

GROUP 3

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

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I. INTRODUCTION

Group 3 started its discussion on 28 October 2014. The Group elected, by consensus, Mr. Lahcen Saadi as its Chairperson, Ms. Christine Saaga its Co-Chairperson, Ms. Mariia Fomina as its Rapporteur, and Mr. Takashi Ishikawa as its Co-Rapporteur. The Group, which was assigned to discuss “Strengthening the Capacity and Integrity of Criminal Justice Authorities and their Personnel”, agreed that judicial and criminal justice institutions in many countries have come under criticism on the ground that they are not efficient in dealing with the crime of corruption and maintaining the rule of law within society. The Group identified three major challenges facing preventive, investigative, prosecutorial and judicial authorities: 1) Strengthening the capacity of the criminal justice system in dealing with corruption cases; 2) Independence of criminal justice systems; 3) Establishing an efficient monitoring system.

II. SUMMARY OF THE DISCUSSION

A. Strengthening the Capacity of the Criminal Justice System in Dealing with Corruption Cases

All participants agreed that there is an urgent need to strengthen the capacity of the criminal justice system in dealing with corruption cases. However, it was stated by the members of the Group that in this research paper criminal justice authorities as mentioned are investigation bodies, prosecution and judicial authorities. Bodies which execute the court decisions are not taken into account in this study.

The discussion emphasized that capacity and integrity of criminal justice authorities and their personnel is the key element to achieve the goal of having a proper and efficient criminal justice system. Capacity and integrity are prerequisites for creating surroundings that can successfully prevent and combat corruption. Many members of the Group highlighted that improving the capacity and integrity of criminal justice authorities depends on the following.

Adequate basic and continuous training is crucial for elevating the capacity and integrity of criminal justice systems in order to efficiently deal with corruption cases. The participant from Afghanistan agreed that enhancing individuals’ official capacities is an essential criterion. Capacity could be enhanced by imparting appropriate training to relevant authorities on how to deal with corruption cases. For achieving this goal, there is an urgent need to establish specialized institutes and training courses in anticorruption cases. In this account, some participants pointed out that such specialized institutes and academies have already been created in their respective countries. For example, in Ukraine and Algeria specialized universities of Internal Affairs, Prosecution Academy and Judges High School are successfully functioning. These educational establishments provide highly educated personnel for particular departments. The Group agreed that establishing such an educational system is an important element of securing goals of impartial investigation and getting free and fair justice by honest judicial authorities.

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At the same time, the participant from Samoa admitted that in her country the responsibility for the training and development of staff generally falls on each criminal justice agency which usually has limited or no funds in its annual budget for training. However some training becomes possible through an alternative source such as the Samoa Law and Justice Sector Program, the Pacific Judicial Development Program and the Pacific Prosecutors Network, but this can be ad hoc and relies heavily on international donor funding or technical assistance, which means training is often a one-off event and cannot be sustained on an ongoing basis.

In addition, most of the Group members stated that in their countries there is a lack of special training courses in the anticorruption sphere. One of the participants stressed the absence of specialized degree courses or trainings for prosecutors and other investigative bodies in his country which could help to organize their methods of dealing with cases in the sphere of fighting against corruption and money laundering. The participant from Ukraine proposed as an example a national system which provides a wide circle of special mandated trainings for judges, judicial personnel, prosecutors and investigative bodies. Some participants found such system useful and acceptable in their countries, and admitted the necessity of providing it.

In addition, the existence of chartered accountants, technical experts and technical assessments is also mentioned by participants as a cardinal principle of capacity and integrity of criminal justice authorities. It was emphasized by the participants that deserving officers should be assigned the job as per their caliber, as the participant from Samoa mentioned. She suggested that reception of some features of the Japanese criminal justice system could help improve problems which appeared in the participating countries. For example, the approaches that Japan and Korea had taken of professionalizing (i.e., recruits to have a minimum of a relevant tertiary education qualification and rotating staff through different organizational functions, e.g., policy and operations) and specializing their law enforcement officers (assigning people to particular priority crime areas, e.g., corruption, and providing training), could serve as a good example.

Some members of the Group mentioned that specialized investigative bodies, prosecutorial and judicial departments were provided in their countries, but they are still seen as inefficient.

B. Independence of the Criminal Justice System

The independence of criminal justice refers to the relationship between the judiciary and other branches of state power. It has been recognized by the Group that the independence of the judiciary and prosecutors are guaranteed as a rule on the constitutional level and by statutes in terms of having provisions for safeguarding their selection and recruitment, their tenure, performance and disciplinary actions, remuneration and transference. Additionally, criminal statutory provisions exist to deter corruption (namely bribery) offences involving judicial and law enforcement officials. The same could be said for police officers in relation to current statutory protection regarding their independence.

In this connection, our Group reached a consensus that criminal justice authorities and auxiliaries' appointments should occur according to a proper and fair recruitment system. In this regard, some members mentioned that in their countries sensitive positions and top-level officials in the investigative authorities and judicial departments are politically influenced because their appointment and removal are entrusted to executive power. For sure, political influence must be eliminated in the functioning of the judiciary and prosecution. The members of the Group agreed upon the need for an institution which could allow the appointment and dismissal of judges and prosecutors without involving executive power.

The participant from Tunisia highlighted that immunity is a very important part of imparting independence to representatives of criminal justice authorities, including those who deal with corruption cases. Some participants stated that the legislation of the participating countries provides statements about judicial and parliamentary immunity in theory only. At the same time, several participants agreed that there is a necessity to extend such immunity to prosecutors, and this position found support among participants.

In addition, the participant from Tunisia stated that the right of judges to affiliate with self-

governing organizations should be ensured. He also mentioned that the guidelines of legal interpretation commonly termed as “codes of conduct” must be defined clearly and investigators and prosecutors must carry out their responsibilities following the code. If such code of ethics is established, it will appear that investigators and prosecutors are able to refuse the political interposition on the ground of the violation of discipline. Many participants found it appropriate to adopt universal principles that make every judge responsible for exhibiting and promoting high standards of conduct to reinforce public confidence in the judiciary and as a fundamental means to maintain judicial and other criminal justice authorities’ independence. According to the Uzbek participant, developing a code of ethics for judges in order to establish clear ethical conduct in line with the Basic Provisions of the Bangalore Principles of Judicial Conduct adopted by General Assembly of the United Nations on 19 May 2006 would contribute to enhancing the independence of criminal justice systems. As a result participants have recognized the need to refer to international standards as general guides for realizing independence.

Particularly with regard to the independence of prosecutors, some members of the Group stated their opinion that the independence of prosecutors should be ensured strictly. On the other hand, there was another argument that the excessive independence of prosecutors was dangerous because of the absence of civilian control.

As the participant from Samoa mentioned, setting remuneration of staff members’ perks and privileges to attract and retain the right people is a key issue for most of the participating countries. Such experience needs to be looked at in light of the Japanese and Korean examples of setting high salaries not only as a way for reducing and preventing susceptibility to corruption, but also to be able to keep senior and experienced staff who can deal effectively with complex offences related to corruption.

As for the independence of criminal justice, the judiciary and prosecutors are influenced by media and lawyers. But this also could be an instrument of public control as a part of the monitoring system which we will now address.

C. Establishing an Efficient Monitoring System

The members of the Group pointed out the importance of monitoring the criminal justice system. The participant from Samoa stated her opinion that the monitoring of the violation of discipline by judges, prosecutors or investigators needed establishment of a powerful third-party organization. She mentioned that the Japanese system served as a useful reference and the Group members agreed completely.

The Japanese participants mentioned that in Japan both the Constitution and the Judges Impeachment Act provide for a special judge impeachment system. When a judge betrays the people’s trust, the Judge Indictment Committee initiates removal proceedings in the Impeachment Court. This Court is composed of lay judges elected from the members of the Diet. The Impeachment Court shall examine the case openly and decides whether the judge should be removed or not. If the Impeachment Court decrees the judge’s removal from office, he/she shall be removed immediately. This works effectively as a democratic monitoring system against judges.

Furthermore, in Japan performance and qualification of judges and prosecutors alike are periodically evaluated and reviewed by each special committee as regards appointment of judges or qualification of prosecutors. These committees consist of judges, prosecutors, lawyers, scholars, etc. Japanese experience has been recognized by all the participants as one of the best practices and highlighted the need to adopt it in the system of respective states. However, the representatives of this committee should be secured from any political influence as mentioned in the previous paragraph.

Moreover, in Japan, there is the lay judge system called the “*Saiban-in*” system, which is quite different from a typical jury system. Under the jury system, a mixed panel consisting of three professional judges and six lay judges handles the case. The lay judges are randomly selected for each case from among eligible voters who collaborate with professional judges to decide on issues of facts and sentencing. This system enables the general public to monitor the exercise of jurisdiction by

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participating in the criminal trial proceedings and deeply considering the trial decisions. Systems similar to the Japanese style exist in many countries in different forms. Consequently many legal systems consider this principle as one of the efficient monitoring methodologies in their respective legislation.

The right to complain against prosecutor's decision has been also regarded by the Group as one of the monitoring characteristics. For instance in Japan it is possible to apply to the Committee for the Inquest of Prosecution with the aim of examining the propriety of a decision. This may occur if crime victims or persons who made a complaint or accusation are not satisfied with the public prosecutor's decision not to prosecute. The committee consists of 11 members selected from among eligible voters and reviews the prosecutor's investigation and conducts an investigation of its own. If the committee concludes that prosecution is appropriate or non-prosecution is improper, another prosecutor investigates the case further and re-examines the original disposition. This is the system by which citizens monitor the exercise of the prosecutor's power. Participants from Algeria, Tunisia, Ukraine and Uzbekistan added that similar systems exist in their procedural legislation by the way of revising the prosecutor's decisions in court.

Another point proposed by the participants to discuss was self-monitoring systems. The participants of the Group agreed that internal-monitoring focuses on regular review of the conduct and performance of judges and other criminal justice authorities, e.g., by submitting performance evaluation reports, is necessary.

Declaration of assets and income as well has been found by the Group members as an important tool for an efficient monitoring system.

At the same time the participant from Pakistan stated his opinion that non-governmental organizations play an important role in the monitoring. For example, reports in the media and the publication of the remonstrance by human-rights groups significantly impact the awareness of human rights and the trend of public opinion that rebels against authority. And there are circumstances when the control and the protest by bar associations disclose the connection between the executive power and the judicial power. These acts of non-government organizations are indirectly useful in the monitoring. On the other hand, there was another argument that the opinions of non-government organizations were not always right, and it was difficult to ensure the justice of these opinions. There is an argument that lawyers, representatives of civil society and media should not abuse their rights and positively contribute in having proper checks and balances on the monitoring system.

Similarly the Group agreed that judges should state the reasons for the decisions. This process plays an important role in discharging accountability for judges, ensuring the transparency of the exercise of the judicial power and achieving the national right-to-know. This publication is preferable to directly monitoring of the judgement.

On the whole, increasing public awareness and participation in the criminal justice system strengthens the role of the media in reporting corruption crimes accurately and how the system deals with them. The use of shared crime statistics and analysis among agencies as currently attempted to be done by the law to indicate corruption crime trends and patterns to inform policy interventions all play a vital role in the effective monitoring of performance of criminal justice systems' and agencies' mandated roles, duties and obligations.

III. CONCLUSION AND RECOMMENDATIONS

Given the above summary of the discussion, the Group reached a consensus that the following should be recommended as possible ways of strengthening the capacity and integrity of criminal justice authorities and their personnel:

A. Important Factors for Strengthening the Capacity of the Criminal Justice System in Dealing with Corruption Cases

1. To adopt new strategies by reviewing and going beyond existing rules and establishing or develop-

ing efficient mechanisms in order to ensure capacity, integrity, independence and efficient monitoring systems.

2. Recruiting personnel who have a minimum systematic professional growth of relevant educational qualification and requisite training.
3. Specialization of law enforcement officers and authorities, including judges, prosecutors and investigators by imparting them with appropriate training during their careers.

B. Requirements for Independence of the Criminal Justice System

1. Ensuring the independence of the judiciary and prosecutors by policy on the constitutional and legislative levels simultaneously.
2. Having legal provisions and practices for safeguarding selection and recruitment, tenure, performance and disciplinary actions, remuneration and transference of the judiciary, prosecutors and police officers.
3. Criminal justice authorities' and auxiliaries' appointments should occur according to a proper and fair recruitment system without political influence and nepotism. This system should be stipulated by law as well as implemented lawfully.
4. Immunity for protecting judges and prosecutors from chilling effects and political influence.
5. Clearly defined "Codes of conduct" which enable investigators, prosecutors and judges to refuse political interposition on the ground of the violation of discipline.
6. Establishing international ethical "codes of conduct" in line with the Basic Provisions of the Bangalore Principles of Judicial Conduct adopted by General Assembly of the United Nations on 19 May 2006.
7. Setting remuneration of perks and privileges on the legislative level to attract and retain the right people.

C. Establishing an Efficient Monitoring System

1. Establishing a democratic monitoring system of the judiciary taking into account the example of the special judge impeachment system in Japan.
2. A system by which citizens monitor the prosecutor's power taking into account the Japanese experience of providing the Committee for the Inquest of Prosecution.
3. A system which enables the general public to monitor the judiciary by participating in criminal trial proceedings and deeply considering trial decisions as "*Saiban-in*" Japanese system or assessors in some other countries.
4. A system by which performance and qualification of both judges and prosecutors are periodically evaluated and reviewed, referring to Japanese legislation.
5. An internal-monitoring system focusing on regular review of the conduct and performance of judges and other criminal justice authorities, e.g., by submitting performance evaluation reports.
6. Legislation providing the declaration of assets and income of representatives of criminal justice authorities.
7. Activities of non-governmental organizations such as human-rights groups, bar associations and media, which are indirectly useful in monitoring. At the same time, those organizations should not abuse their rights and positively contribute to proper checks and balances.

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8. Stating the reasons for the decisions by judges for discharging accountability, ensuring transparency and achieving the citizen's right-to-know.

Thus, the members of the Group hope to continue further work towards strengthening the capacity and integrity of criminal justice authorities and their personnel after the completion of this course and returning to their respective countries.