
REPORTS OF THE COURSE

GROUP 1

ETHICS AND CODES OF CONDUCT FOR JUDGES, PROSECUTORS AND LAW ENFORCEMENT OFFICIALS

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I. INTRODUCTION

Group 1 started its discussion on 9 October 2009. The group elected by consensus Mr. Shiwakoti as Chairperson, Mr. Muamba and Mr. Takahashi as Co-Chairpersons, Mr. Hossain as Rapporteur, and Ms. Otake and Mr. Minh as Co-Rapporteurs. The group, which was assigned to discuss “Ethics and Codes of Conduct for Judges, Prosecutors and Law Enforcement Officials”, agreed to conduct its discussion in accordance with the following agenda:

- 1) Current situation and issues concerning corruption or misconduct in the judiciary and prosecutorial/law enforcement authorities;
- 2) Legal ethics/professional responsibility and codes of conduct in the judiciary and prosecutorial/law enforcement authorities;
- 3) Other measures to prevent corruption and misconduct in the judiciary and prosecutorial/law enforcement authorities;
- 4) Appointment, Education and Training;
- 5) Procedural Regulations;
- 6) Conclusion and recommendations.

II. SUMMARY OF THE DISCUSSIONS

A. Current Situation and Issues concerning Corruption or Misconduct in the Judiciary and Prosecutorial/Law Enforcement Authorities

The discussion began with all participants sharing information about their respective countries’ current situations and issues regarding the topic. Most of the participants agreed that the rule of law and access to justice are key elements of governance and are essential for ensuring human rights. Corruption in the judiciary, prosecutorial authorities and law enforcement authorities not only decreases the capacity of a country to curb corruption, but also deteriorates the morale of the people and their trust in the justice system. Many issues make maintaining an ethical workforce difficult. Regarding corruption and misconduct in the judiciary, most of the participants stated that significant problems exist in the respective countries. Inefficiency and corruption in terms of bribery throughout the sector are a major concern and a significant inhibitor to access to justice.

All the participants opined that poor salary/remuneration, abuse of discretionary powers, absence of effective monitoring systems and weak implementation of the existing codes of conduct are the main causes

of this violation. Transparency in the decision making process is also inadequate in most of the represented countries. Lack of a rule abiding culture and legal complexities aggravate the situation.

The people's perception of corruption indicates that the absence of accountability and misuse of position and power are the most important manifestation of corruption. It is also interesting to note that the second most frequent perception of corruption is negligence of duty. These are directly related to non-accountability and absence of monitoring systems and are also common indications of poor governance. The third most frequent perception of corruption is engagement in outside activities, avoiding the parameters laid down by business or service rules.

B. Legal Ethics/Professional Responsibility and Codes of Conduct in the Judiciary and Prosecutorial/Law Enforcement Authorities

Most of the represented countries apply rules of conduct or ethics law to civil servants in general, but those same rules or laws are not applied to justices or judges of the apex court. These rules provide a framework code of conduct for government servants, intended to ensure safeguards against corruption, external influence on decision-making, nepotism, favoritism, victimization, etc. In most cases, the rules also require disclosure of assets, or the value of properties held by the public servant exceeding a certain amount. Sometimes a government servant is required to disclose his or her liquid assets when asked by the government.

There are no formal separate or specific codes for judges and prosecutors in the Democratic Republic of Congo (DRC), Japan or Vietnam. Conduct rules for government servants in general are applicable to judges and prosecutors in DRC and Vietnam. But in Japan and Nepal, these general rules are only applicable to prosecutors. Nepal has separate codes for judges, prosecutors and law enforcement officials. In Palestine, the codes for judges and prosecutors are similar. In Bangladesh, the Supreme Judicial Council prescribes a code of conduct for all of the judges of the Apex Court. Judges and judicial magistrates in the subordinate courts and for the prosecutors have to follow the written guidelines prescribed by the Ministry of Law, which is almost similar to the code of conduct for judges of the Appellate Division and the High Court Division.

In most cases, the codes stipulate that any act of a judge, whether in an official or personal capacity, which erodes judicial credibility and independence, must be avoided. The code of conduct encompasses all the basic factors of ensuring judicial independence, integrity and propriety and is merely a restatement of the values of judicial life, illustrative rather than exhaustive. In most cases, codes of conduct for law enforcement officials are prescribed in the laws and developed by the country's Ministry of Home or Interior Affairs. For law enforcement officials, the internal rules are self-monitored and supervised in most of the represented countries. But in Japan, the public safety commission and prefectural police committees monitor and supervise police activities.

Effective implementation of the codes is the main challenge in most of the countries. Japan has introduced some monitoring measures which are implemented in terms of reappointment. Every ten years, judges' performances are reviewed by the nomination advisory committee, which is comprised of judges, prosecutors, lawyers and academics. Every three years, prosecutors' qualifications must be reviewed by the review committee, comprised of Diet members, judges, lawyers and academics. In Vietnam, judges have a five-year tenure. Bangladesh, Nepal, DRC and Palestine have no such system of reappointment, but there are annual confidential performance appraisals.

In Bangladesh, High Court and Supreme Court judges have superintendence and control of all subordinate courts and tribunals. The conduct of judicial officers is also overseen by the local authority.

Integrated preventive measures should be introduced in the developing countries. The group members agreed that effective formal codes of conduct are necessary. They opined that multiple codes will be more effective and more attention should be given to implementation. They likewise agreed upon the necessity of effective guidelines for using discretionary power.

C. Other Measures to Prevent Corruption and Misconduct in the Judiciary and Prosecutorial/Law Enforcement Authorities

Judicial Officers are required to submit asset statements regularly as a part of the monitoring mechanism in most of the represented countries. Indirect appraisal of judges is also practiced.

In Japan, judges are not required to submit an annual asset statement but prosecutors are required to disclose gifts. The adequate remuneration of judges and prosecutors in Japan means that there is little motivation to acquire wealth illicitly. The group agreed that an appropriate compensation package is also required to reduce the motivation for illicit wealth acquisition.

In most of the countries, cases are assigned automatically, but prosecution chiefs may assign cases considering each prosecutor's ability and merits. Besides this, the regular transfer of personnel also provides a significant barrier to corruption.

In some countries there is provision to appoint High Court and Supreme Court judges from among practicing lawyers. In all countries, the prosecutorial authority must give written reason for a decision of non-prosecution. In addition, Japan has a Prosecution Review Commission, which consists of 11 members selected from the citizenry. It is empowered to examine the propriety of decisions made by public prosecutors, not to institute prosecutions. Besides this, people have the right to complain about abuse of authority.

In some countries there are provisions allowing the apex court, or other authorities as provided by legislation, such as the Financial and Administrative Control Bureau in Palestine, to inspect or observe the subordinate courts' activities. The Parliamentary Standing Committee has also monitored the activities of judicial officials. Comments in the controlling officers' annual confidential evaluation report create a deterrent to indulging in bad practice and corruption. Besides, these serious breaches of its standards could lead to a criminal or disciplinary investigation. Some NGOs, including Transparency International, bar councils and media also play an important role in this regard. The group agreed that a separate independent oversight committee or commission within and outside the organization would be a further effective control.

D. Appointment, Education and Training

Most of the countries have a transparent competitive national level recruitment system. In Bangladesh, candidates for the judiciary and prosecution are selected from among law graduates. In Nepal, the judicial council makes recommendations for the appointment of district judges from among judicial officials and legal practitioners. In Japan, the candidates must take the one-year legal trainee course at the Legal Research and Training Institute. Candidates in Vietnam require four years' legal experience. In Palestine, candidates also require two years' training from the bar association and five-to-ten years' legal experience. High Court and Supreme Court judges are appointed from sitting judges, legal practitioners and government officials of a legal background.

In Vietnam, internship training after appointment is long (one year), but in most countries it varies from 3 to 16 weeks. In the DRC there is very limited opportunity for legal training for judges, prosecutors and law enforcement officials. In Bangladesh and Palestine, new officers are provided training at the Judicial Administration Training Institute on various important procedural and substantive laws, both civil and criminal, including codes of conduct, good governance, anti-corruption issues and some cross-cutting issues. In Japan, judges and prosecutors have also been provided periodic on-the-job training. Other countries, with the exception of the DRC, have some periodical on-the-job training, but it is not sufficient. Adequate moral and ethical education or training is absent in most of the countries. In most countries, a police training academy provides basic and in-service training to police officers which also includes codes of conduct, human rights, and prosecution and investigation related courses.

The participants agreed that long basic and periodic on-the-job training is necessary for imparting appropriate knowledge to judicial officers, which may include numbers of case studies on corruption and misconduct cases.

E. Procedural Regulations

Every country has provisions for disqualification and recusal of judges in criminal proceedings in which the judge's impartiality might reasonably be questioned. Senior judges also may replace the judge in charge

upon a request from a defendant or prosecutor. For prosecutors, though there is no such formal regulation, in practice, they also follow a system of disqualification and recusal. In Japan the rule of criminal investigation prescribes the law enforcement official's obligation to avoid cases in which there may be a conflict of interest. But for law enforcement officials in Bangladesh there is no such recusal system. A law enforcement official must do his/her duty according to the law; in practice, sometimes an official will refuse to proceed.

Disciplinary procedures are the same for judges and prosecutors in Palestine, Nepal and Bangladesh. But in Japan judges cannot be removed except by public impeachment. The Impeachment Court decides whether or not to remove the judge. In Bangladesh, Supreme Court judges can only be removed by impeachment. Concerned authorities like ministries or the Attorney General's Office can initiate action based on their service related laws. Most of the countries have their own rules and regulations against the violation of conduct rules. Depending on the nature and seriousness of the violation, the official may receive a reprimand, warning, wage reduction, demotion, removal from office or dismissal as a punishment. Corruption is treated as criminal misconduct and is deemed to be a cognizable criminal offence.

The group agreed that the procedural regulations may be developed further, making it more clear, accountable and transparent. The requirement to provide reasonable opportunity to show cause applies to inquiry procedures for both major and minor penalties. Besides the general disciplinary procedures there are some internal regulations for dealing with the matters involving law enforcement officials. Disciplinary procedures for a judge start with a request from the court which has the power to supervise the judge and the court makes the disciplinary decisions by a ruling. The facts which give cause for disciplinary action consist of violation by a judge of his or her official duties, neglect by a judge of his or her duties or misconduct which undermines public confidence in the judiciary. To ensure transparency and accountability an independent outside body may be more appropriate to handle these kinds of affairs.

III. CONCLUSION

No country in this world is absolutely free from corruption that is why it is a global problem. It is a complex social, political and economic phenomenon that affects all countries. Model preventive policies require formulation and strict adherence to a standard set of codes of conduct and appropriate disciplinary measures. For effective control of corruption and misconduct the group emphasized prevention. But due to its global nature, effective control also depends largely on global co-operation. Our group discussed the issues in a comprehensive way and agreed to find a best practice solution which may be adopted in general.

Our group also agreed that the 3Rs essential for fighting corruption are:

- REFRAIN: Do not participate in corruption;
- RESIST: Resist corruption wherever and whenever detected; and
- REPORT: If all fails, report to the authorities.

Success depends on uniform support at the highest levels. In the years to come it will be the partnership of judiciary, police and the community working together in a climate of mutual respect, understanding and co-operation through which citizens will enjoy a truly enhanced quality of life, free from corruption and crime, which is pre-requisite for a just society.

IV. RECOMMENDATIONS

1. Proper codification and regulations by the appropriate authority should be adopted regarding codes of conduct and other relevant matters/measures;
2. The codes of conduct should accommodate all the core values like independence, impartiality, integrity, propriety, equality, competence and diligence;
3. Multiple codes will be more effective. Besides general codes of conduct for government servants, it is better to have separate codes of conduct for judges, prosecutors and law enforcement officials, depending on the legal system and their job descriptions;
4. Discretionary power should be guided by the transparent guidelines and its exercise should be accountable to a proper authority like the Prosecution Review Commission in Japan. Judges/

prosecutorial authorities should make the reasons for final dispositions (judgments/non-prosecution) clear;

5. An internal independent oversight committee (like the OPR in USA) is required for monitoring strict adherence to the codes of conduct. Sometimes the internal monitoring body may include members from outside the jurisdictions. The members should not be replaced very often. Outside oversight bodies (like the inspector General's Office in the USA or a Parliamentary committee) may look after serious violations;
6. Review of performance evaluation systems is also required, by which superior officers can ensure the just functioning of the system. Job rotation and disclosing of assets ought also to be considered;
7. An effective complaint reporting system should be developed. Public officers who uncover misconduct should be obliged to report such misconduct;
8. Adequate measures should be taken for dissemination of codes of conduct among the members inside and outside the organization to sensitize the citizen as to rights and services provided by the organization. It will develop a deterrent effect against the corrupt practices;
9. The selection/recruitment of candidates should be transparent, effective and based on merit. It should be clear and equally applicable to all. A system of basic legal practitioner training, such as Japan's, may be adopted;
10. Before appointment there may be a system of information collection regarding the judicial candidate's career, including personal and professional moral or ethical behaviour, from the Bar and other institutions;
11. Besides the long initial training, periodical on the job training should be introduced. Inclusion of case studies of corruption and misconduct in the training sessions may be very useful. Adequate legal moral/ethical education and training programmes should be introduced before and after appointment;
12. Moral and ethical education should be incorporated as a separate subject within the curricula from elementary level;
13. Clear criteria for disciplinary procedures stating who and how the measures will be conducted are required. Violations should be strictly dealt with;
14. There should be a transparent and accountable information sharing system regarding the proceedings, violations, disciplinary measures taken;
15. Adequate measures to ensure judicial independence along with job-security and proper compensation should be ensured;
16. Strong political commitment is required above all for curbing corruption. Co-operation from all, including NGOs and the media, is also necessary.