
REPORTS OF THE PROGRAMME

GROUP 1

EFFECTIVE MEASURES TO INVESTIGATE CORRUPTION CASES

Chairperson	Mr. Vladimir Aras	(Brazil)
Co-Chairperson	Mr. Hironori Sato	(Japan)
Rapporteur	Mr. Abraham Kemboi	(Kenya)
Co-Rapporteur	Ms. Justine Namukwambi	(Namibia)
Members	Mr. Faycal Touti	(Algeria)
	Mr. Md Golam Rabbani	(Bangladesh)
	Mr. Nuon Norith	(Cambodia)
	Ms. Evah Thingini	(Kenya)
	Mr. Oleg Crismaru	(Moldova)
	Mr. Rosito Amaral	(Timor-Leste)
	Mr. Kenichi Ito	(Japan)
	Mr. Mutsuo Nakabayashi	(Japan)
	Mr. Shotaro Yamada	(Japan)
Adviser	Prof. Kazuhiko Moriya	(UNAFEI)

I. INTRODUCTION

Group 1 started its discussion on 25 October 2013. The group elected Mr. Vladimir Aras as its Chairperson, Mr. Hironori Sato as its Co-Chairperson, Mr. Abraham Kemboi as its Rapporteur and Ms. Justine Namukwambi as its Co-Rapporteur. The group which was assigned to discuss “Effective Measures to Investigate Corruption Cases” agreed to conduct its business in accordance with the following agenda: 1) Measures to investigate corruption; 2) International cooperation in investigation of corruption cases; and 3) Procedures for trial of corruption suspects/accused/defendants in order to conclude the Case Study. Of these agenda items, we agreed to focus on 1) Measures to investigate corruption.

II. CASE STUDY

Anti-corruption organization B in A country has received an anonymous report (assume that this information is accurate and reliable): Public official C in charge of a project to build bridge D has accepted a bribe from Construction Company E. In exchange for the bribe, the public official C has agreed to award the construction contract to Construction Company E. The bidding is scheduled to take place soon. Additionally, Construction Company F was awarded a construction contract to build bridge G three years ago after the public official was bribed by Construction Company F.

Based on the Case Study provided, the group decided to examine the three broad topics of discussion by country and agreed to conduct its discussion with following format:

III. MEASURES TO INVESTIGATE CORRUPTION

A. Measures to Generate Leads (Intelligence Steps) in Each Country

The questions/points on the said topic to be discussed by the group as agreed and the prevailing situation in each country regarding these matters in the participating countries are summarized as follows:

1. Whether Corruption Cases are Investigated by an Anti-Corruption Agency, Police, or Prosecutors

Almost all the countries, except for Japan and Brazil, stated that they had established independent anti-corruption agencies (ACA) dedicated to investigate corruption cases. In Brazil and Japan corruption cases are investigated by police or prosecutors. In these two countries, their practice is that if corruption cases are to be handled by the police, supervision by a prosecutor is necessary because the cases are considered complex.

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Establishment of the independent ACA is in line with UNCAC Article 36, which requires States Parties to ensure the existence of a body or bodies specialized in combating corruption through law enforcement. The participants observed that the ACAs had been granted necessary independence, in accordance with fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without undue influence.

2. Whether Reporting through Anonymous Letters is Acceptable

All the participants stated that anonymous reports/letters were accepted in their countries as a means of generating information that can assist in identifying acts of corruption. This method is considered safe and convenient for informants whose lives and relationships with the perpetrators would greatly be affected if it was found out that they reported such cases to law enforcement agencies.

3. Anonymous Email

All the countries indicated that they had established dedicated email accounts for use by informants/complainants when reporting alleged corruption practices to the anti-corruption agencies/police/prosecutors. It was observed by the participants that it is necessary and always important to protect the source of the report to guard against any harm.

4. Means to Identify the Source

Except for Cambodia, all the countries stated that they had in place mechanisms to identify the source of the anonymous reports. Identification of the source would be done through deployment of intelligence techniques such as recruitment of reliable informants within the target organization who will provide information for covert identification of the source. Identification of the source is usually crucial for clarification of the issues touching on the case beforehand. Members agreed that the identification of the source is not mandatory if information is reliable. Members consider that resources of identification of the author of an anonymous report can be used more successfully in verification of the information about the crime.

5. 24-Hour Telephone Hotlines

Japan, Algeria and Timor-Leste were the countries which indicated that they did not have 24-hour telephone hotlines; the rest of the countries in the group have such lines in place. The said lines are manned at all times and allow people who witness acts of corruption to report the same to authorities as and when they happen.

6. Suspicious Transaction Reporting from FIU

The participant from Timor-Leste stated that at the moment, they did not have a Financial Intelligence Unit for reporting of suspicious transactions. It was the considered opinion of all the participants that such a unit was very crucial in generating leads on laundering of proceeds of corruption; and therefore recommended the establishment of an FIU in Timor-Leste.

7. Whistle-Blower Programmes

These are programmes to ensure the safety of whistle-blowers when they expose mega scandals touching on persons or group of persons considered dangerous to the whistle-blowers. Each participant was requested to share the situation in their countries as regards programmes for protecting whistle-blowers. The group was informed that Algeria, Cambodia and Timor-Leste had no whistle-blower programmes in place.

8. Public Databases (Property, Work, Movements, Criminal Records, Etc.)

These are databases which are accessed by law enforcement agencies for information that may be useful in informing the direction of the case. Such information includes but is not limited to assets owned by the suspect, past criminal record(s) and personal details. Algeria, Bangladesh, Japan and Timor-Leste do not have such arrangements in place.

9. Human Intelligence

Except for Algeria, all the other countries use human intelligence to discover more facts about corruption reports.

10. Collection of Relevant Documents

All the participants agreed that collection of documents touching on the report was necessary. It was observed that this step needed to be done covertly to avoid arousing the suspicion of those involved, which could lead to destruction or concealment of the documentary evidence.

11. Surveillance (Visual, Trailing or Physical Tracking)

Except Moldova, in the remaining 8 countries, surveillance would be used monitor the activities of the suspects. According to the participant from Moldova, surveillance at this early stage before investigation is considered too intrusive to fundamental rights of the suspects as per the Universal Declaration of Human Rights. Surveillance firms up the report by confirming the associations of various players and movement of proceeds of corruption.

12. Formalization

This is the stage of arriving at a decision that full investigation should commence; and it occurs upon acquisition of sufficient information and documents necessary to support such investigation. All the information and documents acquired are put together in an orderly manner. Formalization requires sanctioning by an authorized official.

13. Problems Faced by the Countries in Relation to the Intelligence Phase of Investigation

- 1) Participants from some countries cited slow progress in passing legislation that establishes key institutions such as FIUs
- 2) Participants from some countries stated that they had challenges in generation of leads, especially by use of surveillance techniques because of lack of professional training. Lack of modern surveillance equipment was also cited as a contributor to this problem.
- 3) Some participants stated that bribery in the private sector is not criminalized.

B. Measures to Detect Corruption Cases (Investigation Step)

The issues on this topic were discussed by the group as agreed, and the prevailing situations in the participating countries are summarized as follows:

1. Interception of Electronic Communications (Voice, Voice over IP, Etc.)

Bangladesh, Japan and Timor-Leste stated that they do not intercept communication of suspects engaged in corrupt activities; the rest of the participating countries do. The justification for this according to Japanese participants is that the country's legal framework does not permit interception of communication in corruption cases. Warrants are required in some jurisdictions such as Brazil and Moldova so as to intercept communications.

2. Computer Tracking and Phone Call Tracking (IP, Metadata, GMT/UTC, Etc.)

Cambodia, Japan and Timor-Leste do carry out computer and phone call tracking during investigation of corruption cases. According to participants from Japan, financial institutions are very strict in their dealings and therefore there is no likelihood of illegal financial transactions. As such it may not be necessary to monitor computers for any possible illegal transaction. The other participating countries consider this a rich source of evidentiary materials on the associations and movement of suspects as well as procurement details and money trail. Warrants to track calls and computers are required in Moldova and Brazil.

3. Electronic Surveillance (Inside and Outside, GPS, Drones, Etc.)

Algeria, Bangladesh, Cambodia, Japan and Timor-Leste are the countries which do not use electronic surveillance during the investigation of corruption cases; the other four participating countries employ such techniques in investigation.

4. Physical Tracking

All the participating countries use physical tracking as a technique for investigating corruption, especially in tracing suspects' movements and possible exchange. In all the participating countries no

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warrant is required to use this technique of investigation.

5. Eavesdropping (Video, Photo, Voice Recording)

Except for Bangladesh and Timor-Leste the other seven participating countries use eavesdropping as an investigation technique. Participants from Brazil and Moldova stated that a warrant is required to carry out video and voice eavesdropping.

6. Postal Interception

Involves clandestine access to a suspect's mailbox; upon which information contained in the suspect's letter(s) is extracted for use in investigation. Brazil and Moldova are the only countries that use postal interception as an investigation technique, the rest of the participating countries do not.

7. Covert Investigation

All the participating countries use this technique to investigate corruption cases. In Brazil, a warrant from the court and approval of a prosecutor are required for the police to conduct covert investigation.

8. Undercover Operations (Agents)

All the participating countries except Japan conduct undercover operations while investigating corruption.

9. Controlled Delivery

Bangladesh, Cambodia, Japan and Timor-Leste do not use controlled delivery as a means of investigating corruption, but the other participating countries use this technique. The participant from Moldova observed that this technique is very useful and relevant for the case study because it can be used to confirm the delivery of a bribe.

10. Trash Can/Bin Collection

This involves physical surveillance on the suspect and collecting banking slips dropped in trash cans/bin collection. This may contain account details of the suspect, which can now be handed over to the FIU to monitor any suspicious transactions. Participants from Bangladesh and Moldova stated that this technique is not regulated in their countries; whereas the rest of the participants observed that it was in use for investigations in their countries.

11. Access and Monitoring of Financial Activities

Except for Algeria, Japan and Timor-Leste, all the other participating countries monitored the financial transaction of suspects in real time, with the assistance of the respective country's FIUs. It was observed that if the investigative agency was interested in real-time monitoring of the account, it would simply forward the details to the FIU which would carry out the monitoring and share the same information with the agency.

12. Informants (Plea Bargains)

Algeria, Bangladesh, Brazil, Japan, Namibia and Timor-Leste participants informed the group that there are no plea bargain arrangements for informants in their countries. On the other hand, plea bargain arrangements are practised in countries such as Cambodia, Kenya and Moldova.

13. Leniency Programmes

The participants from Algeria, Bangladesh, Japan and Timor-Leste reported that there are no leniency programmes for suspects who commit corruption offences in their jurisdictions. Cases are investigated and processed to logical conclusions whether or not suspects request leniency.

14. Problems Faced by the Countries in Relation to Investigation of Corruption

- The participant from Bangladesh stated that they do not use evidence obtained through wiretapping as there is no enabling legislation.
- The participants from Japan stated that their legal framework does not allow wiretapping

during corruption investigations.

C. Acquiring and Analyzing Objective Evidence

Discussions on this topic were approached by the group following the agreed items as follows:

1. Acquiring and Analyzing Bank Records

All the participating countries stated that in order to obtain objective evidence, it was necessary to acquire bank records of the suspect(s). As a legal requirement, warrants to search the bank records of the suspect(s) would be obtained in all the participating countries except Algeria, Cambodia, Japan and Namibia. The participant from Brazil stated that in cases where public money is involved, no warrant is required to access bank records.

2. Acquiring and Analyzing Other Documents

All the documents relevant to the investigations being carried out are acquired and analyzed as stated by all the participating countries. Relevant expertise would be necessary for each particular set of documents; for example if the documents involved touch on the procurement process, they are better analyzed by procurement experts.

3. Search and Seizure

Participants from Moldova, Kenya, Timor-Leste, Brazil and Japan stated that searches and seizures are carried out using warrants. In Kenya and Timor-Leste, the ACA applies for the warrants while, in Brazil, the police or the prosecutor can apply for warrants. The participant from Cambodia stated that the ACA can search premises with the permission from the prosecutor, whereas, the participants from Namibia stated that an authorized officer of the ACC can search premises, other than a private dwelling, without a warrant, while the participant from Cambodia stated that they can search premises without warrants.

4. Acquiring and Analyzing Account Details

All the participants agreed that acquiring and analyzing account details was necessary, with the help of accounting experts.

5. Analyzing Electronic Data

Participants from Japan stated that electronic evidence is analyzed with the input from industry experts. The other participants stated that they had in-house experts, and in case certain expertise was missing, they would outsource.

6. Expert Opinions

Except Timor-Leste, which does not have experts in document examination, all the other participants stated that an expert's opinion was always sought on documents and other evidentiary materials which required such input.

7. Problems Faced by the Countries in Relation to Acquiring and Analyzing Objective Evidence

- Except Algeria, Namibia and Japan, the rest of the participating countries stated that access to bank records is a challenge because they cannot access the bank details of suspects directly.
- In Bangladesh, the ACA cannot acquire tax details of suspects without a warrant. This is considered a challenge to investigation of corruption cases.
- Participants from Kenya stated that they faced challenges in analyzing electronic data because of lack of technical capacity.

D. Acquiring Suspect, Accomplice and Witness Statements

The issues on the said topic were discussed by the group as agreed, and the prevailing situations in the participating countries are summarized as follows:

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1. Interviewing Witnesses, Including Company Employees and Bank Officials

All the participants declared that it was the practice in their respective countries that, given the scenario presented by the case study, it would be necessary to interview all witnesses considered useful to the investigations, including company employees and bank officials. This would help build up a strong case against the suspects by sealing all the loopholes that may be exploited during trial.

2. Interviewing Suspects (Natural Persons and Legal Entities)

All participants stated that the suspect should be interviewed so as to establish his/her line of defence. Interviewing a suspect may also lead to a confession, in which case, it will be registered before a magistrate/judge. Some suspects may request leniency during the interview. The suspect may be accompanied by their defence lawyers at the interview in all the participating countries except in Cambodia where the defence attorney is not allowed at all; and in Japan where the defence attorney sits around the interview area for any possible consultation with the client (suspect). In all nine participating countries, the right to silence is allowed apart from interviewing the natural suspects; all the other countries except Brazil would interview the legal entities which may be represented by their defence.

3. Compel Suspects to Appear

In all the participating countries, if the suspect fails to appear for an interview, he/she will be compelled by way of summons obtained from court. The participant from Brazil stated that in their jurisdiction the prosecutor and the judge can compel appearance. The participant from Namibia stated that if a witness/suspect fails to appear for an interview, he/she will be compelled to furnish the information under oath or on affirmation by way of summons issued by the Director of the ACA.

4. Harsh Interrogation

Participants from Bangladesh and Cambodia stated that they sometimes use interrogation in place of interviews when dealing with difficult suspects. In the other seven participating countries, interrogation is not practised.

5. Plea Bargaining

The participants from Japan and Namibia stated that there are no plea bargaining arrangements in their respective countries. The other seven participating countries have plea bargaining arrangements in place.

6. Leniency

Leniency is allowed in all the participating countries.

7. Problems Faced by the Countries in Relation to Acquiring Witness, Accomplice or Suspect Statements

- Participants from Cambodia, Namibia, Brazil, Japan and Bangladesh lack plea bargaining frameworks.
- Participants from Moldova and Brazil stated that their legal systems do not take legal persons to task over acts of corruption

E. Domestic Cooperation

The issues on the said topic were discussed by the group as agreed, and the prevailing situations in the participating countries are summarized as follows:

1. Prosecutors (Supervision and Approval)

All participants stated that the investigative agencies cooperate with the prosecution in the investigation of corruption cases.

2. Investigating Agencies (ACA/Police/Prosecutors)

Except for Brazil and Japan which do not have ACAs, the rest of the participating countries have established ACAs to investigate corruption cases.

3. Examining Judges

Only Algeria has examining judges undertake investigations on corruption.

4. Supervising Judge (Warrants and Orders)

All the participating countries except for Algeria stated that they need to cooperate with a supervising judge for the purpose of obtaining warrants or other court orders.

5. Financial Intelligence Units

All the participating countries stated that they cooperate with their respective countries' FIUs.

6. Revenue and Tax Authorities

Algeria has no tax authority, but the rest of the eight participating countries have tax authorities which they cooperate with in investigation of corruption cases.

7. Customs

All the participating countries stated that they cooperate with their respective countries' customs offices.

8. Task Forces

All the countries except Algeria stated that they cooperate by way of task forces to investigate corruption cases.

9. Private Sector Organizations

All the participating countries stated that they cooperate with the private sector in investigating corruption.

10. Government Regulatory Agencies

All the participating countries stated that they cooperate with government regulatory agencies in investigating corruption.

11. Problems Faced by the Countries in Relation to Domestic Cooperation

- Bangladesh lacks access to tax authority systems to acquire necessary evidence
- Poor working relationships between examining judges and prosecutors in Algeria.

F. Identifying, Tracing and Freezing Proceeds of Crime

To prevent flight and concealment of assets already identified and associated with the suspect and accomplices, it is necessary that they are frozen, according to all the participants. Participants from Bangladesh, Kenya and Timor-Leste stated that the ACA is empowered by law to freeze assets by way of a court order. The participant from Namibia stated that the Prosecutor General is charged with the responsibility of freezing suspects' assets. In Cambodia, the ACA can freeze the assets with permission from the Prosecutor. In Algeria, Brazil and Japan, freezing of assets is the responsibility of the prosecutor through court orders. Asset recovery represents an important issue of anti-corruption authorities, because the proceeds of crime are often very hard to identify and trace.

A majority of participants stated that proceeds of crime that consist of immovable or movable goods can be identified by accessing information from public databases or by gathering information through intelligence. Some participants mentioned the importance of property databases in preventing leakage of information about the investigation. Most of the participants stated that anti-corruption authorities need a warrant to access suspects' bank information.

The participants agreed that FIUs, MOUs or Interpol channels can ensure rapid tracking of the proceeds of corruption if the proceeds were deposited in bank accounts. In addition, the participants highlighted the importance of international collaboration and specified that the majority of countries have different means of mutual legal assistance in order to trace and freeze proceeds of corruption such as: treaties and agreements, MOUs, law enforcement cooperation (Interpol, JIT, FIU-FIU information

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sharing, etc.), informal channels, etc. The participants found that Algeria conducts non-conviction-based repatriation of frozen proceeds of corruption.

Most of the countries can freeze assets of an individual before bringing charges against a suspect, as well if the property over the assets related to crime was transmitted to third parties. In Brazil, the freezing of assets can be performed based on civil cases of corruption against legal entities.

All the participants mentioned that, in their respective countries, law provides measures for securing the recovery of damages caused by the crime and for guaranteeing the execution of a punishment by fine. Measures for securing the recovery of damages consist of freezing the movable and immovable assets.

A majority of the participants agreed that their countries should follow the example of Bangladesh, when the burden of proof is shifted to the defendant with respect to the origin of ill-gotten assets. Participants consider that criminalization of illegal enrichment should be enacted in their countries.

IV. RECOMMENDATIONS TO IMPROVE/DEVELOP INVESTIGATION MEASURES IN EACH COUNTRY

The measures to improve/develop investigation in each country were recommended as follows:

1. All the participants agreed that the plea bargaining system should be considered in countries where possible due to its advantages.
2. All the participants agreed that legislation on corruption should be reviewed so as to enable holding legal persons accountable for acts of corruption.
3. All participants agreed that ACAs, police and prosecutors should be able to directly access banking institutions without warrant.
4. All the participants agreed that ACAs should develop technical and technological skills so as to enable them to analyse technical evidence including electronic evidence.
5. All the participants agreed on establishing an inclusive approach between the ACAs, police, prosecutors and other agencies that play roles in the justice system.
6. All the participants agreed that the ACAs should be connected to all government ministries and departments/agencies to enable easy access of any relevant information.
7. All participants agreed that cooperation between law enforcement agencies and private companies was very crucial in aiding law enforcement and, therefore, should be encourage and sustained.
8. All the participants agreed on the importance of legislation to establish FIUs.
9. All participants agreed that the law should enable the use of evidence obtained through eavesdropping to prove a case.
10. All participants agreed that anti-corruption agencies should pay special attention to asset recovery.
11. All participants agreed that governments should encourage international collaboration for tracing, freezing and repatriation of frozen proceeds of corruption.
12. All participants agreed that countries should consider the possibility of freezing of assets based on civil cases of corruption against legal entities.
13. All participants agreed that insurance of anti-corruption authorities with on-line free access to all the public property databases without any restrictions as well as establishment of databases should be

done.

V. QUESTION

1-a) What steps should Anti-Corruption Agency B take, and in what order, to collect sufficient evidence to take this case to court?

All the participants stated that in order to investigate the case adequately, it was important that covert techniques were used initially so as to avoid leakage and concealment of evidence. The covert methods that can be used are wiretapping, computer tracking, surveillance, and communication interception for the ongoing case (company E bribe); FIU, MOU, and Interpol report, for the past case (company F bribe). After sufficient information has been acquired then the investigative agencies should employ overt methods of investigation, such as search warrants, freezing suspect assets, and interview of witnesses and suspects.

The participants observed that both crimes required priority attention; therefore they should be handled simultaneously. The participants noted that securing of evidence, suspects and assets was of great importance. However, the participants noted that in the event of limited resources which usually happens in practice, it is better to focus on one case. The participants from Namibia, Kenya, Brazil and Japan stated that they would pursue the past crime, whereas the participants from other countries would pursue the ongoing crime.

1-b) How should Anti-Corruption Agency B cooperate with prosecutors or the examining court judge in the collection of evidence?

The participants stated that formation of a task force was the best way of ensuring cooperation between the ACA, the prosecution and the examining court judge. In the participating countries where there are no ACAs, the police, prosecution and all the other agencies which have valuable input to law enforcement should cooperate. Cooperation between agencies enables sharing of resources and enables speedy acquisition.

VI. CONCLUSION

The group thoroughly deliberated and discussed the current issues and problems of each participating country relating to effective measures to investigate corruption cases. Following thorough discussion, the group concluded certain recommendations and necessary measures to be implemented in the participants' countries for the development and improvement of the criminal justice system focusing mainly on investigation of corruption cases. However, it is noted that the measures and recommendations in this report may be adopted in each of the respective countries based on the necessity and suitability for the ultimate achievement of an effective and efficient criminal justice system.