

BEST PRACTICES FOR INVESTIGATION OF CORRUPTION

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I. INTRODUCTION

Generally speaking, anti-corruption measures take a three-pronged approach: prevention, enforcement and education. Although all three of these three measures are of great importance, enforcement — that is, to detect, prosecute and punish corruption — is the most powerful measure to combat corruption. Further, enforcement has great preventive and educational effects.

However, enforcement is a very difficult task for investigators and criminal justice officials, because bribery is a hidden crime which benefits the collusive parties. We cannot expect to receive victims' complaints. Little, if any, evidence is left at the crime scene. Corruption cases are often committed by powerful politicians or high-ranking officials, which makes it difficult for investigators to obtain the cooperation of witnesses and suspects. Investigation of large scale corruption cases demands perseverance, knowledge, experience, expertise and organizational strength.

In addition to these difficulties, investigators have recently been confronting other challenges. The protection of human rights imposes significant restrictions on suspect interviews, which play a very important part in the investigation of corruption cases. The globalization of society and development of the Internet and information technologies allow criminals and crime proceeds to cross borders easily.

We must develop the capacity to investigate corruption cases in response to these difficulties and challenges. To achieve this goal, two of UNAFEI's international training courses conducted this year addressed criminal investigation — the 155th International Training Course, which focused on "The Effective Collection and Utilization of Evidence in Criminal Cases" (21 Aug.-27 Sep. 2013) and the 16th International Training Course on the Criminal Justice Response to Corruption (UNAFEI UNCAC Training Course, 9 Oct.-13 Nov. 2013).

As the keynote speech at this Seventh Good Governance Seminar for Southeast Asian Countries, I would like to share the outcomes of these two training courses.

II. BEST PRACTICES

A. Covert Operations Based on Information from the Public (ICAC, Hong Kong)

Ms Rebecca Li, the Director of the Investigation Operations Department, Independent Commission Against Corruption (ICAC), Hong Kong, China, gave her lectures during the 16th UNCAC Training Programme.

The Prevention of Bribery Ordinance stipulates a full range of offences including private sector corruption, illicit enrichment, and no defence of custom or cultural practices. It further provides special powers of investigation by the ICAC including access to records of banks and financial institutions, access to information of the Inland Revenue Department with the approval of a High Court Judge, and notice to the suspect or witnesses to provide declarations or statements in writing. The Ordinance also has provisions to recover proceeds of corruption crimes.

Using these powers effectively, the ICAC conducts proactive investigations such as developing intelligence sources, telephone interception, covert surveillance, physical surveillance and undercover operations. A considerable number of these investigations are opened based on information from the public. As the ICAC enjoys strong confidence from the general public and the intelligence source is strictly protected, three-fourths of informants identify themselves, which contributes to assure the credibility of the information.

B. Intelligence-based Investigation (MACC, Malaysia)

Mr Dato' Abdul Wahab bin Abdul Aziz, the Director of the Malaysia Anti-Corruption Academy (MACA), has rich experience as an investigator at the Malaysia Anti-Corruption Commission (MACC), which is MACA's parent body. He gave his lectures on "Intelligence-Based Investigation (IBI)" during the 16th UNCAC Training Programme.

MACC started IBI in 1999. IBI is conducted by collecting information discreetly using technical aids such as recording, interception and wire-tapping. Officers investigate current and potential offences by various methods like sting operations,

integrity testing, electronic surveillance (covert or overt), interception, and the use of undercover officers, undercover agents, etc.

The benefits of IBI are huge. It shortens the investigation process, saving time and money. It can uncover syndicated and organized crimes. Investigators can gather quality information and reliable evidence, so conviction rates are very high.

C. New Anti-Bribery Legislation (SFO, United Kingdom)

Mr David Green, the Director of the Serious Fraud Office (SFO) of the United Kingdom, gave his lectures during the 16th UNCAC Training Programme.

There has been important legislative progress regarding the anti-corruption measures in the UK, such as the Bribery Act 2010 and the introduction of deferred prosecution agreements (DPA) by the Crime and Court Act 2013.

The 2010 Act stipulates various bribery offences including bribery of foreign public officials, failure to prevent bribery by a corporation, private sector bribery, etc.

The UK authority has robust jurisdiction as follows pursuant to the 2010 Act:

- if any part of the conduct is committed in the UK;
- if the person is a British national, resident in the UK, incorporated in the UK, or has a close connection with the UK; or
- if a commercial organization carries on its business or part of its business in the UK.

Mr Green also discussed key corruption indicators such as abnormal cash payments, abnormally high commission payments, payments routed through offshore accounts with no apparent business links, agents with little nor no subject knowledge, little evidence of due diligence, etc.

Alongside the normal investigative powers, the Criminal Justice Act 1987 bestowed the SFO with special powers to notice any person to answer questions, to disclose specified documents, etc.

D. Interview Techniques: the PEACE Model to Interview Cooperative Witnesses/Suspects (Hampshire Police, United Kingdom)

Mr Tim Curtis, who has rich experience as an investigator and trainer of investigative interviews at the Hampshire Police in the United Kingdom, delivered his lectures during the 155th International Training Course.

He started his lectures by introducing seven principles of investigative interviews: to obtain accurate and reliable information to discover the truth; investigators must approach the suspect with an open mind and information obtained must be tested; the police officer must act fairly; investigators are not bound to accept the first answer; the suspect possesses the right of silence/right to question; investigators should ask questions to establish the truth; and vulnerable people must be treated with consideration at all times.

The PEACE model has its roots in the four-phases-of-interview method, which was developed in 1992: rapport; free narrative account; questioning; and closing. PEACE is a simplified acronym for PPEEACCCE, that is Plan and Preparation; Engage and Explain; Account, Clarify and Challenge; Closure.

Special care must be taken when investigators interview vulnerable people. The government published “Achieving Best Evidence in Criminal Proceedings” in 2001 and amended it twice thereafter. These guidelines target vulnerable witnesses with learning disabilities, physically disabled witnesses, witnesses with mental disorders or illness, and intimidated witnesses.

To extract the best possible information from the interviewee, the interviewer must understand the system of encoding, storage and retrieval of memory, establish a good relationship (rapport) with the interviewee, and ask proper questions which progress from open to closed questions and then on to forced-choice and leading questions.

E. Interview Techniques: the Reid Technique to Interrogate Uncooperative Suspects (FBI, United States)

Ms Shelagh Sayers, an FBI agent and legal attaché at the US Embassy in Tokyo, delivered her lectures on interrogation techniques, especially the Reid technique during the 155th International Training Course.

The purpose of the interrogation technique is to extract full confessions from suspects. It should be emphasized that the purpose of the Reid Technique is not to extract false confessions or confessions at any cost. The credibility of confessions and any statements extracted by the interrogation technique must be carefully analyzed and corroborated by other evidence.

Effective listening is crucial to the success of the Reid Technique. Qualities of an effective listener include: desire; sincerity; projecting empathy; maintaining control; listening critically; staying at the suspect's level; being non-judgmental; remaining relaxed; remaining engaged; being polite; being patient and consistent; being persuasive; being flexible; being well prepared; and maintaining professional appearance and demeanor.

The interrogator must understand the importance of the introductory statement, the differences between open, closed and direct questions, and indicators of truthfulness and deception.

The nine steps of Reid interrogation are: Step 1: The investigator directly and positively confronts the suspect; Step 2: The investigator introduces an interrogation theme; Step 3: The investigator handles the initial denials of guilt; Step 4: The investigator overcomes the suspect's objections; Step 5: The investigator gets and retains the suspect's attention and clearly displays sincerity in everything he says; Step 6: The investigator recognizes the suspect's passive mood; Step 7: The investigator uses an alternative question, that is a suggestion of a choice to be made by the suspect concerning some aspect of the crime; Step 8: The investigator has the suspect orally relate the various details of the offence that will serve ultimately to establish legal guilt; Step 9: The verbal confession is converted into a written or recorded statement.

F. Public Prosecutors' Independent Investigations under Conventional Legislation (Japan)

During the 16th UNCAC Training Programme, I delivered a lecture, as the Deputy Director of UNAFEI, on the Japanese Public Prosecutor's independent investigation of corruption cases.

Despite operating under very conventional criminal law and criminal procedure statutes, the Japanese Public Prosecutors' Office has been successfully detecting and prosecuting bribery cases which involve high-ranking officials, Ministers and politicians through public prosecutors' independent investigations. The main clues of bribery cases come from investigation of other cases such as tax evasion, embezzlement, breach of trust, fraud, violation of antitrust laws, organized crime, etc.

Prosecutors conduct financial investigations through inquiries to financial institutions without requiring warrants or subpoenas. We identify suspicious expenditures, trace the flow of funds, identify the true ownership of pseudonymous bank accounts, find out where the funds were held, and identify secret funds for bribery.

We conduct thorough searches and seizures and analyze physical evidence. Identifying all relevant places and establishing proper chains of command are the keys to successful search and seizure. The seized evidence is immediately analyzed and the results are shared by intranet.

Interviews play a very important part in the investigation of corruption cases. After some inappropriate interviews of suspects were revealed, we have been in the process of reforming the interview system by balancing human rights with the punishment of offenders.

G. Ad Hoc Lectures

The following ad hoc lecturers delivered their lectures during the 155th International Training Course and the 16th UNCAC Training Programme.

- An officer from the Criminal Identification Division of the National Police Agency explained crime scene identification and the importance of cooperation between police and prosecutors.
- A Professor at the Department of Forensic Medicine of Jikei University School of Medicine explained forensic medicine in Japan.
- A Professor at the Research and Training Center for Interview and Interrogation Techniques of the National Police Academy talked about "Investigative

interviews and interrogations by Japanese Police: basic techniques for interviews and interrogations on the basis of psychological knowledge”

- The Director of the General Affairs Department of the Supreme Public Prosecutors’ Office talked about “Interrogation of suspects from the viewpoint of public prosecutors”.
- An experienced criminal defence lawyer talked about “Investigation and interrogation from the viewpoint of criminal defence practice in Japan”.
- An officer from the Japan Financial Intelligence Center explained the current situation of anti-money-laundering measures in Japan.
- An officer from the Japan Fair Trade Commission (JFTC) explained the roles of the JFTC in fighting corruption.
- A senior executive of a private computing company explained digital forensic technology and cooperation with the investigative authorities.
- A Senior Ethics Officer of Planning from the National Public Service Ethics Board explained the public service ethics system in Japan.
- The Deputy Director of the International Affairs Division, Ministry of Land, Infrastructure, Transport and Tourism explained Japan's bid contract system regarding public procurement and securing its transparency.
- The Director of the Trial Department of the Tokyo District Public Prosecutors’ Office explained the international legal cooperation focusing on the importance of informal communication and exchange of information.

III. CONCLUSION

The best practices for corruption cases investigation which I have discussed today are very important but not exhaustive. I am sure that there are other best practices in each of the countries participating in this Good Governance Seminar. I sincerely hope that we will share our best practices on successful detection, investigation and

prosecution of corruption cases, which will cultivate strong ties of international cooperation amongst us during this Seminar.