

GROUP 2

EFFECTIVE MEASURES TO ESTABLISH SYSTEMS TO PREVENT AND COMBAT CORRUPTION

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I. INTRODUCTION

The group started its discussions on 25 October 2013. The group, in its first meeting, elected by consensus Ms. Oris Idalmis JAEN FERNANDEZ (Panama) as its Chairperson, Mr. David Gathii WAMBUGU (Kenya) as co-Chairperson, Mr. Alexandru DONCIU (Moldova) as Rapporteur and Ms. Shizu KOYAMA (Japan) as co-Rapporteur.

Corruption continues to be a major challenge to a majority of developed and developing countries, with the latter being hardest hit. All countries represented in the group had put in place various measures to prevent and combat corruption. The countries had signed the United Nations Convention Against Corruption (UNCAC) and, with the exception of Japan, ratified it. Implementation of the UNCAC was at various but advanced stages of implementation with regular reviews and reporting on progress. Apart from the establishment of robust criminal justice systems through which cases of corruption were processed and enactment of anti-corruption laws, a majority of the countries, with the exception of Japan, had also established anti-corruption agencies charged with enforcement through investigations and asset tracing, prevention and education.

The group's aim was to establish : effective measures to prevent and combat corruption in regard to the current situation of corruption in each country, effective systems to prevent corruption, effective systems of capacity building in each country, and problems and countermeasures related to establishing systems to prevent and combat corruption in each country.

II. SUMMARY OF DISCUSSION

A. Current Situation of Corruption in Each Country

In order to have a clear picture of the current situation of corruption in each country, members considered the report by Transparency International (TI) regarding the Corruption Perception Index 2012 (CPI). According to this index, the countries represented in the group fared as follows:

JAPAN

Japan was ranked 17th among 176 evaluated countries. Participants from Japan noted that corruption mainly spreads in local administrative authorities, particularly in the field of public procurement. For example, a public official of local government gets a kickback from the construction company and leaks cost estimates for construction projects coming up for bidding.

NAMIBIA

Namibia was ranked 58th in the world. Most of the corruption happens in law enforcement agencies,

the judiciary and government ministries such as customs and immigration control.

PANAMA

Panama was ranked 83rd out of 176 countries. The majority of the corruption cases relate to embezzlement, abuse of authority and public procurement, among others. Most of these cases are highlighted in the media, hence the higher perception of corruption in the country.

THAILAND

Thailand was ranked 88th out of 176 countries. Corruption in the public administration system has taken place for a long time in Thailand. The Thai people somehow accept the reality that corruption is inevitably part of the system and when an ordinary citizen or honest business people seek the services from governmental authorities or politicians, a small fee or reward may be given to officials in exchange of convenience and speedy services. In the eyes of the public, this does not count as corruption.

REPUBLIC OF MOLDOVA

Republic of Moldova was ranked 94th among 176 countries. Corruption is mostly prevalent in the judicial system, health sector, law enforcement and other public authorities. As an ex-Soviet country, Moldova inherited the soviet way of life which tolerates bribes and other corrupt acts. Moreover, political patronage in all public authorities allows corruption to thrive.

KENYA

Kenya was ranked 139th out of 176 countries. Corruption is endemic in Kenya and has eaten into the socio-economic and political fabric of the country. Corruption mostly thrives in politics, administrative authorities: police, immigration, revenue and lands departments, and criminal justice authorities. Corruption spreads in Kenya mainly in the following fields: public procurement, the criminal justice system, immigration and tax collection. Corruption is therefore an existential threat to the economy and national security in Kenya.

BANGLADESH

Bangladesh was ranked 144th out of 176 countries. The people of Bangladesh are engaged in corruption due to poverty, over-population and inadequate resource. Public servants, non-state actors, political leaders are also engaged in corruption. Corruption is rampant in the service sector. The entrepreneurs face problems in obtaining loan facilities and administrative facilitation without illegal payments. Public officials and politicians misappropriate funds set aside for development.

MYANMAR

Myanmar was ranked 170th out of 176 countries. Most corrupt activities take place within administrative and criminal justice authorities. Corruption is rampant due to the fact that salary of public servants is lower than in other countries. However, it is difficult to determine the exact fields of corruption for want of credible data.

In light of the foregoing, it is imperative to put in place effective systems to prevent and combat corruption in countries represented in the group.

B. Effective System to Prevent Corruption

1. Establishment of Authorities to Prevent Corruption

Group members noted that in their countries, there are established authorities charged with responsibility of preventing and combating corruption. In the case of Japan, there is no specialized authority to prevent corruption. However, there are effective mechanisms to prevent corruption put in place in each public authority.

All members stated that they have Anti-Corruption Agencies (ACA) in their respective countries with the exception of Japan. For example, in Moldova the National Anti-corruption Centre has power to prevent corruption. In Thailand, many government authorities are set up to monitor, prevent and efficiently suppress corruption cases. These include the National Anti-Corruption Commission (NACC) and the Office of Public Sector Anti-Corruption Commission. NACC is mandated to deal with declara-

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tion and inspection of assets and liabilities, prevention of corruption and suppression of corruption.

The participants from Kenya stated that the Ethics and Anti-Corruption Commission has been established which is mandated to prevent corruption in line with the UNCAC requirements. Furthermore, the Constitution of Kenya 2010 requires the National Police Service to prevent corruption. The National Land Commission is also charged with the responsibility of stamping out corruption in the land sector. Moreover, the National Anti-Corruption Campaign Steering Committee was established to prevent corruption through sensitization and awareness creation to the public.

The members pointed out that though most of the countries have ACA, there is a need to define their powers and functions in order to make them more effective in preventing corruption. These include proper governance structures, accountability, declaring conflicts of interest and having enough powers to ensure that their recommendations after audit of public entities are implemented. In addition, the ACA should be well resourced in order to fully support their operations.

The functions of these authorities should include corruption risk assessment, systems, policies and procedures audits, education, sensitization, awareness creation, developing codes of conduct in private and public sectors and development of strategies to prevent corruption.

2. Establishment of Independent Authorities to Investigate Corruption

The members were of the view that the afore-mentioned preventive measures would not be effective unless independent authorities to investigate corruption are established. All the participants stated that they have in their countries independent authorities that investigate corruption cases. Such authorities should be independent, well resourced with the capability to initiate their own investigation and have special investigative powers such as eavesdropping, wiretapping, surveillance, and search and seizure, among others.

The members strongly felt that both investigation and prosecution should be conducted under the same roof to effectively combat corruption cases. Members concluded that there should be robust and adequate legal framework to anchor the above measures.

3. Systems to Ensure the Independence of Criminal Justice Authorities

For corruption to be effectively dealt with, the members agreed that systems must be put in place to ensure the independence of the criminal justice authorities as follows:

(a) Independence of the judiciary

Independence of the judiciary must be guaranteed in the constitutions of the respective countries. This will enable the adjudication of corruption cases without undue interference. Members suggested that the appointment of judicial officers should be fair, transparent, competitive and insulated from political interference and other vested interests. Judges should have security of tenure and should be only removed from office by an independent tribunal. They should have a fixed retirement age, be well remunerated and that the pay should not be reduced during their term of service. Members agreed that judicial officers should be transferred after a fixed period of time according to a transfer policy formulated by the judiciary itself.

(b) Prosecutorial independence

All participants agreed that prosecutorial independence should also be guaranteed in the constitution, and the Public Prosecutor should not be under the direction or control of any authority.

(c) Investigative independence

Members agreed that investigative agencies should be independent and this must be guaranteed in the constitution. The recruitment and selection of personnel in these agencies must be competitive, transparent and fair.

(d) Codes of conduct for public officials

Members were unanimous that there should be one code of conduct for public servants, as is the case in Japan and Panama. The code of conduct should provide for sanctions in cases of breach by public

servants as well as declaration of income, assets and liabilities for the official, spouse and dependent children. The declarations should be submitted periodically and also upon appointment, promotion and exit from service. These declarations should be easily accessible to the law enforcement agencies.

(e) Systems to Manage Public Procurement

During group discussions, it was agreed that the management of public procurement is an important and critical problem in many countries. A case in point is Japan which faces the problem of public procurement and has adopted the Overall Evaluation System. This system enables the prevention of dumping and bid-rigging and expulsion of delinquent, disqualified companies etc., by allowing only qualified contractors to participate in public procurement. It also enables the prevention of bid-rigging by considering non-pricing factors.

Finally, group members came to a consensus on the following principles to manage public procurement: open tendering, sufficient time to prepare and submit tenders, transparent evaluation and award process; and avenues for appeal.

(f) Measures to prevent corruption by encouraging cooperation between public and private sectors

Members noted that there is a need for cooperation and involvement of the citizens and the private sectors in supporting measures to prevent corruption. It is important to encourage the spirit of cooperation between both sectors. Corruption in the private sector has an impact on the public sector. Measures to prevent corruption in the private sector may include signing corporate integrity pledges, establishing risk and compliance units and promoting corruption reporting within corporations.

Members agreed that it is important to ensure active public participation in anti-corruption initiatives. Their participation may include refusing to give/receive bribes, reporting corruption, recording statements and testifying in courts of law and other forums.

Participants from Japan stated that in each organization, public and private, employees are educated to obey the relevant laws. The group members suggested the following measures to encourage the participation of private and public sectors: active participation of civilians in the fight against corruption, trust in institutions and processes to deliver results, public education, sensitization and awareness creation, public campaigns, enactment of law to address corruption in the private sector, media advertising, civil society involvement and access to relevant information.

C. Effective Systems of Capacity Building in Each Country

1. Necessary Expertise and Abilities

Members were of the view that in order to effectively prevent and fight corruption it is necessary to build capacity in each country. For example in Namibia there is a huge backlog of cases in the Courts. The Magistrates, Judges and Prosecutors are also not enough to deal with the cases. In Myanmar, for financial, accounting and fiscal expertise, officers from the Office of Auditor General are requested to check financial affairs and where necessary, private accountant firms are engaged by investigators. Further, experts from the Information and Communication Ministry may perform computer forensics to assist the investigations.

Members agreed that the main expertise and abilities necessary for effective systems of capacity building in each country include: financial, accounting and fiscal expertise, analysing financial evidence and computer forensics. Where necessary, specialized divisions to perform fiscal expertise within ACA may be established.

The participants agreed that for a better case management, it would be advisable to have these types of expertise within ACAs. Participants stated that it was necessary to build capacity to ensure fair, speedy and organized investigation and trial of corruption cases. It was also recognized that lack of timeframe for trying corruption cases, as is the case in Thailand and Moldova, hinders proper case management.

Further, members agreed there was a need to build capacity of public officials to enable them conduct official business in an ethical manner. Consequently, newly hired public officials should be

instilled with public ethics while at the same time, establishing systems of reward and punishment for unethical conduct.

2. Measures to Ensure Expertise

As a measure to ensure expertise, members stated that ACAs must competitively recruit specialists in different areas. These specialists must be trained continuously to be up to date with emerging trends in corruption. The training should encompass short and long courses, exchange programmes and study tours, on the job training, mentoring and partnership with academic institutions to promote excellence.

Since it is not possible to have all the expertise required to investigate corruption under one roof, members stated that it was necessary to outsource to the private sector. Outsourcing also supplements the expertise available within ACAs. Outsourcing can also be used as a means of technology transfer.

It is important to have a pool of highly specialized bodies of investigators, prosecutors and judges in the investigation, prosecution and hearing of corruption cases respectively. This is a highly specialized area that requires specialized personnel.

D. Problems and Countermeasures Related to Establishing Systems to Prevent and Combat Corruption in Each Country

Members appreciated that preventing and combating corruption is faced with many challenges, and there is a need to identify them and suggest countermeasures to establish effective systems. Therefore, it was unanimously agreed to identify problems and countermeasures related to the establishment of systems to prevent and combat corruption in each country, as follows:

1. Lack of Political Will

Commitment of the top political leadership to the goal of eradicating corruption in countries is weak, as has been the case in many of the group members' countries. Most governments only pay lip service to the fight against corruption. Anti-corruption reforms, in this regard, are therefore bound to fail.

Members proposed the following countermeasures: political party manifestos should contain pledges to prevent and combat corruption as a priority. The citizens should hold their leaders to account in this regard.

2. Political Influence and Interference

The participants felt political influence and interference is a threat to the establishment of effective systems to prevent and combat corruption. The budgetary allocation process, which is controlled by politicians, was cited. Interference in the appointment of the heads and staff of ACAs, among others, was also cited. The group agreed that it is necessary to guarantee independence in the constitution and develop well-defined policies to avoid political influence.

3. Lack of Adequate Legal Framework

All members agreed that though the UN Convention Against Corruption (UNCAC) provides a powerful tool to strengthen anti-corruption programmes, ACAs continue to be denied adequate legal frameworks to fight corruption. Some participants stated that in their countries, ACAs do not have powers to investigate corruption in the private sector, while in others, ACAs are denied special investigative powers such as wiretapping, etc.

As a countermeasure, members were of the view that the legal framework should be strengthened. In this regard ACAs should have powers to prevent corruption through laws that allow improvement in collection of evidence, investigation, prosecution, asset tracing and seizure, intervention in the private sector and mutual legal assistance.

4. Mind-set of the Citizens and Public Officials

All participants agreed that the mind-set of the citizens is a threat to establishment of effective systems. They noted the culture of "giving" gifts promoted corrupt practices. In some countries the citizens think that they have no responsibility in the fight against corruption, yet they are on the supply

side of the corruption equation. Citizens also don't view corruption as a crime, but as mutual obligations and mutual benefits.

Members proposed extensive public education, sensitization and awareness of citizens to promote moral and ethical behaviour. This will enhance the public officials' integrity in the society. Engaging citizens in fighting corruption through providing information/feedback (change the public perception and expectations), involvement of mass-media, positive engagement, call-in programmes, debate competitions, establishment of local civilian oversight committees, establishment of a system to empower people to report incidences of corruption without reprisal.

5. Lack of Equipment (Advanced Technology, Transport, Etc.)

All participants agreed that a lack of appropriate equipment and advanced technology could hamper the development of effective measures to prevent and combat corruption. Persons engaged in corrupt activities have embraced new technology making it hard to detect and collect evidence. Lack of modern equipment and technology makes it difficult for investigators to deal with corruption cases effectively. The same applies to the delivery of the public education programmes. The group, therefore, recommended acquisition of modern technology and equipment.

6. Human Resources

The group noted that human resources are an important factor in the establishment of effective systems. Mismanagement of human resources through unfair recruitment, appointment without transparent policy, lack of motivation and low salaries was cited.

Participants stated that it is necessary to develop clear policies as far as recruitment, appointment, management and development of human resource are concerned. There is also the need for establishment of an independent body for recruiting and selection as well as enhancing salaries according to living standards and competitiveness and developing reward programmes.

7. Insufficient Funds

The participants agreed that the lack of reasonably adequate funds undermines the efficacy of the anti-corruption systems. The members were of the view that funding policies should be developed and implemented. ACAs should be allowed to receive support from NGOs, foreign authorities for campaigns training and advertisements.

8. Bureaucracy (Process Length, Inefficiency)

Members identified bureaucracy as a threat to the establishment of effective systems. Lengthy and complex processes frustrate the service delivery and provide opportunities to extort and offer bribes. Members recommended the development and promotion of service delivery charters, automation of the manual processes and review of policies, procedures and processes.

9. Lack of Interagency Cooperation

All participants agreed that lack of mutual trust and working at cross purposes by law enforcement agencies pose a threat to the establishment of systems to prevent and combat corruption. Members noted that there is need to foster cooperation between the agencies, develop better communication mechanisms and demonstrate unity of purpose. Agencies are encouraged to sign Memoranda of Understanding (MOUs) and build synergies.

10. Lack of Supervision

The participants noted that lack of supervision is a threat to establishment of effective systems as the staff may lose its sense of direction and focus. Members, therefore, recommended the following countermeasures: open-space office policy, hands-on management, visiting and inspecting subordinates' workplaces.

III. CONCLUSION

Members appreciated that fighting corruption through investigation and prosecution of the corruption cases was very expensive. Corrupt individuals who had illegally acquired public resources would

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not hesitate to deploy such resources to circumvent legal processes. The group was therefore of the view that establishing effective systems to prevent and combat corruption should be government's primary concern. Consequently sufficient resources, political will and support should be fostered by all stakeholders.

The participants unanimously agreed that creating awareness of the people and engaging the civil society, mass-media, private and public sector cooperation in preventing and combating corruption is the ultimate goal for zero tolerance of corruption.