

## **GROUP 3**

### **STRENGTHENING THE CAPACITY AND ABILITY OF CRIMINAL JUSTICE AUTHORITIES AND THEIR PERSONNEL**

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<i>Chairperson</i>	Mr. Yasunobu Hishita	(Japan)
<i>Co-Chairperson</i>	Mr. Hassan Gashemi	(Iran)
<i>Rapporteur</i>	Mr. Joselito D.R. Obejas	(Philippines)
<i>Co-Rapporteur</i>	Mr. Vladimir Georgiev	(FYR Macedonia)
<i>Members</i>	Mr. Mardite Harlan	(Indonesia)
	Ms. Clelia Fabiana Akizawa	(Argentina)
	Ms. Mihoko Aso	(Japan)
<i>Advisers</i>	Prof. Tetsuya Sugano	(UNAFEI)
	Prof. Jun Oshino	(UNAFEI)
	Prof. Koji Yamada	(UNAFEI)

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#### **I. INTRODUCTION**

The group convened at the Director's House on 28 January 2008. The group chose, by consensus, Mr. Hishita as Chairman, Mr. Ghasemi as Co-chairman, Mr. Obejas as Rapporteur, and Mr. Georgiev as Co-rapporteur.

The group was tasked with discussing the topic of "Strengthening the capacity and ability of the criminal justice authorities and their personnel" with the following guiding points or agenda: (1) Ensuring the necessary independence of the criminal justice authorities; (2) Integrity of the personnel of the criminal justice authorities; (3) Transparency and accountability in the relevant decisions in criminal proceedings; and (4) Specialization of the criminal justice authorities.

#### **II. SUMMARY OF THE DISCUSSIONS**

##### **A. Ensuring the Necessary Independence of the Criminal Justice Authorities**

The discussion of this item started and terminated on the first day the group convened. Before the commencement of the discussion, it was agreed that the criminal justice authorities in each country to which the discussion shall pertain are limited to the law enforcement agencies, the public prosecutors and the courts only.

During the discussion, it was disclosed that the independence of the criminal justice authorities in Japan is generally observed and respected.

In some of the participating countries in the group, the independence of the criminal justice authorities suffers to some extent because of the necessity of political patronage in their appointment, selection, promotion and assignment and/or due to occasional interference in their work or the exertion of influence by other government functionaries within or outside of the criminal justice system.

So that full independence of the criminal justice authorities in the affected countries can be attained, the group suggests that each of the said countries must sincerely endeavour to pass, adopt and enforce relevant legislation that shall clearly define the functional divisions of the three branches of government and stringently observe and put into force constitutional provisions on their independence from each other. The approval of the proposed budget of the criminal justice authorities must always be guaranteed or secured.

##### **B. Integrity of the Personnel of the Criminal Justice Authorities**

While the participants from Japan consider the personnel in their criminal justice system, in general, to possess an appreciable degree of integrity, the participants from the other countries disclosed that the integrity of the criminal justice authorities in their respective countries is most often compromised by: (1) low pay or remuneration; (2) the cultural values of family groups, cronyism, getting along, extending sympathy on another's misery, and eternally paying a 'debt of gratitude'; and (3) the need to obtain political

backing in their appointment/selection or promotion.

To address this matter, the group recommends the following;

- (1) The upgrading of the remuneration of the criminal justice authorities and their personnel, making it more decent and competitive;
- (2) The passage and implementation of appropriate measures that will further underscore and strengthen codes of conduct and ethical standards in the public service;
- (3) The creation by law of a permanent and independent multi-sectoral body that will regularly conduct a performance evaluation or audit of the civil service personnel but whose functions will not necessarily prejudice the independence of the criminal justice authorities;
- (4) The ratification of, and full compliance with, the UNCAC by each of the countries concerned, it containing measures guaranteeing the integrity of the judiciary and the prosecution service; and
- (5) The adoption and observance of the pertinent UN guidelines and resolutions regarding the independence and integrity of judges and prosecutors, particularly the “Guidelines on the Role of Prosecutors” and the “Bangalore Principles of Judicial Conduct”.

### **C. Transparency and Accountability in the Relevant Decisions in Criminal Proceedings**

The participants gladly revealed that the relevant decisions of their judicial authorities are generally transparent for they are readily made known not only to the parties involved but to the public as well, and that their judicial authorities can always be held accountable for their decisions, either administratively, civilly or criminally. However, in some countries there is less transparency in the investigation proceedings and in the decisions of prosecutors.

The participants in the group agreed that the ratification, adoption and full implementation of the UNCAC may be a very appropriate action to broaden public access to the anti-corruption bodies, as provided in the said Convention.

Moreover, insofar as the accountability of the law-enforcement agencies and the prosecutors in their decisions is concerned, an internal audit system, like the one presently adopted and implemented by the ICAC of Hong Kong, must be considered.

### **D. Specialization of the Criminal Justice Authorities**

Among the countries represented in the group, only the Philippines and Indonesia have special anti-graft courts. Nevertheless, all the countries in the group, except Iran, have special law-enforcement units and prosecution offices that are tasked with investigating and prosecuting corruption cases.

Since it is the consensus of the participants that it is more beneficial for a particular country to have specialized criminal justice authorities, it is, therefore, suggested that the creation of such special anti-graft bodies in the countries concerned be considered. Furthermore, the ratification and adoption of, and full compliance with, the UNCAC is desirable as it contains provisions on specialized authorities.