
REPORTS OF THE PROGRAMME

GROUP 1

EFFECTIVE MEASURES TO OVERCOME UNDUE POLITICAL INFLUENCE AND ENSURE INTEGRITY OF CRIMINAL JUSTICE AUTHORITIES AND EFFECTIVE MEASURES TO OBTAIN LEADS FROM OPEN SOURCES

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I. INTRODUCTION

This report focuses on the independence of high-profile anti-corruption institutions and the integrity and impartiality of the persons involved in fighting corruption. The group also looked at open source evidence, a fast-growing source of evidence in a dynamic cyber age in order to help in developing laws and policies that will strengthen institutions that are fighting corruption in the participant countries.

II. ISSUES AND CHALLENGES

A. Effective Measures to Overcome Undue Political Influence and Ensure Integrity of Criminal Justice Authorities

The participants generally agreed that there was no direct political influence on high-profile corruption cases; however, participants from some jurisdictions pointed out that political influence occasionally occurred indirectly in high-profile corruption. The indirect interference can be in the form of reduction of the budget allocation to anti-corruption agencies, personal threats, or press statements by politicians that touch on an ongoing investigation.

1. Measures to Ensure Independence of Criminal Justice Authorities

The participants reported that all their different jurisdictions have independent judicial commissions and prosecution authorities which are protected by their constitutional and legal frameworks. In some jurisdictions, the procedure on appointment of judges and public prosecutors is conducted by special commissions and/or councils that are independent of the executive branch of government and cannot be politically influenced.

In addition, among other measures, the mechanisms for ensuring independence include the following:

- Judges and public prosecutors should have legal protection against unlawful reduction of salaries;
- Judges and public prosecutors should not be subject to removal from office without reasonable cause;
- In Jordan, judges and prosecutors can only be prosecuted for criminal offences with the consent of the Judicial Council as provided by the Independence of Judiciary Law;
- In Brazil, judges and public prosecutors have a specific rule on competence (privileged jurisdiction);
- In Ukraine, judges cannot be prosecuted without the consent of the High Judicial Council;
- In Zimbabwe, judges and the Prosecutor General can only be prosecuted after a tribunal set up by the Judicial Service Commission finds them guilty of misconduct, removes them from office and recommends prosecution;
- In Thailand, the recruitment, appointment and transfer of judges and public prosecutors are conducted by the judicial or public prosecutor's commission.

Most jurisdictions have independent anti-corruption commissions which are responsible for investigation, while Brazil and Japan do not have specialized anti-corruption agencies. In some jurisdictions, the police are also responsible for investigation of corruption cases and are subject to the particular laws of the various jurisdictions. However, removal from office is subject to compliance with the legal disciplinary proceedings of each jurisdiction.

2. Measures to Ensure Integrity and Impartiality of Criminal Justice Authorities

The participants agreed that judges, public prosecutors and investigators of high-profile corruption must be of high integrity and have to be fit and proper persons whose conduct is unquestionable. To that extent, they are not allowed to be involved in active politics. In some jurisdictions their conduct is guided by codes of conduct or ethics. Other jurisdictions have mandatory ethics tests or ethics training. Other mechanisms to ensure integrity include the following:

- The vigorous screening upon employment such as through written tests, public interviews, vetting for previous convictions, and psychometric examinations. Competitive and rigorous interviews and exams are in themselves a deterrent to corruption;
- In situations of perceived conflict of interest, most jurisdictions have laws that allow judges or prosecutors to step down from the case either in writing or upon application in court;
- Most jurisdictions ensure that judges, public prosecutors and investigators are well remunerated;
- In Jordan, Ukraine, Brazil and Thailand, the laws provide for financial declaration of assets and liabilities. However, Japan, Fiji and Zimbabwe have no legal provisions on financial declaration;
- In Jordan, the Integrity and Anti-Corruption Commission has to release a press statement every two weeks and when needed in order to update the media and members of the public on corruption cases. This is in compliance with the law, particularly with the public's right to access to information. This practice contributes to transparency.

3. Challenges

Some participants pointed out that investigators have been transferred or removed from a particular investigation without reasonable cause. The specific practical challenges differ in each jurisdiction. One practical challenge in Brazil is in ensuring better checks and balances on the nomination of Ministers for the Superior Courts. In some participants' jurisdictions, judges, prosecutors and investigators of high-profile cases do not have adequate remuneration, and that may create opportunities for corruption. In Ukraine, salaries of judges can be reduced by Parliament, which has the power to amend the law. This power can influence the independence of judges. In most of the participating jurisdictions another challenge is the provision of limited budget for institutions involved in the anti-corruption effort.

4. Level of Public Confidence

The participants agreed that the level of public confidence in judges and public prosecutors is generally high, while some participants pointed out that the public confidence in investigators may be lower. However, some participants pointed out that the level of public confidence in criminal justice authorities may vary according to those members of the public who have or have not been involved in the criminal justice process.

5. Recommendations

Criminal justice authorities should be recruited and appointed using transparent procedures that are free from any political influence. Good practices that were recommended by the participants include institutions that are independent and not subject to the control or direction of the executive branch of government and competitive public interviews for judges and prosecutors. Participants also recommend laws that protect judges, prosecutors and investigators of high-profile corruption from removal from office and transfer without reasonable cause. They also agreed that there are specialized prosecutors who fight corruption and good mechanisms for oversight of investigations. In addition, both the judiciary and the prosecution service should be overseen by external public bodies composed by different representatives of diverse sectors. The judicial authorities should keep the public well informed, provide clear information on criminal justice processes and encourage public participation in order to ensure the correct understanding of court proceedings.

B. Effective Measures to Obtain Leads from Open Sources

Open sources are available in all of the participating countries and can be divided into two types of sources: official and unofficial sources. The official source mainly relied upon by the majority of jurisdictions

is the financial disclosure system of high-ranking government officials in which the laws of each country define different particular positions such as judges, public prosecutors, members of parliament, and ministers. Other official open sources are, for instance, audit reports, securities reports, annual financial reports, and criminal records. Unofficial open sources are internet websites, newspapers, television, radio, magazines, and social media, i.e. Facebook, Twitter and Instagram.

1. Data Analysis

Some jurisdictions have special units to analyse the open source data; however, it is agreed that there are various methods of analysis. A lot of data is collected using open sources and any suspicious information has to be categorized before it can be verified or authenticated. The risk-based approach is commonly used in most jurisdictions.

2. Recommendation

The participants agreed that open source data should be taken into account in the investigation of high-profile corruption cases. In order to achieve that goal, the participants recommended the establishment of specialized units responsible for forensic analysis and human analysis. In addition, the participants also proposed continuous specialized training to maintain and keep up with technological advances.

III. CONCLUSION

Political influence can be prevented by counter measures to ensure integrity and impartiality. It can also be detected by adequate and concrete financial disclosure system.