

GROUP 2

CODES OF CONDUCT FOR JUDGES, PROSECUTORS AND LAW ENFORCEMENT OFFICIALS

Chairperson	Mr. Hussain Shameem	(Maldives)
Co-Chairperson	Mr. Manabu Imai	(Japan)
Rapporteur	Mr. Bishnu Prasad Upadhyaya	(Nepal)
Co-Rapporteur	Mr. Yuki Mori	(Japan)
Members	Mr. Khalid Salim Fadhil	(Oman)
	Mr. Long Ta Cuu Doan	(Vietnam)
	Ms. Gereltuya Gombojav	(Mongolia)
Visiting Experts	Mr. Sunghoon Park	(UNODC)
	Ms. Judith B. Wish	(USA)
Advisers	Deputy Director Haruhiko Ukawa	(UNAFED)
	Prof. Fumiko Akahane	(UNAFED)
	Prof. Junichi Watanabe	(UNAFED)
	Prof. Ayako Sakonji	(UNAFED)

I. INTRODUCCION

This Group started its discussion on 9 October 2009. The group elected, by consensus, Mr. Shameem from Maldives as its Chairperson, Mr. Imai from Japan as Co-chairperson, and Mr. Upadhyaya from Nepal and Mr. Mori from Japan as its Rapporteur and Co-rapporteur respectively.

The Group was assigned to discuss “Codes of Conduct for Judges, Prosecutors and Law Enforcement Officials”. Under the above mentioned theme, the group agreed to discuss the following issues as sub-topics.

1. Current situation and issues concerning corruption or misconduct;
2. Legal ethics, professional responsibilities 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.

II. SUMMARY OF THE DISCUSSIONS

A. Current Situation And Issues Concerning Corruption or Misconduct

1. Current Situation

Members of the group took turns to introduce their countries and the situation in their countries in general, in terms of the legal system and issues relating to corruption. This was mainly a brief of the Individual Papers presented during the previous couple of weeks. The members agreed that in order to better understand the position of the represented countries, it was important to understand their legal systems.

Corruption and corrupt activities by officials are criminalized in all the countries represented and corruption is always seen by the public as a disgrace or shameful.

The first issue that the group discussed was defining corruption and the perception of corruption in different countries. Corruption was agreed to be defined as ‘the abuse of entrusted power for private gain by a public official’. It was obvious from the discussion that the general public perception of corruption differs widely from country to country and from culture to culture. It was also observed that this perception has roots in the socio-political situation of the country. Therefore, the group agreed that while combating corrupt activities by judges, prosecutors and law enforcement officials, it is vital to take into consideration the many factors that could affect the official concerned, i.e. the political background of the country, financial situation, culture, etc.

The swift and speedy disposition of corruption cases was discussed as a matter of high priority. Nevertheless, while doing so, it was agreed that officials must consider, the complexity of such cases, the difficulty of collecting evidence and successfully prosecuting the accused. Therefore, speed and swift disposition must not be at the expense of collecting sufficient evidence and hence, successful prosecution.

2. Main Causes of Corruption

Low remuneration was identified as a cause of corruption. The meaning of 'low remuneration' was discussed in great depth. While members agreed that low remuneration does cause corruption, they disagreed about the degree of this cause.

The group discussed deeply the meaning of 'minimum living standard' and it was observed that the above term does not intend to give a specific standard; however, it could be interpreted as 'a living standard that is acceptable to a person of his or her stature in the society'.

Many arguments were raised about the level of remuneration and the relationship between the salary and living standards of judges, prosecutors and law enforcement officials and the national average wage. It was agreed that the salary of a judge, prosecutor/law enforcement official should rather be compared with that of a civil servant of the same rank and stature and/or should be sufficient to maintain a minimum standard of living.

The group also discussed the following issues as other major factors resulting in corruption by public officials: social and cultural values towards corruption; weak laws, and their weak implementation; more discretionary power and weak monitoring systems; and inconsistency of applicable laws.

B. Legal Ethics, Deontology, Professional Responsibilities and Codes of Conduct in the Judiciary, Prosecutorial and Law Enforcement Authorities

Legal ethics, deontology, professional responsibilities and codes of conduct vary in different countries. Different countries had different reasons to adopt or not adopt a code of conduct for officials. This has historical and social explanations.

The group then assumed and discussed a code of conduct for judges, prosecutors and law enforcement officials of an imagined new country. The pros and cons of establishing and implementing a code of conduct were widely discussed. However, for the new country, it was agreed that a code of conduct was needed to prevent and deter criminal justice officials from becoming involved in corruption and to maintain public confidence in the criminal justice system.

It was discussed that a capacity assessment of the judiciary, prosecution service and police service must be conducted before attempting to establish such a code to achieve the best possible discipline among criminal justice officials.

1. Code of Conduct for Judges

A code of conduct for judges should include all the principles stipulated in the Bangalore Principles of Judicial Conduct. However, it should be amended in a way that would suit the new country. The code of conduct should be 'localized'. The group discussed the hierarchy of the principles. Some members argued that some principles may be more important and therefore prioritized, while other members argued that only a someone with *all* the values will make a good judge.

(i) Independence

Judges must be independent in judicial work from the legislative and executive branches of government, other institutions and judicial colleagues. Additionally, a judge may be encouraged to discuss judicial matters, with colleagues, but must not be influenced in any way whatsoever by his or her colleagues.

(ii) Impartiality and Integrity

A judge must maintain a high level of integrity. Judges should not be biased while executing their duty. The decision-making process must also be seen to be unbiased, impartial, just and fair.

(iii) Propriety

Judges must maintain a lifestyle becoming of judges. Judges must restrict themselves from social activities that may damage the judiciary's reputations for propriety.

(iv) Equality, Competence and Diligence

Judges must deal fairly, equally and respectfully with everyone, including but not limited to prosecutors, defence lawyers, colleagues, staff and subordinates. Judges must not, by words or by action, portray his or her opinion on a matter that may end up in his or her court. Judges must also make an effort to remain competent and diligent. Judges should be encouraged to attend training and refresher programmes.

2. Code of Conduct for Prosecutors

Prosecutors play a vital role in the administration of the criminal justice system. Prosecutors have a duty to ensure that the fundamental human rights of the citizens are observed at all times. Therefore, prosecutors should maintain ethical behaviour. The following principles can be identified as minimum standards of ethical conduct by prosecutors.

(i) Professional Conduct and Competency

Prosecutors, as practitioners of criminal law, must at all times be well informed of all recent developments in the legal framework, including a thorough knowledge of criminal procedure codes, evidentiary laws and fundamental human rights of the citizens.

(ii) Independence

As the use of prosecutorial discretion is a wide power given to prosecutors, to ensure that this discretionary power is used in a fair, consistent and legally sound manner, prosecutors must be independent from any political or other sorts of influence.

(iii) Impartiality

Prosecutors must perform their duties without favour, prejudice or fear. Prosecutors must remain calm at all times and carry out their duties impartially and objectively, according to their jurisdiction's laws and regulations.

(iv) Role in Criminal Proceedings

Prosecutors, as the representative of the public interest must ensure that the defendant receives fair treatment during the criminal proceedings. Prosecutors must also guarantee that prosecution evidence submitted to court is sufficient and has been legally obtained. As the defenders of the public interest, prosecutors must not only consider the rights of the victims, but the rights of the greater community as well.

(v) Co-operation

Prosecutors play an important part in criminal proceedings. However, the prosecutor's work shall be supplemented by the work of law enforcement officials. Therefore, the co-operation between prosecutors and the law enforcement officials must be maintained at all times. Prosecutors must also maintain a professional courteous relationship with courts, defence lawyers and all other relevant parties in the criminal justice system, to realize that justice is served fairly and in an expeditious manner to all parties involved in criminal proceedings.

3. Code of Conduct for Law Enforcement Officials (Police)

While establishing a code of conduct for police officials, the group discussed the importance which must be given to honesty, integrity and the spirit of sacrifice. Moreover, given global nature of police work, the code must comply with international best practices as each police force will have to co-operate with other international organizations in fulfilling its duties.

(i) Honesty, Integrity, Confidentiality and Spirit of Sacrifice

Police officials must be honest, maintain high integrity and be willing to, made sacrifices while fulfilling their duties. This is more relevant to police as police are the 'face' of the criminal justice system and fight crimes on a day-to-day basis. Police also receive information of a classified nature from different sources. Misuse of this police intelligence may result in major breach of public confidence in the criminal justice system.

(ii) Fairness, Tolerance, Appearance and Impairment

Police must be fair and must be able to tolerate any amount of difficulty (humiliation, violence, etc) during the performance of their duties. Police must not react to violent actions by criminal elements. On the contrary, police should remain calm at all times and maintain high level of personal conduct and good appearance. Law enforcement officials must not be under the influence of drugs and alcohol while on duty.

(iii) Use of Force, Abuse of Authority and Lawful Order

The nature of police work includes using of force against citizens. It is important to make sure that this force is only to the limit required. The police must not abuse their power in any way. Fighting corruption in the police must be the focus of this principle.

(iv) Co-operation and Partnership

As the police get involved in dealing with international crime that which causes economic and social problems, it is important for them to deal in a friendly manner with foreign police to achieve investigative success.

C. Other Measures to Prevent Corruption in the Judicial, Prosecutorial and Law Enforcement

Authorities

The group agreed that implementation of the code of conduct shall play an important role in fighting corruption of public officials of the criminal justice system. Therefore, it was suggested that, during the drafting of the code of conduct, judges, prosecutors and law enforcement officials must be actively involved and widely consulted. This is to ensure ownership of the code.

Thereafter, comprehensive training must be provided to facilitate complying with the code of conduct. Training must include discussion of real-time issues and problems. Adult learning mechanisms should be employed. Specialized experts may be employed to advise judges, prosecutors and law enforcement officials on ethics and codes of conduct. Continuous training and refresher courses shall be conducted throughout the year. The public shall also be informed about the code of conduct of the criminal justice system officials. Additionally, the group agreed that along with a written code of conduct, the traditions and work culture of judges, prosecutors and law enforcement officials shall be given priority.

Mechanism: an independent committee/authority must be established within each respective organization to ensure compliance with the code of conduct.

D. Appointment, Education and Training

The group agreed that selection of judges, prosecutors and law enforcement officials should be based on merit. Integrity of the applicant should be considered too. As for education and training, the group agreed that the lecture-based education only may not be sufficient. Therefore, adult learning methods (Experience Exchange, Sharing) should be deployed. Continuous legal training on ethics and codes of conduct must also be conducted. A separate officer or officers may be employed to advise the officials continuously on the code of conduct and ethical behaviour.

E. Procedural Regulations

The group did not discuss in depth the issues of procedural regulations as it was understood that *all* the countries represented had sufficient procedural regulations stipulated in their respective constitutions and local procedural laws. Issues relating to recusal were also addressed in most jurisdictions. In countries that do not have recusal arrangements written in procedural regulations, it was observed that they had strong unwritten customs, traditions and practices that worked to avoid any possible conflict of interests. However, the effective implementation of the procedural regulations was raised as a concern and more work needs to be done on this aspect.

III. CONCLUSION AND RECOMMENDATION

Upon discussion, it was observed by the group that the international covenants and instruments that relate to codes of conduct and ethical behaviour of judges, prosecutors and law enforcement officials are merely minimum standards (as it is the nature of any international instrument). The group observed that

there are certain values that may be considered common values among the officials of the criminal justice system. However, the aspect and the mission of each organization and their values will differ and therefore have differing impacts.

Following their comprehensive discussion, the group was unanimous that a written code of conduct for judges, prosecutors and law enforcement officials was indeed important to fight corruption and unethical conduct of officials of the criminal justice system. The code should reflect the aspirations of the citizens towards criminal justice. It should also incorporate the country's traditional values and social and cultural values. It should also address the historical events that might have led to the establishment of the code of conduct. The code of conduct must be coupled with efforts to train officials, on a continuous basis, on the codes of conduct and ethical behaviour, with constant advisory support and harsh punishments in the event of violation of the code.

The work of judges, prosecutors and law enforcement officials and the decisions made by them affect the daily life of citizens. High levels of ethical behaviour, equality and fairness in performance of the duties of judges, prosecutors and law enforcement officials are not only a favorable qualities but it can considered a right of all citizens.