

GROUP 2

STRENGTHENING THE CAPACITY AND INTEGRITY OF CRIMINAL JUSTICE AUTHORITIES AND THEIR PERSONNEL

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I. INTRODUCTION

Group 2 began its work on 24 October 2011 by electing its Chairman, Co-Chairman, Rapporteur and Co-Rapporteur by group vote.

The topic assigned for the group is “Strengthening the Capacity and Integrity of Criminal Justice Authorities and their Personnel”. The group’s responsibility was to discuss, exchange views, share experiences, country situations and consider possible measures or solutions against the current problems faced by each country in terms of the following areas:

- Independence of the criminal justice authorities;
- Integrity of the personnel of criminal justice authorities;
- Impartiality, transparency and accountability in the relevant decisions in criminal proceedings;
- Mindset of the people; and
- Strengthening the capacity of the criminal justice system in dealing with corruption cases, including specialization.

II. SUMMARY OF THE DISCUSSIONS

The group identified the following as the major challenges facing the three branches (investigative, prosecutorial, judiciary) of the criminal justice authorities and discussed the possible solutions.

A. Independence of the Criminal Justice Authorities

In the group discussion all the members agreed, that in order to practice true independency effectively, as adopted by many countries, the major three powers (executive, legislative and judicial) must be separated from one another. Likewise, they also agreed that it is important that criminal justice authorities (investigative, prosecutorial and judicial) be made independent in order to give fair and equal justice to all. Members were in agreement that it’s not an easy goal to achieve unless there are proper and efficient mechanisms set in terms of the following areas:

1. Effective Laws

Members of the group were in agreement that in order to practice independency and make the officials of criminal justice authorities’ work independently, sufficient and effective laws should exist.¹ Therefore members discussed to a level where the laws should lay down a mechanism of check and balance, where the

¹ Singaporean Visiting Expert: The law must provide sufficient teeth for law enforcement.

work and duties of these officials are monitored. It was noted that in some countries they adopt very strong systems of monitoring, such as segregation of duties within the authorities, while there are also independent bodies set-up to monitor their work.

2. Appointment and Discharge

There should be a clear procedure in the appointment and removal of top level officials in the investigative authorities, public prosecutorial and adjudication. Some of the group members highlighted that the terms of appointment and removal of chief investigators, prosecutor general, and judges are laid down in their Constitution, while some members noted that in their countries still these powers are in the hands of the president. It was a concern for the group members that in many instances the officials who were appointed for the purpose of executing their duties with an independent motive are also politically influenced.

3. Terms of Office

Length of appointment of chief investigators, prosecutors and judges are said to be an important factor in maintaining independency in executing their duties. Therefore, all the members were in agreement that there should be a fixed term of office for the above mentioned officials, either as laid down by the Constitution in the case of some countries, or a law governing the terms of their office.

4. Remuneration

In the opinion of all the members, remuneration or the pay package was the single most influential factor in practicing independency. Therefore, it was believed that the officials of the criminal justice authorities be paid adequately up to a level where their decisions cannot be influenced by others.²

5. Transfer

Some members noted that there was weaker punishment for the officials of criminal justice authorities in failing to perform their duties. It was discussed that if an official happened to be transferred to another branch or city, rather than being punished for his or her crime, it could be regarded as an advantage for the official and the same act can be repeated over and over again. The terms and conditions under which transfers can be affected should be clearly spelt out in the rules and regulations to avoid transfers being used as a punishment to an official who acts independently.

6. Security

It was agreed that, the top officials of criminal justice authorities, especially for the judiciary, sufficient and proper security should be provided. Their decisions can sometimes be a threat to their own life; therefore in order for them to practice their duties independently without the influence of others, safety is regarded as a necessity. It was noted that, in some countries, the top officials of these authorities are provided with official cars and security guards, while in other countries they are not.

B. Integrity of the Personnel of Criminal Justice Authorities

The integrity of the criminal justice authorities is crucial in fostering people's confidence in the criminal justice system, for justice must not only be done but must be seen to have been done. Accordingly, the group members agreed that the following measures are essential in order to strengthen the integrity of criminal justice authorities and their personnel thereby fostering the confidence of the people in the system.

1. Members believed that in order to maintain integrity among the officials of criminal justice authorities, there should be a strong mechanism of appointment. They should also make sure that the appointed person holds adequate qualification and experience to meet the relevant requirement. Further, the persons to be appointed should be sufficiently vetted. All the appointments should strictly be merit based. Robust mechanisms be put in place to ensure that people who do not have merit, are not appointed.
2. Having written and approved Code of Conduct for the personnel within these authorities as the guidelines as to the conduct of the personnel, it was also noted that these authorities have a manual which the officials and subordinates have to follow as regards the performance of duties and

² Visiting Expert from Hong Kong: emphasized on the importance of reasonable pay for ensuring integrity.

responsibilities.

3. In order to make sure that integrity is maintained within criminal justice authorities, just as for independency, the members considered having strong check and balance mechanism where work is delegated and segregated while the top management has a system to monitor the work carried out by the subordinates.
4. It was considered that in the judiciary, there should be an appeal procedure where lower court decisions can be appealed at higher courts. Many members agreed that already this system existed in their judiciary.
5. Members suggested that it is important to have an independent body or unit monitoring the level of integrity within the criminal justice authorities. For example, a Judicial Service Commission or a Judicial Intelligence Unit to monitor the integrity of the judicial officers. Likewise, it was agreed that there should be appeal tribunals set up to observe the work of investigative and prosecutorial authorities.
6. There should be constant and continuous ethical training on all the personnel in the criminal justice authorities. Further, there should be continuous integrity testing mechanism.
7. Strict disciplinary measures and impeachment for misconduct should be applied to any officer who is found to have breached the code of conduct or whose integrity is found wanting. This should apply to any officer regardless of his rank.³
8. Importance of having a mechanism where the members of the public can file complaints against judges, prosecutors and law enforcement officials, whereby these complaints can be reviewed and corrective measures or action is taken.
9. In the subject of establishing an independent body for investigation or prosecution of corruption cases, two different models were considered. The first model being the one followed in Japanese criminal justice system where the investigation is carried out either by the police or public prosecutors (no specialized independent body to investigate corruption cases), whereas the other model is to have an independent body such an anti-corruption agency or a commission to take care of corruption cases. Few members suggested that the success of Japanese system was because of the mindset and integrity of people and as long as the police had proper facilities, capacity and efficiency to handle corruption cases, it was not necessary to form an independent body for corruption cases. On the other hand, many members said that it is necessary for developing countries and large populations to have an independent authority, the advantage being to reduce the work load of police and to concentrate on the subject of corruption, as recommended by the United Nations Convention against Corruption (UNCAC).

C. Impartiality, Transparency and Accountability in the relevant Decisions in Criminal Proceedings

To enhance the aspect of impartiality, transparency and accountability, adequate laws and regulations need to be in place. Thus, the officials of the criminal justice authorities must strictly follow the laws. The investigative and prosecutorial authorities should be established under strong laws on carrying out their duties and dealing with corruption related cases. For example, there should be written justification for dropping cases, maximum length for completing a case, and also corrective action taken against personnel who violate the rules and regulations.

In terms of having strong and adequate laws for guidance, the judiciary is no exception. Courts verdict is the last resort in the process of investigation and prosecution; therefore it is necessary to make sure on the impartiality of their decisions and the transparency of judges. There should be appropriate laws in order to make the judiciary accountable for the decisions. Some members suggested that, in their respective countries, the Constitution itself guides the judiciary on their duties, responsibilities and also having an independent body (for example, a Judicial Service Commission) to monitor the judiciary and its personnel. It was also suggested to follow internationally accepted ethical codes for judiciary, such as Bangalore

³ Visiting Expert from Hong Kong: Under strict disciplinary regulation highlighted “zero tolerance”.

Principles of Judicial Conduct. In addition to having effective and sufficient laws criminalizing corruption, the same should be strictly enforced. It was considered good practice to borrow laws from other countries, which can be useful in fighting corruption.

D. Mindset of the People

A mission without a vision is like day dream. Therefore the mindset of both the personnel of criminal justice authorities and the citizens at large in a country will be major contributing factor to combat corruption. Consequently it was agreed that in order to win the war against corruption it is important to change the mind-set of the people, whose willingness work for their country's betterment rather than personal benefit.⁴

Therefore, in order to change the attitude and mindset of the people civic education is said to be important.⁵ The citizens need to be educated and made aware of the danger of corruption with the help of continuous civic educational and awareness programmes with the help of media and other methods. Public officials and personnel of criminal justice authorities should continuously be trained on ethics and integrity. It is also important for the state to concentrate on the private sector in terms of methods to make it clean from corruption and add value to the nation in the right manner.

Some participants suggested including a subject related to moral and ethics in school curriculum. This can be a very useful tool to build a new generation, especially for nations fighting corruption at large scale.

A good mindset or honesty of politicians, top and managerial level employees of organizations, and senior employees of criminal justice authorities can play a significant role by being role models to their coworkers and employees in motivating them and minimizing corrupt behaviour. There should be a legal requirement for public servants to report any gifts they receive while executing their official duties and this could be an example of the law being used to change mindset. For instance, there is a requirement in Japan where public officials receive gifts of more than 5,000 yen, and incomes from personal businesses or investments, they have to report.⁶

E. Strengthening the Capacity of the Criminal Justice System in dealing with Corruption Cases, including Specialization

One major area of the groups discussion was based on strengthening the capacity of the criminal justice system to a level where there is adequate resources to carry out their duties efficiently and effectively. In addition to acquiring the necessary resources in terms of technology, adequate human resource, and meeting the administrative requirement, the group also discussed the importance of specialization, delegation and segregation of duties within the authorities. The following areas were discussed.

- It is necessary to import expertise from outside the organization when required in order to improve the standard of output. This type of expertise is borrowed when it is necessary and is not a must to have within the organization. For example, very sophisticated forensic expertise or security of police can be borrowed by an Anti-Corruption agencies whenever is necessary. Some types of expertise can be built within the authorities such as fraud investigative techniques, and forensic auditing. It is also important that the personnel with the expertise be trained regularly for them to be up to date.
- It is necessary to have team work within and between institutions in order to facilitate and accelerate their activities and performance in terms of partnership, coordination and synergy. This will improve efficiency within the organizations themselves as well as in dispensing justice in general. For example, forming teams within an investigative authority, consisting of personnel with knowledge of law, audit and accountancy, can be very efficient, rather than delegating cases to individual investigators who may have limited knowledge to deal with the assigned case. The same kind of partnership and coordination can be built between organizations such as anti-corruption

⁴ Visiting Expert from Hong Kong: Under the topic of changing the public attitude said "no longer tolerating corruption as a way of life".

⁵ Visiting Expert from Hong Kong: On public education and Communication Programme's objective as to change the public attitude, enlist public support, encourage public report, promote a clean society and force "political will".

⁶ Deputy Director, UNAFEI: In his lecture on "The Japanese Prosecution" highlighted on the requirement of reporting to the government on receiving gifts, income other than salaries, and of trading in stocks.

agencies and the police investigative unit.

Therefore effective structures or reliable teams of investigators are the solution for efficiency and also ensuring the secrecy of their investigations. In order to uphold the secrecy of investigations, the investigators should disclose information when it is necessary and only to the people necessary. Thus, for this mechanism to work effectively, it is important to recruit honest personnel with adequate education and experience. Management should have a strong in-built system to monitor their activities and the setup of work environment should be in such a way to help maintain the secrecy of investigations. There should also be effective sanctions against the personnel who disclose or leak secret information.

- Members agreed that it is not of paramount importance to distinguish whether the institutions carrying out investigation, prosecution or the courts handling corruption cases are specialized or within the normal justice system, rather what is of importance is that those bodies be independent, effective and efficient.
- To ensure proper case management and organized speedy trial procedures, a mechanism must be in place to achieve efficiency within authorities, for example by use of technology ⁷ (free toll telephone number for public to file cases, email, etc). Members also agreed that adequate resources, intelligence collection, specific time frame to finish investigation are indispensable for ensuring proper case management.
- Mechanisms to be in place to report back and share knowledge in a wide range, from what participants learn from workshops within the country and overseas are recommended.
- Organized speedy trial procedure demands specific time framework, ample conclusive evidence, adequate judges and witness protection. For prosecutors there should be similar provisions in that there should be adequate personnel, investigations be completed within a given time framework.
- For minor cases where the defendant does not dispute the evidence, the summary procedure as is currently used in Japan is recommended.

III. CONCLUSION

To conclude the discussions of the group on strengthening the capacity and integrity of criminal justice authorities and their personnel, the participants are of the view that the most important overriding factor is political will⁸ and the mindset of the government and personnel within the criminal justice authorities. The importance of educating the public in terms of combating corruption, and finding ways of making the general public aware of getting rid of this intolerable disease was noted. Some other factors which seem necessary to strengthen the criminal justice authorities as a whole were identified: having proper and efficient facilities and technology requirements. Having efficient and adequate laws and mechanisms to manage the authorities themselves was identified as a high priority, keeping in mind that these personnel executing their duties should be paid adequately. By doing so, it was believed that we could go in the right direction in achieving independence and integrity within the criminal justice system.

⁷ Visiting Expert from Singapore: Increased use of technology and sophistication of modus operandi. Example, computer forensic capability.

⁸ Visiting Expert from Singapore: Categorically mentioned that it is difficult to live up to this good intentions unless the leaders are strong and determined enough to deal with all transgressors, and without exceptions.