

THE WHISTLEBLOWER ANTI-CORRUPTION CAMPAIGN IN MONGOLIA — ANALYSIS AND PREDICTIONS

© **Jamyansuren O, Minnikes S., 2023**

MGIMO, Moscow, Irkutsk State University, Irkutsk

The Government of Mongolia announced a «One-year Whistleblower campaign against corruption» starting from May 2023. In this article authors are trying to estimate whether this campaign is a real way of fighting corruption or just a trick to crush political competitors, and to predict the possible effectiveness of this campaign. Moreover, the authors are researching the possible outcomes of this campaign in social, economic and political perspectives, and the reasons for the campaign not to lead to the desired outcome. The term whistleblower is also explained.

Keywords: whistleblower, corruption, Mongolia, lawmaking

The Government of Mongolia announced a «One-year Whistleblower campaign against CORRUPTION» starting from May 2023, providing the co-called 5 sweeps initiative. Those are:

1. Sweep the corruption with the help of whistleblowers
2. Sweep the corruptors from the public jobs
3. Sweep the corruptors finding them around the world
4. Sweep the corruptors by getting back corrupt offshore money
5. Sweep the corruptors with total transparency [1].

The first and the most obvious problem with this government initiative is the fact, that there's no understanding in who is the whistleblower in the Mongolian society. Moreover, theirs is a big misperception of this term, so the whistleblower is perceived as a snitch or a malicious person, nobody wants to be. So, the campaign is supposed to fail at least because there is a need to teach the society first, who is the whistleblower and how the system must work, and only after declare a campaign. Moreover, there was no work done at the state organizations on how to blow a whistle on illegal and immoral wrongdoing, not mentioning GRC (Governance, Risk, and Compliance Management) standards and related training. Businesses don't know about this system, except those from abroad who are already familiar with it. So, the term «Whistleblower» is totally new to Mongolia even today.

The 5 sweeps are to be explained and analyzed thoroughly to predict the possible effectiveness and outcomes of the whistleblower campaign in Mongolia.

Sweep #1. Anti-Corruption Agency swept.

With this initiative the Government puts its hands on the Anti-Corruption Agency which was at the disposal of the Parliament of Mongolia. The Government swept out the right of Parliament to appoint the Chief of the Anti-Corruption Agency to itself. Now it is up to the Prime Minister to appoint the Chief of the sole agency who should monitor the Prime Minister and every government official for corruption.

Today, every corruption investigation of government officials is now in the hands of the Government through the appointed Chief of the Agency, which is totally impossible in terms of fighting corruption.

It may seem that now that the Corruption investigation and court hearing were closed selectively on the grounds of the limitation period (1 year and 6 months) and/or lack of sufficient evidence since that day [2].

This sweep untied the hands of the Government to initiate a Paper Sweep operation when you fight so furiously on paper but in real life, many corruptors went free.

Sweep #2. General Agency for Specialized Investigations (GASI) swept.

Any meaningful compliance control and monitoring of any standards nationwide were delegated from that specialized agency to relevant ministries and their officials. Standard compliance could be a history soon

in Mongolia. To prove this point of view let us look at the current situation in Mongolia. Many disasters and discrepancies occurred — natural and mismanagement.

Hot water. More than a million people were cut off from hot water for months as standard monitoring went missing. People were worried about what happened but not one official would explain why half of the city was out of hot water this summer.

Electricity. This year Ulaanbaatar experienced an unprecedented cut of electricity, breakdowns of local and micro-level electrical shields were everywhere, people were living without electricity for days and in some places for weeks.

Flood. Usually, every summer heavy rains occur. However, Ulaanbaatar City Hall with no monitoring of the safety standards forgot about the annual heavy rain. And, 1,5 million people got mixed up with «Ger district» excrements having children and pregnant women heavily infected, six people died, hundreds were injured, lost their homes, businesses, and jobs, and got their equity (vehicles and belongings) flushed away [3].

Asian Development Bank's study on the flood in Ulaanbaatar clearly concluded many points among them the grievance redress mechanism, compensation and support standards, relocation strategy, budget and financing, implementation schedule, and of course monitoring and evaluation [4].

Sweep #3. Whistleblower campaign sweep.

The Whistleblower system is brand new to the Mongolian governing system. Best practices of the Whistleblower system usually suggest implementing it on multiple governance levels: starting from national and industrial to organizational and down to the individual.

The mistakes of the Mongolian whistleblower campaign «... Нэгдье!» are to be exposed.

First, the law draft on Protecting Whistleblowers is still in the review process at the Parliament, which gives one no legal protection but the blunt excitement of announcing some works with no proper preparation. This is called out of sheer excitement (сэтгэлийн хөөрлөөр). «Potemkinism» kept from the Soviet era when we pretend to doing a job (ажил хийсэн дүр эсгэх) on paper with no proper outcome and still get paid.

Secondly, any whistleblower system is introduced under that set of governing management standards such as Quality management (ISO 9001), Auditing and Compliance management (ISO 19011 & Iso 19600), Anti-Corruption management (ISO 37001), and even Whistleblower management standard (ISO 37002) is at hand and none of them was introduced to state or business organizations.

This means these and other related management standards must be established in every state and government organization before announcing the whistleblower campaign, not after. That is exactly what the whistleblower management standard is suggesting to

build up the whistleblowing culture through the culture of training.

Thirdly, such regulatory management standards at the organizational level should be carried out under the direction and control of independent consulting firms. The reason is that Potemkinism is the main cliché. Let the experts do their job and monitor it independently. Why independence. We need to answer the question: Would we fairly evaluate your work if you were given such power?

And at last, with our corruptive culture, it would be nearly impossible to blow a whistle on any illegal or unethical conduct. Moreover, the law draft on protecting whistleblowers is already 7 years in the review stage at the Parliament and soon it could be on a forgotten list.

Before explaining what is whistleblower concept is and how the whistleblower system works properly, we need to understand who is a whistleblower.

«Whistleblowers play an essential role in exposing corruption, fraud, mismanagement, and other wrongdoing that threaten public health and safety, financial integrity, human rights, the environment, and the rule of law. By disclosing information about such misdeeds, whistleblowers have helped save countless lives and billions of dollars in public funds, while preventing emerging scandals and disasters from worsening» [5].

That definition is quite substantial and determines who is a whistleblower and in what circumstances they would blow a whistle. With all different connotations and definitions, a whistleblower has the following basic attributes:

1. It is a person, which can be a private person, and/or an entity. In practice, most of them want to keep their identity confidential so individuals at work more often report to specialized whistleblowing organizations that are independent from government financing. Sometimes, we see private individuals, who are already in the situation of «nothing to lose» and coming out to the public to blow a whistle. The latter coming out always is a lifetime hard experience, since society might get misguided by the media, and, publicly condemn the whistleblower, harming his/her private life and work reputation forever. In some cases, entities come out with a whistleblower, very common for countries with relevant legislation, to enjoy its benefits, such as tax deduction or exemption, and whistleblower's monetary incentives.

2. Clearly it raises concern about the illegal, immoral, and illicit behavior of someone in power of something not just the corruption. Thus, a whistleblower is not a «rat», «informant» or «snitch» as initially was met in social media in Mongolia.

3. Concern does not need to be supported by hard or concrete evidence, it can only be a suspicion unless proven otherwise. Even after the suspicion has not been proven, anxiety is not considered punishable. After all, what should someone be afraid of who hasn't done

anything illegal or unethical? Let yourself be checked and be on your way.

4. Reporting must be made in «good faith» and on «reasonable grounds». This means that individuals and entities who deliberately make false disclosures (some thoughts will be in my next article) should not be afforded whistleblower protection. Some laws expressly refer to this, for example, Korea's ACRC states that «a person who reports an act of corruption despite the fact that he or she knew that his/her report was false shall not be protected by this Act.» However, whistleblower protection laws would not normally impose sanctions for misguided reporting, and protection would be afforded to disclosures that are made in honest error. This moment must be clearly expressed so there be no vagueness between honest error and deliberate false accusations.

So, in what circumstances a whistleblower would blow a whistle in «good faith» or on «reasonable grounds»?

- Whistleblowers want favorable conditions and a safe whistleblowing culture at the workplace for reporting, such as proper and clear rules and mechanisms for safe reporting.

- To be protected at all times, meaning they may reveal their identity to the public, but in real life, almost all of them want to stay anonymous and safe, since their public, private, and work reputation is on the line.

- Reporting behavior is not limited by illegal and illicit content but also may qualify as immoral and unethical. Meaning that reporting any immoral and/or unethical misbehavior goes beyond any crime or misdemeanor understanding, and, since it is usually done at the workplace, which in turn involves labor and corporate legal environment for businesses.

- Whistleblowers want to be protected even after the investigation of their reports was conducted with no proven results. Stay anonymous all the time.

- Whistleblowers cannot and would not report if there are no clear and proper reporting channels with protected mechanisms, such as a reporting hotline and/or web communication. And these channels should protect their identity at all costs, preferably under the designated law statutes. For public servants reporting any illegal, illicit, and unethical conduct is their duty, for failure to report they may be accused of accomplice.

- Whistleblowing concerns not only the government but also the businesses, so if businesses encourage whistleblowers incentives could be granted with monetary up to releasing from certain taxes.

- Retaliation of whistleblowers and/or revealing their identity without legal consent can lead to serious criminal consequences and high fines.

Certainly, not government enforcement agencies as «...Нэгдье» campaign wishes, as there is a high potential risk of identity loss, so they are more likely to turn to middle-man specialized agencies, firms, NGOs, or organizations such as Speak-OUT, National Whistleblower Center or FaceUp.

In most countries, the whistleblower's identity remains anonymous and their rights are protected even though the report investigation gave nothing but a false alarm. However, the whistleblower is listed in a potential false accuser list with a potential following adding him/her to a blacklist if that case repeatedly occurs.

According to an OECD study on whistleblowers [6], Retaliation in best foreign practices for whistleblowing usually presents itself in the form of disciplinary actions or harassment in the workplace. Therefore, the legislation focuses on providing ample protection of the whistleblower's employment status, including unfair dismissal. For instance, South Africa prohibits whistleblowers from being subject to any disciplinary actions and provides one of the most comprehensive lists of measures for protection. Along these same lines, the 2007 French Law on the Fight against Corruption [7] provides broad employment protection for persons that, in good faith, have reported acts of corruption acknowledged in the exercise of their functions, and cannot be excluded from recruitment and internships, or be disciplined, dismissed or discriminated.

Implementations and legislations may cover all direct, indirect, and future consequences of reprisal, and can vary from a return to employment after unfair termination, transfers to comparable job positions, compensations where they have suffered harms that cannot be remedied by injunctions, and difficulty or impossibility to find a new job and suffering, and criminal sanctions for the employers when they take retaliatory actions, like in Canada and the U.S. German law allots claims for damages (Schadensersatzansprüche) and/or claims for compensation (Entschädigungsansprüche) for the whistleblower.

Moreover, when protection is not provided or the remedy is insufficient, whistleblowers have the right to take action in court proceedings. Physical and psychological threats are subject to criminal law and must be punished severely.

To summarize, The Whistleblower campaign of the Mongolian government is a very much-needed action indeed, but it was announced with no proper preparation and without counseling with national and international experts in such a specialized area. ■

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Антикоррупционная кампания разоблачителей в Монголии — анализ и прогнозы

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Правительство Монголии объявило о «Годовой whistleblower кампании по борьбе с коррупцией», которая начнется в мае 2023 года. Авторы статьи пытаются оценить, является ли данная кампания реальным способом побороть коррупцию, или же способом влияния на политических соперников, а также предсказать, насколько эффективной окажется эта кампания. Кроме того, авторы исследуют возможные исходы этой кампании в общественной, экономической и политической перспективе, и предпосылки того, что она не приведет к ожидаемому результату, дают определение и функции самого понятия whistleblower.

Ключевые слова: коррупция, законотворчество, Монголия, whistleblower
