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## REPORTS OF THE PROGRAMME

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### GROUP 1

### EFFECTIVE ANTI-CORRUPTION MEASURES

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<b>Chairperson</b>	Mr. KUSHIMOV Nurkhat	(Kazakhstan)
<b>Co-Chairperson</b>	Mr. MARUYAMA Jun	(Japan)
<b>Co-Chairperson</b>	Ms. DIOMANDE Nanan Assiata	(Côte d'Ivoire)
<b>Rapporteur</b>	Mr. Mahmoud Hassan BAKRY	(Egypt)
<b>Co-Rapporteur</b>	Mr. Edwin Ocharo RIOBA	(Kenya)
<b>Co-Rapporteur</b>	Ms. Silawan PANOM	(Thailand)
<b>Members</b>	Mr. Md Manzur MORSHED (Bangladesh)	
	Mr. Tulsi Ram ARYAL	(Nepal)
	Mr. USMANOV Ulugbek Melisovich	(Uzbekistan)
	Mr. HONDA Shuichi	(Japan)
<b>Advisor</b>	Prof. HIROSE Yusuke	(UNAFEI)

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### I. INTRODUCTION

Group 1 started its discussion on 30 October 2015. The group elected Mr. KUSHIMOV as chairperson and both Mr. MARUYAMA and Ms. DIOMANDE as co-chairpersons while Mr. BAKRY was the rapporteur and both Ms. PANOM and Mr. RIOBA acted as co-chairpersons. The group chose effective anti-corruption measures and the way to prevent corruption from the point of view of law enforcement bodies as subjects to discuss, and divided the discussion into subtopics (generating leads, investigation, prosecution, trial, prevention).

### II. GENERATING LEADS

We discussed the subject of generating leads, and we agree there are similar measures to generate leads in our respective countries like complaints, informants, confession, whistle-blowers, surveillance, mass media, and information derived from investigations of other cases.

According to our experience, we found that there are some problems in generating leads. For example, some related to culture, the lack of awareness among the public (they do not know their rights and duties) and they are afraid of pressure from authorities and have poor education. They are afraid to be witnesses because of the possibility of threats to their security. There is a lack of trust between people and authorities in most developing countries, and they are afraid of becoming victims. As we mentioned above, since there is a high ratio of uneducated people some do not know how to access authorities or make complaints.

Additionally, there are some other problems related to the system that corruption crimes are characterized to be secret crimes, meaning there is no victim and the criminals are powerful and have high influence on others. They can hide any clues that would generate leads to discover their corrupt acts. Unfortunately, the law enforcement bodies that are established to fight these crimes suffer from low levels of professionalism. In addition to that, investigation of these crimes and trial procedures take a long time. Sometimes politicians interfere in those investigations and trials using different means.

We recommended some measures to solve these problems starting from building awareness by holding conferences among the public (students, private and public sectors, etc.) that corruption badly affects their economic, political and social lives. We have to keep the identity of the informers and witnesses secret to ensure their security so that they are not afraid of making complaints. Paying the informers to obtain information is a good measure to generate leads, but we agreed that payment should be made after the conviction, and it has to be publicized to encourage others to inform without mentioning names and putting certain criteria about the amount of money that should be paid to the informers. Establishing Whistle-blower Protection Laws will be useful to encourage informers; a legal status can be given to the whistle-blower that will offer to him physical protection and stability in work, and this legal status will be given to the employee upon the request of the investigator to the prosecutor or the judge, but if a dispute happens

between the employer and the employee (whistle-blower), and the employee claims that the employer breached the law, this dispute will go first to the labour committee and any party can appeal the decision of this committee to courts while the burden of proof will be on the employer. If the employer is found liable, the employer will face criminal and civil charges. Another way to encourage complaints and informants is to accept anonymous complaints or informants, but they must be detailed and must be reviewed carefully.

### **III. INVESTIGATIVE MEASURES: EFFICIENCY, ADEQUACY, AND PROPORTIONALITY**

#### **A. Problems in Investigation**

All participants agreed that there are several problems in investigation such as bank secrecy and private sector secrecy. This is because banks and financial institutions always claim that they have a duty to protect the information of their client.

The next problem is limitation of undercover measures. Some countries have some limitations on undercover operation such as Egypt, where recording is only allowed in public areas. In Japan, wiretapping is only allowed in the investigation of organized crime cases.

Other problems include limited numbers of investigators and financial resources and difficulties in accessing or gaining information such as telephone logs and delay of receiving information from experts. It was also mentioned that in some countries there is a problem of limited jurisdiction; for example, the investigation agency cannot investigate the private sector.

#### **B. Points of View in Group Work Discussion**

During the discussion, the Group considered the necessity of issues such as collecting crucial evidence, shortening the period before prosecution and the protection of human rights.

#### **C. Recommendations**

##### **1. Sting Operations**

One of the effective measures to deal with corruption cases is the sting operation. This is an undercover measure where the investigator acts as if he is a part of the crime, aiming to set up the corrupted criminal. This strategy is controversial due to concerns that it may be used for entrapment. The group agreed that investigation in corruption cases by using sting operations is useful under certain criteria, for example, in bribery cases. However, this operation should be conducted under the supervision of a judge to prevent abuse of power. This measure should be used in exceptional circumstances when there is no other effective overt investigation to gain information and evidence.

##### **2. Integrity Tests**

Another effective measure is integrity testing. In this operation an undercover officer makes a random visit to the government department in search for services and observes the officers for indications of corrupt activity where there are repeated allegations of corruption in a government department.

This test should be applied to public offices only under the authority of a judicial warrant. Some participants mentioned that there should be no need of warrants because of the high ethical requirements for public officials, and the public officials should be required to sign a waiver accepting that such test may be conducted before becoming a public official. Some participants stated that this test should be used for administrative penalty.

##### **3. Deterrent Punishment for Delaying of Expert Reports**

If experts delay their reports, they should be punished.

##### **4. Deposition**

Questioning the witness in the presence of the defence and prosecutor and investigator about his statement. Following the deposition, all of the aforementioned parties should sign a document indicating they do not have any other questions for the witness. This aims to protect the witnesses and prevent wasting their time.

5. Online Interrogation

When witnesses are far from the investigation office or have difficulties coming to the office, investigators should use this measure to interrogate the witnesses.

6. Specialized Investigators

Investigators who specialize only in corruption cases.

7. Expedited Investigations with Safeguards

After the accused accepts his or her guilt, investigators do not have to investigate the criminal cases completely before prosecution. Some participants are against using this measure because it is difficult to find whether or not the person who confessed is a scapegoat.

8. Plea Bargaining

The aim of plea bargaining is to make the investigation process faster and to collect leads and other information.

#### IV. PROSECUTION

Members expressed concern over prosecution of corruption cases, saying that the main problem was political interference. Some members explained that the minister of justice influenced the prosecution of corrupt public officers.

Some of the members explained that the prosecutors in their countries were independent and their recommendations were not influenced by political considerations.

Members discussed the challenges and proposed the following:

- I. Creation of strict guidelines to prosecute corruption matters. However, some members raised concerns that strict guidelines would affect the discretion of the prosecutor.
- II. Members also recommended that the prosecutor should publicize the reasons in cases where he has elected not to prosecute,
- III. Some of the members also proposed that there should be an avenue for affected persons to challenge the decision of a prosecutor in cases where he has declined to prosecute.

#### V. TRIAL

The group noted that some countries had adversarial systems while others had inquisitorial systems of justice. However, it was unanimously agreed that there was no absolute adversarial or inquisitorial system among modern judicial systems.

Members also noted that the absence of a witness protection programme was an impediment to successful prosecution because some witnesses were reluctant to testify, owing to fear of their security.

The group also noted that most of the trials in corruption cases are lengthy and complex and that the judiciary was understaffed and had a huge backlog of cases.

Members discussed these challenges and proposed the following:

- I. The group recommended the creation of special anti-corruption courts to address corruption problems. The creation of specialized courts would address the huge backlog as the presiding officers would only deal with corruption matters. Additionally, the creation of the courts would ensure that there is an adequate number of judges to handle corruption cases.
- II. Members also proposed that there should be extensive pre-trial procedures to facilitate disclosure before trial in order to facilitate speedy disposal of cases.

- III. The group also proposed that petty offences should be handled by lay judges to avoid congesting the higher courts.
- IV. The group also proposed that there should be a functioning witness protection programme to provide for the security of vulnerable witnesses. The group noted that successful prosecution can only be done where witnesses are confident of testifying in court.
- V. Mediating agreements. Some members noted the benefits of solving the small cases with the help of mediating agreements.

## VI. PREVENTION OF CORRUPTION

All the participants of the group agreed that the most important part of the anti-corruption activity is prevention. Many countries focus too much on the criminal justice measures in fighting corruption, whereas such measures, if taken without proper prevention measures, proved to have little efficiency.

Most of the countries represented in the group experience challenges in ensuring the full independence of the judicial system and prosecution. This could lead to political influence over the trial of particular cases and damage other anti-corruption initiatives.

The participants also noted that there are challenges in the process of recruitment, promotion and career management of civil servants. It was noted that some of the countries did not have objective criteria for recruitment, promotion, transfers and career management of civil servants leading to favouritism and nepotism, which creates possibilities for corruption to thrive.

There are also problems in transparency of public procurement, which leads to significant risks of corruption in this field and prevents people from being provided with the desired quality of services.

Another challenge is the lack of the control of the financial activity and spending of the political parties. The parties tend not to disclose the donations from businesses and wealthy individuals. It can serve as a reason for future corruption if the receiving party wins the election, in which case the contributor will expect favourable treatment and lucrative public contracts.

The next cause of corruption in many developing countries is that the relationship and interaction of governmental agencies with the general population is not very well regulated. This gives the corrupt officials wide latitude to abuse their discretion in their own favour.

Having discussed the problem, the group came up with the set of recommendations which, in our opinion, would address them.

1. To ensure **judicial independency** we propose the following:
  - appointment of the judges should be done by the judges themselves (ex. general assembly),
  - The procedure to remove judges should be divided into two parts. The investigation of the wrongdoing of the judges should be conducted by the judiciary itself; however, the right of the final decision should be allocated to the highest political authority of the country (ex. to the parliament in the parliamentary republics and to the president in presidential republics),
  - Other measures to provide independence are financial autonomy, direct protection by the law.
2. For **prosecution to be politically independent**, we think, it is necessary to separate the prosecution office from executive branch of the government. The office should enjoy the privileges of judicial authority. Additionally, the strict and detailed guidelines on the matters of prosecution, especially of the corruption cases, should be introduced to avoid political interference. Financial autonomy and direct protection by the law are also desirable measures.
3. It would be good to conduct **recruitment of public officials** through a separated centralized agency which would recruit on behalf of all government ministries. The centralized agency (Civil Service Commission) would also set standards of recruitment, promotions and training of civil servants.

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To enhance transparency in recruitment and promotions, some of the participants expressed the view that it would be appropriate to promote officers after passing exams and evaluation (internal, external, mixed evaluation, 360 evaluation, etc.). Other members felt that civil servants should be given results or their work evaluations which was the basis of why the officer was not promoted.

4. **For transparency in public procurement** members of the group agreed that the following measures could be useful
  - All procurement should be published with details on a specialized website,
  - To enhance transparency, members proposed the introduction a single on-line web service for all public procurement,
  - To introduce a leniency programme, which encourages companies to inform the authorities about cases of bid-rigging by providing immunity to that company,
  - Companies or individuals who enter into contracts with government agencies should have the duty to disclose an account showing income and expenses of the project under the contract to the public,
  - The members proposed the creation of an external agency to monitor and audit expenditure of public funds,
  - The reports on the audit should be published within 30 days after the completion of the audit.
5. The transparency of **political parties' funds** could be achieved through introduction of mandatory detailed financial reporting, which should be submitted to the Election Commission for audit and should be made available for the general public. Some participants expressed the opinion that the maximum cap on the sum of the donations for political parties should be introduced.
6. To **eliminate the conditions of corruption** in interactions between government and the public, the following principles and mechanisms could be established:
  - No (or minimal) contact between state officials and the population to avoid human inference (one-stop shop in provision of public services, e-government system, e-procurement),
  - No (or minimal) discretion and strict guidelines for exercise of the discretion (standard for provision of public services / strict timing, guidelines for every position of civil servants).
  - Transparency and disclosure of all information (online queues for limited public services etc.)
7. Some participants proposed that the countries might consider tightening the monitoring of financial standing of public officials and their families
  - Everybody agreed that there should be annual reporting of income, spending and assets by public officials and their families and that these reports should be checked on submission.
  - However, the opinion divided (50% agree, 50% disagree) on shifting the burden of proof on the public official to prove the legality of his/her income.
8. Some participants also suggested that public hearings could ensure the accountability of local government and low ranking local officials.
9. In order to ensure the efficiency of the anti-corruption strategy, internal control mechanisms should be in place. Firstly, an internal report of all government agencies about the measures taken to prevent corruption and their efficiency should be required. Secondly, there should be external evaluation by separate and independent agencies, which could also make recommendations on further improvement. Both reports should be made open to the public.