared some information regarding difficulties faced in each respective country.

Regarding extradition, Mr. Sousa and Ms. Ortega said that their countries are open to international co-operation; both countries have signed treaties and reciprocity can also be used.

1. Summary of the Recommendations

- (i) The importance of international co-operation was a common point of agreement for all the participants. The main recommendation is that every country should ratify the UNCAC, and try to adopt legal instruments, such as bilateral and/or multilateral treaties, to receive and provide international co-operation;
- (ii) Although formal international co-operation is very important, the relevance of networking and informal and/or direct contact between corruption investigators cannot be ignored. This relationship must be continually encouraged in order to strengthen its effectiveness.