

GROUP 3

EFFECTIVE MEASURES FOR COMBATING CORRUPTION FROM DETECTING LEADS TO TRIAL—A COMPARATIVE ANALYSIS OF DOMESTIC LAWS

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I. INTRODUCTION

The Chairman guided the meeting to decide on the topics to discuss, and after thorough deliberations on the proposed topics, the meeting resolved to focus on the following topics:

1. Corruption detection and methods of generating leads;
2. Effective measures for corruption investigation;
3. Prosecution and trial of corruption cases.

These topics were chosen because of their importance in any effective response to corruption.

II. GENERATING LEADS

The Group first reviewed methods of detecting corruption in the respective countries, which are summarized in the tables attached hereto and marked as Annexes I and II. The following points contain some of the information derived from the table:

- In generating corruption reports, investigation authorities in all the countries in the Group had adopted direct complaint mechanisms such as hotlines, emails, petitions, in-person reporting and they also detect corruption through open media sources
- Among the nine countries, Maldives and Kyrgyz Republic do not have a mechanism to generate leads through asset declaration
- Presently, the most useful measures for generating leads in Thailand are reports of the Office of the Auditor General, and this measure is also used in all other respective countries other than Egypt
- Other than Laos, all other countries collect and examine suspicious transaction reports from Financial Intelligence Units to generate leads
- Inter-agency information sharing is also a measure to detect corruption in the respective countries other than Kyrgyz Republic and Laos
- Direct detection of the evidence of a crime by investigators, prosecutors or public officials are also

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used to generate leads in the countries such as Japan, Maldives, Bangladesh and the Kyrgyz Republic; however, in South Sudan it is an obligation and a constitutional duty to inform the public officials or report any illegal activities

Best Practices

After deliberation, the following were identified as ideal measures which the respective countries should consider adopting:

- It is needless to say that any investigative bodies should receive information by a variety of means to hear from as many people as possible, and investigative bodies should collect and examine a variety of materials such as media reports, FIU reports, etc.
- Regardless of the number of investigative organizations, the information exchange between ministries which receive information is essential not to miss leads
- Furthermore, reporting obligation to investigative bodies for public officials in case of becoming aware of corruption will enhance efficiency of collecting information, because gathered information can be used to generate useful leads
- There is need for legislation that establishes whistle-blower or witness protection

III. CORRUPTION INVESTIGATION

Thorough and comprehensive investigation is critical to successful prosecution. In the countries of the Group, substantial efforts are invested in finding out adequate answers to what, who, when and how corruption offences occur. All the countries use all forms of traditional methods of corruption investigation with varying degrees as to the control mechanisms.

However, some countries have found it necessary to use special measures to investigate corruption, the reason being that corruption by its nature is a secretive crime, most often committed by mutually satisfied parties. Unless agencies responsible for combating corruption have access to the use of special measures, corruption will continue to wreak havoc unabated. More so, corruption offenders usually do their business with a flair of sophistication, rendering obsolete the traditional methods of revealing its occurrence and damage.

Chief among the special measures to investigate corruption are: controlled delivery, undercover operations, use of informants and surveillance, both physical and electronic. Some countries of the Group use some of these measures.

As for the other countries, these measures are considered intrusive and infringe on the fundamental rights and freedoms which are heavily guarded by the constitution. Their use is therefore a last resort when other less intrusive measures prove less effective, especially in serious crimes. A balance between effectiveness in combating corruption and respect of rights is therefore required when using these measures.

As a safeguard even the countries that use these measures put in place restrictions on their use. Internal control, prosecutorial and judicial scrutiny as well as requiring express provisions of the law are but some of the control measures used.

Best Practices

The key word in investigation of corruption is effectiveness of the means and methods used in gathering enough evidence to prove or disprove the existence of corruption. Each jurisdiction should strive to strike a good balance between being innovative one the one hand and not encroaching too much on protected rights, such the right to privacy of dwellings and communication, which are universally recognized rights. Among the innovative measures to consider are: controlled delivery, use of informants, the use of undercover agents, wiretapping, surveillance, and sting operations, among others.

IV. PROSECUTION AND TRIAL

A. Prosecution

1. Collecting Information

In most countries, prosecutors have the authority to initiate prosecution of corruption cases (Egypt, Japan, Maldives, Kazakhstan, Kyrgyz Republic, and Lao PDR). In Thailand, prosecutors indict cases in the name of the Attorney General with his/her approval. In South Sudan, the South Sudan Anti-Corruption Commission (SSACC) has the authority for prosecution according to the constitution. But the Director of Public Prosecution also has authority to prosecute corruption cases. Only in Bangladesh does the Anti Corruption Commission (ACC, established in 2004) possess sole authority to prosecute.

In most countries except South Sudan, the prosecution bodies have more discretion about whether to prosecute or not. Such bodies are also free to adopt or to dismiss the prosecutor or staff member of the ACC (in the case of Bangladesh). Adequate legal qualification is required to be a prosecutor or a staff member of the ACC in all the countries.

In most countries except Japan and Maldives, prosecution bodies indict cases when there is sufficient evidence to support the reasonable prospect of a conviction. In Maldives, a prosecutor should indict defendants in cases which can be proved beyond reasonable doubt. In Japan, prosecutors indict defendants when the offence can be proved beyond a reasonable doubt and it is necessary to prosecute. Since the prosecutor has wide discretion not to initiate prosecution in Japan, there is a system to review a prosecutor's decision not to prosecute, that is, the Committee for the Inquest of Prosecution. Victims or complainants can apply to the committee to review the prosecutor's decision of non-prosecution. Members of the committee are randomly selected from voter registration lists, and those 11 citizens will see all the evidence and decide whether prosecution is proper or not. If the committee decides twice that prosecution is proper, then the court appoints a private attorney(s) to prosecute the case. Most countries except Bangladesh and South Sudan have a review system for non-prosecution.

2. Best Practices

At first glance, it seems ideal for combating corruption that the anti-corruption commission with investigation authority is also empowered to initiate prosecution and to pursue the case through trial. However, to make this model work in reality, there should be enough human and other resources in the commission. Many of the anti-corruption agencies are relatively new after their establishment, and therefore it would be effective to have a system in which the commission would coordinate closely with prosecutors who take the role to prosecute the cases and to attend to the trial. There should be also a review system for the prosecution, and it would be useful to have a system like Thailand, where non-prosecution decisions are scrutinized by a committee consisting of members from the anti-corruption commission and the prosecutors' offices.

B. Trial

1. Collecting Information

In most countries except Bangladesh, corruption cases are adjudicated through the ordinary judicial process. In Bangladesh, corruption cases are handled only by special judges, appointed from ordinary judges, who have authority to engage in the trial within their territorial jurisdictions. For fair and speedy trial, in Thailand, Japan and Kazakhstan, the pre-trial conference procedure is used, and the court may apply it to corruption cases. Through the pre-trial conference procedure, parties should prepare and clarify their allegations, and thereafter the court arranges points of arguments and the plan for the upcoming trial.

As for witness protection, the judge can order the police to take appropriate measures to protect witnesses in Egypt and Bangladesh (but rarely used). In Maldives, Kazakhstan and Kyrgyz Republic, judges can also conceal the background of witnesses from the suspect or the defendant. In all countries, there are no special rules of evidence that are only applied to corruption cases. But as for the statement of co-offenders, South Sudan deems such statements obtained as admissible. In Egypt, at the stage of prosecution, the prosecutor can ask the judge to mitigate punishment or acquit a witness who provided testimony.

2. Best Practices

Because of the complexity, it normally takes a long time for corruption cases to come to final judgement. It is therefore in the interest of speedy and fair trial to adopt some innovative and effective adjudication mechanisms. Measures to consider include the use of special courts, specialized training for judges, the use of pretrial procedure, and post-trial witness protection, among others.

Method of Generating Leads for Corruption Investigations

	Thailand	South Sudan	Egypt	Japan	Maldives	Bangladesh	Kazakhstan	Kyrgyz Republic	Laos	
Methods of Generating Leads	Complaints	Complaints	Complaints	Complaints and accusation	Complaints	Complaints	Complaints	Complaints	Complaints	
	Assets Declaration analysis	Assets Declaration Reports	Assets Declaration Reports	Assets Declaration Reports only for diet members	Assets Declaration Reports	Assets Declaration Reports	Assets Declaration Reports	Assets Declaration Reports	Assets Declaration Reports	
	Audit Reports	Audit Reports	Audit Reports	Audit Reports	Audit Reports	Audit Reports	Audit Reports	Audit Reports	Audit Reports	
	Media Reports	Media Reports	Media Reports	Media Reports	Media Reports	Media Reports	Media Reports	Media Reports	Media Reports	
	Suspicious Transaction Reports from FIU	Suspicious Transaction Reports from FIU	Suspicious Transaction Reports from FIU	Suspicious Transaction Reports from FIU	Suspicious Transaction Reports from FIU	Suspicious Transaction Reports from FIU	Suspicious Transaction Reports from FIU	Suspicious Transaction Reports from FIU	Suspicious Transaction Reports from FIU	
	Inter-agency information sharing	Inter-agency information sharing	Inter-agency information sharing	Inter-agency information sharing	Inter-agency information sharing	Inter-agency information sharing	Inter-agency information sharing	Inter-agency information sharing	Inter-agency information sharing	
		Whistleblowing	Whistleblowing	Whistleblowing	Whistleblowing	Whistleblowing	Whistleblowing	Whistleblowing	Whistleblowing	
				informants	informants	informants	informants	informants	informants	
		Statutory Reporting		Direct detection of the evidence of a crime by investigator, prosecutor or the public officer	Direct detection of the evidence of a crime by investigator, prosecutor or the public officer	Information received during the investigation of predicate offences of money laundering prevention act	Information received during the investigation of predicate offences of money laundering prevention act	Direct detection of the evidence of a crime by investigator, prosecutor or the public officer	Direct detection of the evidence of a crime by investigator, prosecutor or the public officer	Reports of the public officials

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Special Methods of Generating Leads

	Thailand	South Sudan	Egypt	Japan	Maldives	Bangladesh	Kazakhstan	Kyrgyz Republic	Laos
Reporting Obligation	No	Yes. Anti-corruption legislation obliges public officials to report corruption. Failure to do so attracts punitive sanctions.	No	Yes by law - Public officers are obliged to report police, etc. - No plea Bargain - Mitigation of punishment is practiced by prosecutors and judges.	Yes. Anti-corruption legislation obliges public officials to report corruption. Failure to do so attracts punitive sanctions.	No	Yes	Yes	No
Mitigation System	Yes. Some mitigation	Some mitigation during trial	Yes		No	No	Yes	No	No
Anonymous accusation	No	Is practiced by the Anti-corruption Commission.	No	Yes	Yes	Yes	No	No	No

Investigative Methods and Powers

	Thailand	South Sudan	Egypt	Japan	Maldives	Bangladesh	Kazakhstan	Kyrgyz Republic	Laos
Search and Seizure	Request made directly to the Judge	No warrant for search. Warrant needed for seizure and freezing of properties. But if the suspect absconds, the warrant of attachment and often seizure is obtained for the Senior Public Prosecution Attorney not the court.	Normally a warrant is needed. But the suspect is fought red handed no warrant is needed. However, he should be brought before the Prosecutor within 24 hours of arrest.	Warrant before making search and seizure.	No search warrant from court is needed in public areas. Search of private property, a warrant is needed. Application is made by the prosecution and executed by the police.	No permission from court. But to get information from bank accounts permission from judge is needed.	Warrant is needed form a prosecutor.	Warrant is needed for seizure and search. The warrant is obtainable from the court.	Warrant needed from a prosecutor.
Arrest/ Detention	Also need a judicial warrant. Forty-eight hours to bring the suspect before the court. Maximum detention is eighty four days. Application made directly to the Judge by NACC.	72 Hours. This is the practice of law enforcement agencies. However, the Constitution provides for 24 hours.	A warrant is needed with the exception of when a suspect is caught in the process of committing a crime. In this case no warrant is needed but the suspect must be brought before the judge within 4 Days. The maximum detention period	With a warrant. 72 hours for police and the prosecution. Forty-eight hours for police and twenty-four hours for the prosecutor. If the arrest is made by the Prosecutor then it has forty-eight hours only. Generally ten days for initial detention liable for one more extension only. This makes the total detention days twenty.	Detention period is 24 Hours. Maximum initial period fifteen days liable to extension with a judicial warrant.	No warrant required to arrest.	72 hours without warrant. Extension is made to the court through Public Prosecution Office. Maximum detention period is 18 months. This measure is scrutinized by the court.	Arrest for forty-eight hours extendable to one year maximum by court order.	Warrant needed from a Prosecutor and not a judge. 24 hours for Police. Prosecution has up to three months.
Proactive	Sometimes in serious crimes.	Positive. This kind of investigation is done to disrupt corruption from happening.	Negative.	Negative	Some times.	Negative	Not available for corruption cases.	Positive	Negative
AGNECY	National Anti-Corruption Agency (NACC)	SSACC. Has monopoly over corruption cases investigation.	No Specialized agency. Only Specialized Public Prosecution Offices. Administrative Control. Illicit gains Authority. FIU and then National Coordination against corruption.	Police/Prosecution	Police/ACC have monopoly over investigation over corruption cases.	ACC	ACA/other agencies can investigate corruption but should refer the files as soon as possible to the ACC	ACC of National Security Committee/ Prosecutor Office.	Anti-corruption Authority/ Police

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		Special Investigative Measures									
Type of Measure	Thailand	South Sudan	Egypt	Japan	Maldives	Bangladesh	Kazakhstan	Kyrgyz Republic	Laos		
Controlled delivery	Undercover operations are used	Not expressly provided for under the law and are therefore not safe to use as the evidence obtained through them might be illegal and therefore not admissible.	Controlled delivery, wiretapping, physical and electronic surveillance and informants are used to enhance effectiveness in collecting evidence during investigations.	Some special investigative techniques. Controlled delivery, among others is used to crack criminal networks. However, their use does not extend to corruption cases	Not used on the context of ACC. Only police can use these measures.	Controlled delivery Sting operations (trap case)	Controlled delivery, Wire-tapping (telephone, computer), Bugging (person, place),	Controlled delivery, Wire-tapping (telephone, computer), Bugging (person, place),	Controlled delivery, undercover operations and wiretapping are used by police officers according to Public Security Act.		
Undercover Operatives, Sting operation and bugging.											
Wiretapping											
Physical and Electronic Surveillance											
Informants											
Human Rights Challenges	Intrusive on protected rights	Right to Privacy is one of the inviolable and fundamental rights under the constitution. Any infringement on this right must be in accordance with the express provisions of the law.	Egypt's constitution protects fundamental rights and freedoms. Any infringement of these rights must be in accordance with the express provisions of the law.	Infringe on some fundamental human rights such as the right to privacy	Fundamental rights are protected under the constitution.	Fundamental human rights are preserved under the constitution and the anticorruption law.	These measures are intrusive and infringe much on the right to privacy.	Constitution protects the right to privacy	The constitution ensures basic human rights.		
Procedures and safeguards against human rights infringement and abuse, if any		If these measures are to be used a judicial warrant is needed. Moreover and because of their intrusive nature they should be used as a last resort and in serious crimes. Article 22 of the Constitution	If these measures are to be used a judicial warrant is needed. Evidence admissible if used upon a judicial warrant.	They are used in serious crimes only and subject to judicial scrutiny.	Judicial warrant is needed in their use.	Use with permission from judge or court	Their use is subject to judicial oversight and are restricted to serious crimes only.	Judicial scrutiny is required	Police activities using special measures are supervised by prosecutor. Prosecutor's permission is required.		
Effectiveness in generating useful evidence		Not tested. However, it has the potential of unraveling evidence considering that corruption is a secretive crime in nature and requires secretive and special methods to discover and gather evidence of its existence.	The use of informants is the most effective.	Not tested in relation to corruption.	The use of informants is specifically effective in getting evidence.	Effective in generating useful evidence.	Proved effective and countering corruption through facilitating evidence gathering	Proved effective in generating evidence.	Proved effective		

Prosecution of Corruption Offences

	Thailand	South Sudan	Egypt	Japan	Maldives	Bangladesh	Kazakhstan	Kyrgyz Republic	Laos
Authority	Attorney General	Anti-Corruption Commission/ Director of Public Prosecution	Prosecutor	Prosecutor	Prosecutor General	ACC	Prosecutor	Prosecutor	Prosecutor
Independence in appointment	Positive (subject to consent of the parliament)	Members are appointed by the President of the Republic subject to approval of the National Legislative Assembly (Parliament)	Positive	Ministry of Justice appoints	Positive (subject to consent of the parliament)	Independent (Appointed by the President, nominated by five members Committee)	Positive (appointed by Parliament)	General prosecutor is nominated by President and parliament should approve the appointment	Positive (Prosecutor General is appointed by Parliament) prosecutors are nominated by Prosecutor General
Independence in removal	Positive (subject to consideration of the parliament)	Removal by the President or the National Legislative Assembly	Positive	Positive (dis-qualification committee stipulated in the prosecution office law)	Positive (subject to consideration of the parliament)	Positive (Parliament)	Positive (Parliament)	General prosecutor is nominated by President and parliament should approve the appointment	Positive (Parliament)
Independence in decision in each case	Positive	The Constitution and the law provides for 'functional' independence.	Positive	Positive stipulated in the prosecution office law	Positive	Positive	Positive	Positive	Positive (prosecutor is independent by law)
Financial independence	Positive	No financial independence.	Positive	Budget of Ministry of Justice	Positive	Positive	Positive	Positive (Own budget)	Budget is decided by Government
Element and Criteria	Sufficient evidence	Sufficiency of evidence to sustain reasonable prospect of conviction.	Sufficient evidence	The case can be proved beyond reasonable doubt. The necessity to prosecute is also considered.	The case can be proved beyond reasonable doubt	Sufficiency of evidence to sustain reasonable prospect of conviction.	Sufficient evidence	Sufficient evidence	Sufficient evidence
Check system	Joint Committee (NACC, Attorney General), then NACC can prosecute	No check system	Attorney General (acc. to hierarchy)	The committee for the inquest of prosecution	No check system	No check system. The decision of ACC to prosecute is final	Upper Prosecutors Court	Upper Prosecutors Office Court	Supreme Prosecutors Office Court
Others (qualification for the prosecutors or the member of the commission)	LL.B.+Bar exam+2 years' legal experience and exam for prosecutor recruitment	LLB and 1 year training in legal training institute for prosecutor	LL.B. and 1 year training in National Judicial Centre	Same bar qualification and training at LRTI as judges and defence lawyers	LL.B.for prosecutor, LL.B. and 4 years experience for Prosecutor General	Attorney of 10 years in practice	LL.B. and 5 years' experience in prosecution office	LL.B., exam and training in prosecution office	LL.B. and training in the institute of justice

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Trial Procedures for Corruption Offences

	Thailand	South Sudan	Egypt	Japan	Maldives	Bangladesh	Kazakhstan	Kyrgyz Republic	Laos
Judges and Judicial process for corruption offences	Ordinary judges and ordinary judicial process	Ordinary judges and ordinary judicial process	Ordinary judges and ordinary judicial process	Ordinary judges and ordinary judicial process	Ordinary judges and ordinary judicial process	Special court	Ordinary judges and ordinary judicial process	Ordinary judges and ordinary judicial process	Ordinary judges and ordinary judicial process
Disclosure of evidence	If defendant is a politician-9 judges panel of Supreme Court	All documents are submitted to the court	Negative	Partially	All documents are submitted to the court except the statements which prosecutors want to hide that identify the person.	All documents are submitted to the court	All documents are submitted to the court	All documents are submitted to the court	Negative
Special proceedings for fair and speedy trial	Pre-trial conference procedure	Negative	Negative	Pre-trial conference procedure	Negative	Negative	Pre-trial conference procedure (20 days maximum)	Negative	Negative
Witness protection	Physical protection (rarely used)	Negative	Judge can order police to take appropriate measures to protect witness	No witness protection	Judge can conceal the background of witness from suspect or defendant	Judge can order police to take appropriate measures to protect witness	Judge can conceal the background of witness from suspect or defendant	Positive	Negative
Rule of evidence (Is there something special about corruption cases?)	No difference	No difference	No difference	No difference	No difference	No difference	No difference	No difference	No difference
Statement of co-offender	Nothing special	Admissible	At the stage of prosecution, prosecutor can apply to judge to give mitigation or acquittal to the witness to take a testimony	Nothing special	Nothing special	Nothing special	Nothing special	Nothing special	Nothing special

