

GROUP 2

CURRENT PROBLEMS IN RESPONDING TO THE CORRUPT ACTIVITIES OF PUBLIC OFFICIALS AT THE INVESTIGATION AND TRIAL STAGES, AND SOLUTIONS FOR THEM

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I. INTRODUCTION

The group discussion on current problems and solutions in responding to the corrupt activities of public officials at the investigative and trial stages was executed under three sub-topics. The first part dealt with the problems and solutions for securing independence and neutrality of the investigative agencies and the courts. The target of this sub-topic was to obtain an overview of the current structure, function, and control of investigative agencies and the courts in the participants' countries, and to find appropriate or recommendable measures to achieve independence and neutrality.

Secondly, the problems and solutions for detection and investigation of corruption by public officials was the subject of discussion in sub-topic two. Here, issues regarding the problem of gathering information, securing the cooperation of people involved in the case, investigative tools, investigators' skill, and coordination among different investigative agencies in

the various countries, were discussed exhaustively. The group also identified appropriate solutions for the detection and investigation of corruption in the public sector, and recommended these for implementation by relevant agencies in different countries.

Thirdly, the group examined the problems of and solutions for speedy and efficient administration of trial. The focus of discussion was on the necessity for the introduction of witness protection programs, the reversal of burden of proof, resources at the disposal of trial courts, witness cooperation, dilatory tactics of the defence, court monitoring systems and sentencing patterns.

Finally, the mass media's role in exposing corruption, as an instrument of public mobilization against corruption, as well as its influence on the investigative agencies and trial courts in the participants' countries, was discussed.

**II. PROBLEMS AND SOLUTIONS
FOR SECURING THE
INDEPENDENCE AND
NEUTRALITY OF INVESTIGATIVE
AGENCIES AND THE COURTS**

A. Problems

The police force is widely accepted as the conventional organization responsible for criminal investigations in many countries. However, because it is also the duty of the police to maintain law and order (an issue for which society also holds the executive directly accountable), the tendency in some countries is to avoid making the police completely independent of executive control. The executive can apply controls through appointment or discipline of police chiefs, budget, and different forms of regulation. Where this is the situation, the independence and neutrality of the police in handling cases in which public officials charged with this duty of control are involved, may be seriously jeopardized.

Since in several countries public officials are the main target of legislation against corruption, the suitability of the police as the sole criminal investigative organ has come under wide review. In some countries, the police and the public prosecutor share this function, while in others special agencies are set up to investigate corruption offences.

The above situation is also true of trial courts. The conventional courts may prove inadequate to address the level of corruption in some countries, necessitating the designation of special courts for this purpose. However, whichever agency or court a country may use, the important issue is the guarantee of its independence and neutrality in the execution of the assigned function. The major elements with which the independence and neutrality of such an agency or court may be evaluated are:

(i) *Designation of Conventional or Special Organs for Investigation and Trial*

The important issue to consider here is whether the agency is part of a ministry as a government bureau or is a special organ directly under the Parliament, Prime Minister/President or some other independent committee.

(ii) *Procedure for the Appointment and Maintenance of Supervisory Control over the Investigative Agency and Trial Court*

The points of concern are the system of appointment of personnel, terms of employment, measures against unwarranted dismissal, and fair disciplinary procedures to secure their impartiality in the course of duty. Moreover, which agency should supervise the operation of the designated agency?

(iii) *Budgetary Control over the Investigative Agency and the Courts*

It is important to determine if the agency would be better off sourcing its funding directly from the legislature, or to depend on some other governmental organization.

B. Analysis of the Current Situation in Participating Countries

1. Brazil

The police service is responsible for the investigation of all criminal matters including corruption cases. This duty is spelt out in the Federal Constitution. The criminal legislation is contained in a federal criminal code and is enforced by the federal police in the federal domain and by the state civil police services in the state domain. The police do not require external permission to begin or prosecute a case.

The Governor appoints the State Secretary of Public Safety, the Police Chief General and the Chief Justice. Decisions

about promotions and dismissal of such officers are also made by the Governor. The Governor can veto the decision on an officer considered guilty after an administrative process, and the decision of the Administrative Court is not binding on him/her. Furthermore, the assignment of police officers, prosecutors and judges to respective state units/branches is also the prerogative of the Chief General of each institution, and may be politically influenced.

The executive arm of government proposes the police annual budget and submits it to the legislature for approval. Thereafter, disbursement of the fund is carried out by the executive. From this arrangement, it is obvious that the executive has extensive control over the appointment and promotion of police leadership, as well as budgetary control of the agency, which can affect its independence and neutrality in handling issues involving high-level public officials. An agency whose independence is guaranteed is preferred. The independence of the judiciary is guaranteed under the Constitution. There are no special courts for the trial of corruption cases.

2. Grenada

The Royal Grenadian Police is the only organ responsible for the investigation of all criminal offences, including corruption. It is not under the statutory control of any other organ of government when conducting an investigation.

The appointment of the head of the Royal Grenadian Police is made by the Governor-General, on the advice of the Prime Minister. The Prime Minister almost always assumes control of the Ministry of National Security under which the police fall. The Police Commissioner may be appointed from outside the police service.

Annually, the Ministry of Finance requests and disburses budgetary support for the police under a separate vote. In all serious criminal investigations, the Director of Public Prosecutions must be notified and s/he provides advice. The independence of the judiciary is guaranteed under the country's constitution. Grenada has no special courts for corruption offences.

3. Japan

The police (prefectural police) and public prosecutors are responsible for the investigation of corruption offences. There is no specialized anti-corruption agency in Japan. However, the three major District Public Prosecutor's Offices (Tokyo, Osaka and Nagoya) have Special Investigation Departments, which have successfully investigated a number of corruption cases involving high-ranking government officials and politicians. This system appears to be working efficiently because of mutual cooperation between the police and the public prosecutors, as well as their independence from political influence being sufficiently maintained.

The public prosecutors are appointed by the Minister of Justice and are under his control generally in regard to their functions. However, each public prosecutor is authorized to conduct their duties independently from political influences, and they enjoy almost the same guarantee of status as judges. In addition, the Minister of Justice is authorized to control only the Prosecutor-General in regard to the investigation and disposition of individual cases. In this way, the independence of prosecutors is secured.

On the other hand, prefectural police are established as one of the organizations of each local government. In order to secure the political neutrality of the police, it is subject to the control of the Public Safety

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Commission, which is not under the command nor order of the prefectural governor. In Japan, independence of the trial courts is guaranteed. There are no special courts for corruption cases.

4. Kyrgyzstan

The Ministry of National Security, Ministry of Interior Affairs and the Public Prosecutor's Office are responsible for the investigation of corruption offences in Kyrgyzstan.

The head of the Ministry of National Security, Ministry of Interior Affairs and the Prosecutor-General are appointed by the President, on the recommendation of the Prime Minister. The office of the public prosecutor is an independent entity. The parliament controls the budget of the above investigative organs. The salary of public servants, including the police, is inadequate.

There is no obvious political or administrative interference in the duty of these agencies, and although Kyrgyzstan is still a young republic, so far the agencies are effective in controlling corruption. The courts are independent. Corruption cases are tried in conventional courts.

5. Nigeria

The Nigerian police force is charged with the duty of investigating all criminal cases in the country, including corruption by public officials. There are special units within the police service responsible for the investigation of cases of corruption.

The Inspector-General of Police is appointed by the President. He can also fire him; and this prerogative has been exploited especially by military regimes, without explanation. The Ministry of Police Affairs exercises control over the promotion and discipline of senior members of the police service. The Ministry of Police

Affairs also disburses the police budget. The perception is that if the independence and neutrality of the police is not directly influenced by the Head of State, it could also be checked through other State apparatus. This situation is amply expressed in the low budgetary provisions made for the police in the past which, combined with other factors, tend to erode public confidence in the ability of the police to fight corruption. The President has already sent a Bill to the National Assembly for the establishment of an independent agency to investigate corruption offences.

The independence of the judiciary is protected by the Constitution. However, there were cases of the forceful retirement of judges in the past. Moreover, the judiciary would like to have their budget allocated directly by the National Assembly. No special courts are designated to try corruption offences.

6. Pakistan

In Pakistan, two agencies are responsible for the investigation of corruption offences. They are the Anti-Corruption Establishment which was set up in 1947, and the Ehtesab (Accountability) Commission which was added in 1998 to complement the activities of the Anti-Corruption Establishment. The Anti-Corruption Establishment is headed by a director who is subject to appointment or removal by the government. S/he is completely controlled by the government, and operatives are often seconded from the police service (to where they can also return). On the other hand, the Chief Ehtesab Commissioner is appointed by the government in consultation with the leader of the opposition in the National Assembly and the Chief Justice of Pakistan. The Chief Ehtesab Commissioner cannot be removed from office, except by a decision of the Supreme Judicial Council on charges

of misconduct. The budget of the Anti-Corruption Establishment is controlled by the Finance Ministry. The Ehtesab Commission gets its budget from the parliament.

In the wake of the prevailing circumstances, the independence of the Anti-Corruption Establishment is yet to be assured. However, the Ehtesab Commission enjoys a reasonable degree of independence although, there is public apprehension that the agency might be used against groups opposing the government in power.

In Pakistan, the Constitution guarantees the independence of the judiciary. There are specific judges assigned to try corruption cases. However, the financial resources of the judiciary are very lean. Moreover, judges are sometimes appointed from outside the bench. Because, therefore, of the financial insecurity of the judges, and the lack of confidence and overt political inclination of those judges appointed from outside the bench, they sometimes cannot exercise their independence.

7. Sri Lanka

Sri Lanka has established a separate agency known as the Allegations of Bribery and Corruption Investigation Commission, to deal with corruption cases. The Commission is statutorily independent. The members cannot be removed from office except by a two-third majority decision of the Parliament. Members of the Commission consist of two retired judges of the Supreme Court or Court of Appeal and one senior officer of a law enforcement branch.

The President appoints members of this commission in consultation with the Prime Minister. The salary of members of the Commission is paid from a consolidated

fund created in the Constitution. Their salaries cannot be diminished during the period of service with the Commission. Investigators are usually seconded from the police. Only two courts located in the national capital try corruption cases. The independence of the Commission and the judiciary is guaranteed by the Constitution.

8. Hong Kong

In Hong Kong, the Independent Commission Against Corruption (ICAC) is responsible for the investigation of corruption offences. This agency has three functional departments: namely Operations, Corruption Prevention and Community Relations. Respectively, these departments are responsible for the investigation of corruption offences, plugging of corruption loopholes in institutional practices and procedures, and the education and enlistment of public support.

The head of the ICAC, the Commissioner, is appointed by the Governor. The Commission is independent in its operation, however its activity is monitored by the legislature. It also has four advisory committees chaired by non-members. A Complaints Committee acts as check on the agency. The ICAC budget is guaranteed by law and is provided directly by the legislative arm of government. The agency receives sufficient resources for its day-to-day operations and to hire professionally competent staff.

C. Recommendations for Achieving Independence and Neutrality of Investigative Agencies and the Courts

Depending on the situation in each country, the choice in features of a particular agency will differ considerably. However, sustainability of the independence and neutrality of any agency saddled with the responsibility of

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investigating corruption cases hinges on the following factors:

- (i) The strengthening of the commitment to duty, professionalism and economic base of the operators of the system through adequate remuneration and training. This is judged necessary to increase their confidence and self esteem, and to avoid external influence.
- (ii) Exclusion of political and bureaucratic control by applying constitutional as well as legislative checks against any interference with the independence of the investigation agency and trial courts. Legislation is required to curtail excessive discretionary powers of the executive arm of government and bureaucrats, and to infuse transparency into governance, as well as the guarantee of basic freedom.
- (iii) Democratization of procedures for appointment of judges/magistrates and the leadership of the investigating agency.
- (iv) Establishment of an independent agency to investigate corruption cases in those countries in which the current system is not effective. However, countries that prefer the use of a distinct agency to combat corruption are advised to refer to the Global Program Against Corruption¹ for the guidelines necessary for

securing the independence and neutrality of such an institution.

- (v) The budget of the judiciary and the investigative agency should not be subject to undue bureaucratic control. If a special agency is responsible for investigation, ideally the parliament should allocate funds directly to this institution.

**III. PROBLEMS AND SOLUTIONS
FOR DETECTION AND
INVESTIGATION**

**A. Problems and Solutions for
Gathering Necessary Information
and for Securing the Cooperation
of People involved in the Case**

The issues involved in the detection and investigation of any criminal case will include: cognizance of the crime, determination of time of its occurrence, the *modus operandi* of the perpetrators, persons involved in the act (including their various degrees of involvement) and possibly, reasons for the crime. To resolve these issues, the investigator mainly engages in the collection, analysis and communication of data related to the offence.

In corruption cases, the task of the investigator is often exacerbated by the uniquely limited sources of information. Discussion on this sub-topic sought to identify the sources of information open to the investigator, and the provision of an enabling environment for the detection and investigation of corruption offences.

1. Sources of Information

- (i) *Investigation of Other Cases*
An investigator may come across information on corruption committed by a public official while in pursuit of a different case. This happens more frequently during investigations of

¹ This document was jointly prepared in February 1999 by the Centre for International Crime Prevention, Office for Drug Control and Crime Prevention, and the United Nations Interregional Crime and Justice Research Institute. It outlines the general principles guiding the establishment of a national anti-corruption investigative unit, its functioning, resources and operational methods.

money laundering and tax evasion cases. The experience in Japan and other participant countries has confirmed that this is an important means to reveal corruption cases which might otherwise remain unnoticed.

- (ii) *Accusation/Complaint*
An individual or non-governmental organization might also file a complaint with the investigating agency regarding the corrupt activity of a public official. In this case, the complainant is usually willing to cooperate with investigators, although in many countries people seldom use this approach.
- (iii) *Information Media*
Through investigative reporting, the news media sometimes reveals corruption cases. This is the case in all participant countries.
- (iv) *Observation of Parliamentary Question and Answer Sessions*
The corrupt activity of public officials may be revealed by investigators through their private observations or information obtained during parliamentary question and answer sessions. Investigators in Japan utilize this source.
- (v) *Anonymous Reports*
Sometimes people who do not want to disclose their identity pass information to the investigating agency to reveal the corrupt activities of public officials. These people may also take the cover of fictitious names. In some cases, they may have insider information or they might come from outside the organization. Anonymous reports are more frequent in regions where special post office box numbers are provided to encourage the passing

of information like in Indonesia, Hong Kong, Nigeria etc.

- (vi) *Other Departments/Agencies*
Corruption of public officials may be revealed through information supplied by other government agencies, such as the audit/inspection departments, tax agency or Securities Exchange Surveillance Commission. In Japan, this is a useful source.

2. Associated Problems

Although the sources mentioned above are available to the investigator to obtain information regarding the corruption of public officials, there are nonetheless problems associated with the collection of such information and for securing the cooperation of people involved in the case. These problems include:

- (i) *Unwillingness to Make Complaints/Accusations*
People are often unwilling to reveal corruption cases because of fear of reprisals that may endanger their life or career prospects, rejection from colleagues or peer groups, official secrecy laws and red tape, or lack of confidence in the investigative organ. It may also be that those who know about the crime are also involved in it. Whatever reason is responsible for the people to adopt this position, the effect is felt in most participating countries.
- (ii) *Late Revelation of Incidents*
In several countries, as is the case in Nigeria and Pakistan, the tendency is for people to make a complaint about the demand of a bribe by a public official when the official fails to deliver the promise. In such cases, the official may have noticed the strained relationship with the victim and taken necessary action to cover

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the trail. This is also true of cases revealed through the mass media.

(iii) *False Complaints*

When complaints of corruption are received, it is the responsibility of the investigator to verify such complaints. In many cases, complaints may be made to gain advantage over rivals or for several other malicious purposes, in which case they may be fabricated. This is typical of complaints received from anonymous sources or accusations made by political opponents in the participating countries.

(iv) *Refusal to Testify*

In many cases in the participating countries, there are people who may be willing to reveal corruption cases but are not inclined to being used as witnesses in court. This attitude may be developed due to perceived lengthy periods of investigation and trial, absence of effective witness protection schemes, or fears of cultural sanctions.

3. Recommended Solutions

(i) *Improving Tools for the Collection of Information*

Agencies are encouraged to set up information collection centers (information boxes, hot-lines, etc). The P.O Box 1000 of Hong Kong, P.O Box 5000 of Indonesia and A22 of Nigeria are applicable examples.

(ii) *Public Education*

The investigating agencies should create a section within their organization whose duty will include public education on the evils of corruption and the need to expose it wherever it is found. This is already being implemented by the ICAC in Hong Kong.

(iii) *Witness Protection*

Each agency should promote strong witness-protection schemes to safeguard witnesses from victimization arising from cooperation with the organization.

B. Problems and Solutions for Improving Investigative Tools

1. Problems Posed by Insufficient Investigative Tools

In some of the participant countries, investigation of corruption offences is actually hampered by the inadequacy or total lack of necessary tools. The group discussion considered some of the problems that confront investigators, caused by the lack of necessary tools for efficient investigation, under the following sub-headings:

(i) *Resources*

(a) *Infrastructure*

In developing countries like Grenada, Nigeria and Pakistan, the movement of investigators is often hampered by inadequate means of transportation. There are also situations when the only means of communication is by telephone systems which may not be reliable. Moreover, these agencies lack basic case management tools like computers and necessary office equipment.

(b) *Finance*

Efficient investigation requires the availability of funds for information, to offset investigators' travel expenses, and to meet other incidental needs. Adequate funds are also required to provide the training necessary for improved investigator performance and the acquisition of relevant equipment. However in some countries, sufficient funds

are not provided to meet these needs, either because of the weakness of the economy or simply that the needs of the investigating agency are not given adequate priority.

(ii) *Covert Operations*

The activities categorized under this sub-heading include decoy operations, communication interference and electronic surveillance. Decoy operations are carried out in several forms. One form is the trap procedure, applied where a person approaches the investigative agency to file an official complaint that a public officer is demanding a bribe. The use of undercover agents is another form of decoy operation. Furthermore, covert operations may be implemented through interference with the means of communication or other forms of electronic surveillance.

Whereas in some of the participants' countries like Brazil, Nigeria, Pakistan and Sri Lanka, the trap procedure is used to obtain corroborative evidentiary facts in bribery cases, it is judged a breach of the basic rights of the accused in other countries. Moreover, Brazil is currently the only country in the group where communication interference is legally permissible, with judicial approval, as a means of securing evidence in corruption cases. In view of the covert and consensual nature of the environment in which corruption is executed, the unavailability of these covert tools to investigators in the countries where their use is not permitted might constitute some obstacle to successful investigation.

(iii) *Secrecy of Financial Transactions*

In most of the participant countries, financial institutions are accorded some degree of secrecy from disclosing clients' particulars to any investigating agency, unless a warrant is obtained from a court of competent jurisdiction. Moreover, where there is the need to check the account record within a limited time, even the need to obtain a warrant is considered a hindrance to timely investigation.

2. Solution for Improving Investigative Tools

(i) Agencies should endeavor to install and use computerized criminal information management systems for faster storage and retrieval of information. Adequate security controls should be built into the system to safeguard it against misuse. An integrated criminal justice information system, is a model that may be adopted by all the countries.

(ii) Investigative agencies should be adequately equipped with operational vehicles, and necessary communication equipment. They should also be provided with adequate operational funds by the government, especially where there is the political will to combat corruption.

(iii) It may be necessary to review the existing laws in some countries to secure evidence through covert operations and also to guarantee the judicial admissibility of such evidence. This will depend on the situation of corruption in each country and the people's reception of such a measure. It is recommended, however, that its application be subject to judicial control, to avoid abuse.

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- (iv) The investigating agencies should work in concert with the financial institutions for the examination of a suspect's financial records without the hindrance of secrecy regulations, as is the case in Japan. In addition, legislation should be made in each country to make it mandatory for financial institutions to report transactions exceeding an amount to be determined by the circumstances of the relevant country.

C. Problems and Solutions for Improving Investigator's Skills

1. Problems Associated with Investigator's Skill

- (i) *Assignment of Inexperienced Personnel to Investigate Corruption Cases*

The covert and consensual environment in which corrupt activities are executed often entails the application of a wide range of experience in the area of investigation to successfully solve a case. However, in some of the participating countries, rookies may be assigned to the investigation of these cases. The consequence of this is obvious.

- (ii) *Lack of Relevant Skill*

Investigation of corruption cases often involves the examination of complicated financial and computer records. However, not many investigators possess the expertise to perform such examination. Under these circumstances, it would appear that criminals are operationally ahead of the law enforcement, which is not desirable.

- (iii) *Heavy Workload*

In view of the limited number of investigators with relevant experience and skill, these

investigators are often overworked. Not only does this affect the amount of time they can devote to a given case, it may sometimes result in the embarrassment of the agency, especially if there is pressure from government, the press or the public. Heavy workloads also do not leave the investigator, and invariably the agency, adequate time to analyze the underlying issues involved in corruption cases, in order to devise a strategy to combat it in the long run.

- (iv) *Integrity Issues*

Unfortunately, in some agencies the level of corruption is high and this gravely impinges on the performance of the individual investigator.

2. Solutions for Improving Investigator Skill

- (i) *Develop Professionally Competent Investigative Teams*

In each agency, the leader of an investigation team should possess adequate legal knowledge and operational experience. In addition, s/he should have maintained an impeccable integrity record.

- (ii) *Specialized Training*

The agency should endeavor to avail investigators of the opportunity for specialized training, especially in accounting and information systems, at the local and international level (when appropriate).

- (iii) *Re-training*

Agencies are enjoined to update the skills of investigators, when necessary, through re-training programs.

- (iv) Adequate number of skilled personnel should be deployed to the investigation of corruption cases.

Ideally, the agency would need to set up an analysis unit.

- (v) Investigation by public prosecutors, as long as it complies with the basic legal system of the country, might be an effective tool to tackle corruption by politicians and high-ranking officials. Among the participating countries, public prosecutors in Japan effectively carry out their authority to investigate corruption cases on the basis of their knowledge and expertise in law, as well as their political neutrality.

D. Problems and Solutions for Coordination amongst Different Investigative Organizations

1. Problem of Coordination

- (i) *Absence of Multi-Agency Forums*
In the different countries, there are no common forums for exchange of information or ideas for the agencies involved in the fight against corruption. Inter-agency cooperation is on a case-by-case basis, and is not institutionalized. Worse still, unhealthy rivalry may develop among the different agencies, especially when their duties overlap. This state of affairs cannot provide a suitable environment for effective control of corruption.
- (ii) *Audit Query*
In some countries, audit queries are not made available to anti-corruption investigation agencies for scrutiny. This results in the loss of opportunity for detecting corruption in the organizations concerned.
- (iii) *Differences in Legislation*
Differences in the laws of each country often pose a serious threat to international cooperation against corruption. Where the proceeds of

corruption are transferred outside the country of the perpetrator, legal differences usually make it very difficult for vital information regarding the transaction to be obtained, and for the repatriation of such funds.

2. Solutions for Better Coordination

- (i) *Multi-Agency Committees*
It is not helpful for inter-agency cooperation on criminal investigations to be on an *ad hoc* basis. Multi-agency cooperation within the same country is important since it will provide the forum for different agencies to share vital information and to discuss various issues of common interest. In this regard, each country should consider the establishment of a Multi-Agency Committee Against Corruption. This committee is to be comprised of representative(s) of the agency responsible for investigation of corruption, as well as other members from various government departments. Their mission will be the exchange of information and ideas on how to tackle the phenomenon of corruption.
- (ii) *Notification of Audit Query*
Internal and external audit reports should be given high priority and attention. Moreover, there should be cooperation between the different audit units. Copies of any adverse audit reports should be made available to anti-corruption investigation agencies for information and perusal.
- (iii) *Bi-lateral Agreements*
Although each country's laws are made to suit the culture of the people, one cannot lose sight of the effects of globalization resulting from

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advancement in information technology. The proceeds from corruption are usually transferred offshore to safe havens by the perpetrators. It is important to find new ways of cooperation amongst the different countries to combat corruption. At the international level therefore, each country should strive to increase bi-lateral or even multi-lateral agreements with different countries on criminal matters. Such agreements are especially relevant to combat money laundering.

**IV. PROBLEMS AND SOLUTIONS
FOR SPEEDY AND EFFICIENT
ADMINISTRATION OF TRIAL**

A. Problems Affecting Speedy Trial

While discussing the topic, the group considered the factors involved in criminal trial with a view to identifying associated problems. For corruption cases, the following issues were examined:

- (i) Resources available to the Courts
- (ii) Role of the Prosecution
- (iii) Witnesses Cooperation
- (iv) Defense Tactics
- (v) Related Legal Issues
- (vi) Sentencing Patterns
- (vii) Control Measures

B. Analysis of Current Problems

The common problems identified at the trial stage in corruption cases include:

1. Resources Available to Trial Courts

- (i) *Manpower Resources*
 - (a) *Excessive Caseload*

Most of the participants reported that although the cases the courts have to handle are on the increase, there is no commensurate increase in the number of judges/magistrates to deal with these cases. In countries like Brazil,

Grenada, Japan, Kyrgyzstan and Nigeria, there are no special courts to try corruption cases. Even in Pakistan and Sri Lanka, where specific courts are designated to try corruption cases, the number of cases they have to try by far outweighs their efficient operational ability. The result is that many cases are fixed for hearing on any given date, which subsequently lead to frequent adjournments. Moreover, judges are left with little time to write judgements or even to prepare adequately for court hearings.

(b) *Inexperience of Trial Judges/Magistrates*

Incompetence and ignorance of the law and lack of experience of some judges/magistrates is judged as a contributory factor for delay in trial. This class of judges/magistrates often fail to take proper control of proceedings during court sittings to such an extent that valuable time is lost on unnecessary cross-examination and arguments.

(c) *Unskilled Court Assistants*

Another major source of trial delay in several countries is the lack of competent and skilled court administrative personnel. These courts rely on unqualified court registrars, secretaries and bailiffs to assist the judge/magistrate.

(ii) *Material Resources*

(a) *Equipment*

In some of the participating countries, court proceedings are manually recorded by the judge/magistrate. This is especially the case in Grenada, Kyrgyzstan and Nigeria. In these countries also,

the office equipment necessary for fast reproduction of court proceedings, such as word processors or photocopiers, are also lacking.

(b) *Finance*

Perhaps the biggest problem facing the judiciary in the participating countries is to deal with lean budgetary provisions. In Brazil, Grenada, Kyrgyzstan, Nigeria, Pakistan and Sri Lanka, salary and conditions of service of judges/magistrates and ancillary staff leaves much to be desired. This has tended to imbue low morale in the system. Financial inadequacy sometimes also hinders, or even stalls, the smooth-running of the courts, thereby delaying trial.

2. Prosecution Problems

(i) *Burden of Proof*

One of the tasks encountered in criminal trials is for the prosecution to prove the guilt of the accused. This task may pose a problem in corruption cases where the prosecution is required to prove the receipt of the bribe, despite the peculiar circumstances of the crime. In Pakistan, there is a law which shifts the onus of proof of innocence to the accused, when the prosecution has otherwise proved that such an accused is in possession of assets well beyond visible earnings. This is not the case in all other participant countries, hence the prosecution bears the entire burden of proving that the assets in excess of official remuneration were obtained through bribery. Prosecutors in these countries feel that this is an enormous task and contributes to delay in trials.

(ii) *Report of Experts*

In Brazil, Grenada, Nigeria, Pakistan and Sri Lanka, expert reports take a long time to be obtained because there are few recognized experts. These reports may be laboratory reports needed for cases in which a covert operation is used to obtain evidence, or the report of an expert handwriting analyst for disputed documents. Thus, trials are sometimes adjourned awaiting the receipt of an expert opinion.

(iii) *Lack of Preparation*

In several countries, the prosecutors are few compared to the number of cases they have to deal with. These prosecutors do not have enough time to prepare their cases, and coupled with inexperience, they are often inclined to seek adjournments to enable them to prepare to handle the issues raised by the defence.

3. Witnesses

(i) *Non-Attendance*

Another contributing factor to delay in trial of corruption offences is the failure of witnesses to attend court sessions when required. This situation arises especially in cases where the prosecution may be transferred to a different location and may not be summoned in time. However, the situation is worse in countries where there is no adequate compensation for witnesses' expenses.

(ii) *Witness Protection*

In most countries in the group, there is no protection scheme for trial witnesses in corruption cases. Moreover, it is difficult to secure direct witnesses in corruption cases, except those who may have participated in the crime. However,

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in a country like Kyrgyzstan, there is no legal provision to allow any of the accused persons as a witness for the prosecution.

4. Defence

Defence attorneys are in the habit of prolonging trial time through unnecessarily lengthy cross-examination, disputation of exhibits being tendered by the prosecution, requests for adjournments and absence from trial on flimsy excuses. This perhaps is the chief cause of delay, especially when the accused person had been granted bail.

5. Control Measures

It was also noted that in certain countries, the judge/magistrates are not working as hard as they should. Sometimes, the situation degenerates to truancy, especially as there appears to be no authority designated to effectively monitor their output. In these cases, the trial judges/magistrates contribute to trial delay by their bad work habits.

6. Sentencing Patterns

The participants remarked that the pattern of sentencing for the same offence often varies in different courts in the same country. This practice may be caused by the differing disposition of judges/magistrates and is considered inefficient, if not unjust. The variance in sentencing is even more pronounced among different countries as a result of legal differences.

C. Recommended Solutions

(i) *Reduced workloads*

To reduce the workload on trial judges/magistrates, we recommend that the relevant authority in each country should appoint an adequate number of experienced trial judges. More court assistants would also be required to speed up the processing of court proceedings.

(ii) *Modernization of Judicial Information Systems*

It is necessary that trial courts keep abreast of developments in information technology and acquire the necessary equipment to improve the speed and accuracy of the documentation of trials.

(iii) *Training*

Initial training is recommended for judges/magistrates on first appointment, as is the case in Japan. Furthermore, periodic group training courses may be required to update their knowledge and to share experience on trends in corruption amongst public officials, and the necessary legal and procedural adjustments for efficient and speedy trial of these cases. Such training courses will also enable each judge/magistrate involved to identify when and how to intervene, to minimize delays that could arise due to defence dilatory tactics.

(iv) *Increased Budget*

The budget of the judiciary should be enough to provide adequate salary and conditions of service for judges/magistrates, public prosecutors and court assistants. Improved budget will also enable the payment of adequate compensation to witnesses and the purchase of necessary supplies for use in the trial courts.

(v) *Self Monitoring of Trial Duration*

It may be necessary to establish effective procedures for self-monitoring of the operation and productivity of judges/magistrates. This will improve accountability in the system and enhance speedy trial. Furthermore, it is recommended that trial judges/magistrates should endeavor to conclude all trials of

corruption cases within a reasonable period, such as six months from the date of indictment. However, in view of inherent variations in the complexity of cases and the different situation of each country, the presiding judge/magistrate should submit a report to the supervisory authority within the judicial branch for cases exceeding the relevant period, to explain the underlying circumstances of the case and reasons for the delay.

(vi) *Pre-Trial Meetings*

Pre-trial meetings involving prosecutors, defence attorney(s) and the judge to discuss/determine issues involved in the particular case and agree on lines of argument to be pursued, may speed up the trial process. For this procedure to be effectively applied, it is necessary for all the parties to understand the issues involved and also to take steps to avoid its abuse.

(vii) *Witnesses Protection*

An adequate witness protection scheme is recommended to be put in place in all countries to secure witnesses from the danger posed by reprisals that may be contemplated by the accused or their associates. This is a necessary condition to obtain full witness cooperation in the trial of corruption cases.

(viii) *Designation of Special Courts for Corruption Offences*

As stated earlier in this report, Pakistan and Sri Lanka have specific courts to deal with corruption cases, hence there was a proposal for the adoption of this practice in other countries. The advantage in this is that the presiding judge will devote more time to corruption cases, and

through consistent practice, gain the experience necessary to speed up trials, as well as conduct efficient proceedings. However, the participants did not reach a consensus on this issue, as it was also argued that the designation of special courts will raise new issues of independence. Moreover, it was noted that the existing courts have more fundamental issues like manpower and resource problems to grapple with before the consideration of special courts.

(ix) *Reversal of the Burden of Proof*

It may be necessary to enact laws in each country requiring the accused in a corruption case to prove that assets considered disproportionate to their income were not obtained through corrupt practices. That such a law may be perceived in some countries as an infringement on the right of the accused to be presumed innocent until the contrary is proved cannot be overlooked. However, considering that human rights are involved here, different countries may have to deal with this issue depending on their peculiar circumstances regarding corruption, and the peoples perception of what measures may be taken to combat it. In Hong Kong and countries like India and Pakistan, such legislation was necessitated by the general outrage against corruption at the time of introduction.

(x) *Equitable Sentencing*

Trial courts in corruption cases should make an effort to adopt an even sentencing pattern within their country.

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V. EFFECT OF THE MASS MEDIA

As already noted in section III, the corrupt activities of a public official may be revealed through publication by the mass media. The role of the mass media as a useful vehicle in the dissemination of information on the activities of an investigative agency, and for the education of the people on the evils of corruption, cannot be over-emphasized. Moreover, the mass media is perhaps most suitably located to generate the magnitude of public support and backing required for successful investigation of highly placed public officials under corruption charges. Furthermore, we cannot lose sight of the importance of a free press in any democratic society. However, that the activities of the mass media sometimes interferes with investigations, and even the trial, of corruption cases has become a thorny issue.

Most of the participants in the group felt that media interference in corruption cases in their countries is commonplace. In Brazil, Grenada, Nigeria and Pakistan, the mass media is so powerful that they sometimes influence investigations and the decisions of the court on several issues. This development is considered unhealthy since the media stance on a case may be based on several issues which may not be necessarily connected to the realization of justice or equity in the particular case.

Without the application of proper measures to avoid media interference, public confidence in the investigative agency and trial court may be eroded through irresponsible media practice. The solutions recommended for this problem include:

- (i) Implementation of a strict code of conduct for media practitioners;
- (ii) Pursuit of programs of mutual

cooperation by investigative agencies with the mass media;

- (iii) Application of existing laws on contempt of court by judges; and
- (iv) Development of training programs for judges and investigators to enable them to resist the influence of the mass media in the course of their duty.

VI. CONCLUSION

The group discussed issues concerning the investigation and trial of corruption by public officials from the perspective of investigators and judges. Regarding the sub-topic on securing the independence and neutrality of investigative agencies and the court, the issue of whether or not a special independent agency like the ICAC in Hong Kong should be established in order to eliminate bureaucratic and political influences on the investigation was examined.

To tackle the problem of investigation, the group focused attention on seeking efficient methods to source initial information on corruption, as well as on the personnel and budgetary situation, the expansion of the witness protection program and immunity for securing the cooperation of the people concerned. The propriety of introducing new investigative tools, such as decoy operations and how to secure immediate access to bank accounts in order to strengthen the ability to collect evidence, was also given attention.

To enhance speedy trial, the necessity of improving the material and personnel resources of the court, as well as the possibility of introducing the shifting of the burden of proof or establishing special courts on corruption, were discussed. In addition, based on the consensus among the group members that excessive press coverage interferes with the efficient

administration of both the investigation and trial, the role of the media was given special attention.

The group reached the conclusion that each country should be entrusted with the selection and implementation of the recommended solutions in many aspects, since the problems differ for each country and the effectiveness of each solution depends largely on the legal system, culture and the seriousness of corruption in each country. However, the most important solution, which is common through all these issues, is that investigators and judges must keep making an effort to improve their skills and ability through training and self-discipline. We believe that those who are engaged in the administration of criminal justice must recognize their accountability in their duties and must, therefore, play an active role in realizing speedy and proper investigation and trial, which is the fundamental action against corruption.