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## REPORTS OF THE COURSE

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### GROUP 1

#### IDENTIFYING AND PUNISHING CORRUPT OFFENDERS

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<i>Co-Chairpersons</i>	Ms. Seneviratne Ranjani	(Sri Lanka)
	Mr. Hiroyuki Ito	(Japan)
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<i>Co-Rapporteurs</i>	Mr. Velasco Arturo Ponce	(Mexico)
	Mr. José Portillo Martinex	(Paraguay)
<i>Members</i>	Mr. Julio Abarca	(El Salvador)
	Mr. Prastiono Endri	(Indonesia)
	Mr. Mthombeni Dumisani	(Zimbabwe)
	Mr. Atsushi Maekawa	(Japan)
	Mr. Shinji Yamaguchi	(Japan)
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### I. INTRODUCTION

Group 1 started its discussion on 1 November 2010. The group elected, by consensus, Mr. Khan as its chairperson, Ms. Seneviratne and Mr. Ito as its co-chairpersons, Ms. Satin-Vivas as its rapporteur, and Mr. Arturo and Mr. Portillo as its co-rapporteurs. 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, etc. to supply the information to, and co-operate with, investigative and prosecutorial authorities; 2) Proactive measures to collect information and/or evidence; 3) Identifying and tracing crime proceeds; 4) Seizure, freezing and confiscation.

### II. SUMMARY OF THE DISCUSSIONS

#### A. Measures to Encourage Co-Operation with Investigative and Prosecutorial Authorities

Firstly, each member reported on the situation in his or her country with regard to the sub-topic “mitigating punishment/granting immunity from prosecution to a co-operative person.” The Philippines, Indonesia, El Salvador, Mexico and Paraguay have similar laws on this subject. In the Philippines, the law deals with general criminal offences including corruption charges. However, in Mexico, it deals with organized crimes only, and in Paraguay, only kidnapping and terrorism offences. In Zimbabwe and Botswana, legislation provides for the granting of immunity to a co-accused to testify as a witness for the state on a voluntary basis. This applies to some criminal offences, including corruption charges; once immunity is granted one cannot be charged for the same offence. This procedure is used in cases where there is not enough evidence to prosecute. In Japan and Sri Lanka, there is no similar law.

The group discussed the effect of the law and system regarding this sub-topic. Mr. Mthombeni from Zimbabwe said that the law is very effective in his country. Generally, every offender has to be prosecuted but the state may not have strong evidence against a co-accused. With the assistance of a co-accused, the case against the chief perpetrator becomes very strong. However, it is still discretionary on the part of the state whether to proceed with the case with or without giving immunity to a co-accused.

Mr. Khan from Botswana said that the purpose of the law is really to tell the truth. The immunity is granted after the giving of testimony by the witness (co-accused) to the court to eliminate a motive of false incrimination. The witness is introduced as a tainted witness and he or she is informed of the procedures and rules. The co-operative person can still provide useful information against a co-accused. If properly implemented, the law is very effective.

The group discussed “Witness and/or Whistleblower Protection”. All participants agreed that “Witness and Whistleblower Protection” is very important.

In Japan, there is a law on informant protection, though the law is not limited to corruption. It covers workers who belong to an organization or company who spot misconduct and report the same to the investigation/administrative authority or mass media. The informant or employee who reported must not be harmed and if removed from employment, the removal is considered invalid. However, there are still problems, for example, what does the statement “the whistleblower should not be harmed” mean? If the employer fires the whistleblower for giving information, there is a clear violation of the law or in another situation, if a whistleblower-employee is transferred to another department which he or she does not like, will the employer be punished in such case? Hence, the potential whistleblower is reluctant to speak up.

In addition, several countries have a law or provision on witness protection. In El Salvador, there is a programme which explains how the law is implemented; a means or a tool of the government for the people to be aware that there is such a law.

Mr. Mthombeni interposed that people should always be free to report allegations of corruption without fear, although this does not reflect the reality ‘on the ground’: if there is no confidence in the authorities, coupled with the absence of political will to combat corruption, people cannot come out because the defendant cannot be prosecuted after all.

The group also discussed “reporter-friendly mechanisms to encourage reporting by citizens, raising public awareness of such measures” and “reporting obligations or mechanisms of related investigative agencies and public officials.”

Most members of the group reported that their governments encourage citizens to report corruption through telephone, mail, e-mail and websites. However, people prefer to stay quiet.

Anonymous complaints are entertained as a lead for further fact-finding investigation; for example, in the Philippines, anonymous complaints are entertained by the Office of the Ombudsman. However, complaints cannot be used as evidence per se in court. In some other countries, like Zimbabwe and El Salvador, anonymous complaints cannot also be used as evidence. One of the reasons is that witnesses should be cross-examined in court.

Mr. Ito declared that in Japan, in cases of corruption crime, citizens report to the police or prosecutors, but in some cases, the mass media is used as it is an independent entity which has no links to government agencies. If there are media reports, such information is likely to attract public attention, which may prompt the authorities to conduct an actual investigation.

Several countries have implemented efforts to raise public awareness. In Zimbabwe, the Anti-Corruption Commission, Transparency International, the Law Society and the Ministry of Justice conduct public awareness programmes especially on the evils of corruption.

In Sri Lanka, the Anti-Corruption Commission conducts seminars in government departments; conducts competitions regarding corruption in schools; distributes pamphlets about corruption to inform the public; and broadcasts on the issue on radio and TV.

Mr. Khan from Botswana said the problem is in the rural areas where there is no access to broadcast media and no regular circulation of newspapers, which makes it difficult for the public to become aware of these anti-corruption mechanisms. The DCEC conducts seminars in schools to instil in the students knowledge of the evils of corruption at an early age but this is not enough. So, it is necessary to ensure effective measures to communicate with the entire population and to include anti-corruption lectures in schools.

Mr. Maekawa averred that in Japan, it is stipulated in the Criminal Procedure Code that “A government official or local government official shall file an accusation when they believe an offense has been

committed.” However, government officials are not well trained or are not aware of their obligations. Mr. Velasco said that in Mexico, public officials are obliged to report everything they know, but many public officials keep quiet about any corruption by other public officials. Mr. Abarca stated that in El Salvador, omission of reporting by public officials is considered a crime.

Some expressed the opinion that there should also be measures to protect the reporter, and also that appropriate incentives, such as promotion or assistance in any form, should be given, especially when a low ranking public official reports the corrupt activities of a superior or a high-ranking public official.

Summary of recommendations:

1. When a reasonable report is made, there should be immunity from prosecution and mitigation of punishment and other incentives should also be considered;
2. Throughout investigation and trial, witnesses and whistleblowers should be protected from pressure and retaliation;
3. There must be an organization for implementing reporter-friendly mechanisms: a strong authority, independent and trusted by the citizens. As for the ways of reporting, there must be direct reporting to anti-corruption agencies as well as indirect reporting through letters, mails and websites. There should be an independent contact window in order to protect the identity of a witness from high ranking officials;
4. There is a need to establish a system to facilitate reporting by a public official of acts of corruption to appropriate authorities and consider disciplinary and other measures for violation of such measures;
5. There must be continuous education on the evils of corruption.

#### **B. Proactive Measures to collect Information and/or Evidence**

The group discussed following sub topics: 1) Investigation of related offences; 2) Use of publicly available information (e.g. media reports, NGO reports, financial statements and securities reports of listed companies, websites); 3) Search and seizure and other traditional measures; and 4) Special investigative techniques (e.g., wiretapping and other electronic surveillance, undercover/sting operations).

Mr. Yamaguchi from Japan said that the criminal investigation of corruption and the collection of evidence sometimes starts from investigation of related offences. Mr. Prastiono from Indonesia said investigators will also look for other offences related to corruption cases committed by a suspect. Crimes that are often associated with cases of corruption involved the banking system and money laundering. However some participants stated that in their countries, investigation commences after a formal complaint is made, in principle.

In the Philippines, collection of information can be done through the use of media reports and non-governmental reports, while in cases of financial statements, a court order should first be obtained.

The group agreed that searches and seizures are very important measures to collect evidence or to find facts. Hence, the investigation agency must conduct searches and seizures thoroughly.

Regarding special investigative techniques, Ms. Seneviratne informed the group that in Sri Lanka, a decoy is used in bribery cases but not in corruption cases. In Indonesia, there is a law which specifically allows evidence from wiretapping to be used as evidence in trial. In Mexico, they use special investigative techniques but they are complicated because of lack of equipment and trained personnel. Sting operations can be done in bribery and corruption cases. This involves the use of a pinhole camera on the agent and teaching him or her how to act in front of a public official while conducting a sting operation. Wiretapping is also allowed but there should be a request for a warrant in corruption cases. In a sting operation, the agent will not be punished. However, there is no undercover operation for corruption because of lack of equipment and training.

The group discussed “Inter-agency co-ordination in corruption investigation: how to establish relationships and exchange information.”

In Japan, there is a personnel exchange between investigative agencies and district prosecutors offices and tax offices so that they can understand each other's investigation and co-ordinate even better. Mexico has excellent inter-agency communication but the problem is that there are too many agencies fighting against corruption.

Ms. Satin-Vivas stated that in the Philippines, the Department of Justice (DOJ) has concurrent jurisdiction to conduct preliminary investigation of corruption charges and forwards its findings to the Ombudsman who will file the case in the anti-corruption court. The tax agency conducts tax evasion investigation, then forwards the complaint to the DOJ to conduct preliminary investigation. The AMLC also conducts fact-finding investigations in cases of money laundering, then forwards the complaint to the DOJ for preliminary investigation.

Summary of recommendations:

1. It is important that there is active inter-agency co-ordination, especially in gathering of information. If there is a successful fight against corruption there will be a smooth flow of information from each concerned agency;
2. In order to identify corruption cases, we should use special investigative techniques such as wiretapping, undercover operations and sting operations. These measures can be very effective in investigation of corruption cases so they must be used proactively and appropriately;
3. Criminal sanctions should be considered against persons, bodies or corporations which prevent or block collection of information and/or evidence during investigations.

### **C. Identifying and Tracing Crime Proceeds**

Under the topic "Identifying and Tracing Crime Proceeds," the group discussed the sub-topics: "access to bank information"; "access to government information (e.g., public procurement records, family/birth/marriage/residential registrations, tax declarations, asset declarations); "access to financial, business and corporate records (e.g., securities and bond transactions, financial statements/securities reports, registered board members of corporations); "utilization of FIU information", "disclosure and reporting requirements for officials" and "ensuring the secrecy of investigation".

Mr. Yamaguchi disclosed that in Japan, collection of information for investigation purposes is easily accessible. In case of bank information, a warrant is not necessary as long as there is a written request to perform this inquiry. The investigator can directly ask for information. As to government, financial, business and corporate records or information, an investigation is made through a written request and the answer will also be in a written document. If the information is to be obtained from a private company, the investigator will explain the purpose and the companies usually do not refuse. Public officials, except members of the Diet and cabinet members, do not have disclosure and reporting requirements of their assets. However, if public officials receive gifts whose value exceeds 5000 yen, they have to report it to the government. As to the secrecy of investigation, each public official has an obligation not to disclose any information to anyone; there is no exchange of documents or evidence with other agencies. In the absence of criminal sanction, secrecy of investigation works effectively.

In Sri Lanka, the Corruption Commission (CIABOC) has the power to give notice to any bank to produce cheques or any other documentary evidence relating to the investigation of a suspect. The Commission also has the power to access any government information, to summon any person to produce a document or other things in his possession and to examine financial, business and corporate records.

In Botswana, the anti-corruption investigators (DCEC) have the power to require in writing any person to produce, within a stipulated time, all books, records, returns, reports, data stored electronically and any document relating to the function of any public or private body. Any person who fails to comply with the request shall be guilty of an offence. Both the police and the DCEC investigators can access and utilize FIU information as long as a court order is obtained.

The Philippines and Indonesia both have bank secrecy laws but when it comes to money laundering activities, the Anti-Money Laundering Council (AMLC) and the Indonesian Financial Transaction Reports

and Analysis Centre (INTRAC), respectively, act as FIUs which have the authority to require banks or other financial institutions to provide transaction records of a suspected money launderer. In El Salvador, there is also access to bank information as provided in the Law Against Money Laundering. A request may be made by the prosecutor or judge.

In Indonesia, government agencies work closely together for easier collection of evidence as each has its own procedure to follow. As to reporting requirements for officials, the government requires every person who applies for public office to submit data concerning his or her financial information and assets owned before he or she occupies such office.

In the Philippines, although government records such as birth and marriage certificates, business registration, land titles etc. are considered public documents, a court order is still needed to access them. There is a pending Freedom of Information bill which will require all government agencies to make available for scrutiny and reproduction such documents, as well as those pertaining to official acts and transactions entered into by the government.

In El Salvador, the police, prosecutor and judge can access government and financial, business and corporate records, or information used during the trial proceedings since they are available digitally, but there must be a request to the bank and appropriate agencies. The Financial Investigation Unit, which directs the investigation in cases of money laundering, is under the Attorney General's Office.

In Zimbabwe, whenever there are investigations and there is a need for a particular bank account to be monitored, there is full co-operation of the bank and copies of accounts' transactions can be used as evidence in court. While public documents can always be inspected by the public after payment of an administrative fee, investigative authorities always have access to such documents for free. Denial of access or co-operation may amount to obstruction of justice or defeating the course of justice.

In Mexico, there is access to bank information but the problem is authorities have to wait for eight months before receipt of the information. There is also access to government information but Mexico is composed of 32 states and each has its own records so it is too difficult to get complete information. As to access to financial, business and corporate records, the problem is that corrupt officials are hiding their money in others' accounts abroad.

Mr. Martinez stated that in Paraguay, access to bank and government information, as well as to financial, business and corporate records are available through public prosecutors or judges' requests. FIU information is not well utilized since it only has administrative duties. Disclosure of public officials' information is mandatory upon judges or prosecutors' requests. There are minimum measures to maintain secrecy of information.

With regard to disclosing and reporting of public officials' assets, some participant-countries are required to submit them and some are not. As regards secrecy of investigation, some participant countries criminally sanction a person who divulges information to others.

The group also had a discussion regarding outside activities of public officials, employment, investment, assets, money, objects or profits. The systems differ in each country. Each country has different requirements. The group agreed that it is very necessary that there are requirements in place that should be followed.

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**Table 1. Reporting requirements for public officials by category and country**

Key: ✓ = reporting required  
 X = reporting not required

	Outside Activities/ Employment	Investments	Assets	Substantial gifts or benefits	Disciplinary sanctions
Botswana	✓	X	X	✓	✓
El Salvador	✓	✓	✓	✓	✓
Indonesia	✓	✓	✓	✓	✓
Mexico	✓	✓	✓	✓	✓
Paraguay	✓	✓	✓	✓	✓
Philippines	✓	✓	✓	X*	✓
Sri Lanka	✓	✓	✓	✓	✓
Zimbabwe	✓	X	X	✓	✓
Japan	✓	✓	✓	✓	✓

\* In the Philippines, public officials are not allowed to receive gifts or benefits.