

**BUILDING INTEGRITY IN PUBLIC INSTITUTIONS:
Judiciary, Police, Military
WORKING GROUP SESSION
Tuesday 12th October 2004**

Rapporteur Report

Panelists:

See official programme (except Habitat representative); change of rapporteur to Ekuru Aukot

Main topics:

The main focus of the discussion was on the judiciary, the police and to a lesser extent, the military.

Points discussed:

In all three fields the workshop discussed both content/ principles of reform (what needs to happen?) and sequence and strategy for reform (how can it happen).

Presentations

1. Eva Joly

Eva raised the following question: What is involved in the struggle against corruption? Drawing on experiences from Norway and France, according to her, concentrating on the Judiciary is important. The question is how to construct integrity within the judiciary. This requires independence, impartiality and the protection of human rights. Most importantly, the question was why inoculate the foregoing principles? The following address the question ‘**why**’ but also why corruption is there in the Judiciary, among other reasons, (a) there is lack of awareness of the importance of their roles and (b) low salaries/pensions for officials, (c) lack of transparency. This was discussed to refer to how to insure transparency:

- a. Transparency in judicial appointments.
- b. Transparency in the income/financial status of officials. In Norway, for example, everybody knows what the judges earn.
- c. Transparency in the distribution of judges when handling matters. That people should not be able to choose judges.
- d. Transparency also means facilitating the access of the media and the public to court.
- e. The publication of judgments would also ensure transparency. There should be simultaneous judgment to combat the allegation that there was no judgment.
- f. To control immunity or limit it. Immunity entrenches corruption. Examples include Pinochet, Omar Bongo and situations in Indonesia.
- g. Recruitment of officials should target quality and adhere to a process.
- h. The public and the press to access a list of applicants.
- i. All applicants to have access to all the questions. In France, exams are conducted.

- j. The Executive not to appoint judges directly.
- k. The access to information generally be encouraged.

Working conditions of judges:

Good conditions of the judges must be considered alongside the following factors:

- a. The training of judges and giving them opportunity to improve themselves.
- b. Supportive activities for judges dealing with high profile cases must be initiated.
- c. A system to deal with the pressures/threats to judges.

The Police:

The following was suggested for the police:

- a. The need to ensure competence before recruitment. In Norway, they are all required to have a bachelors' degree.
- b. Initiate teaching programmes on human rights, confession through violence.
- c. That the police should not be left alone. In France, they are under the control of the Interior Minister.
- d. Special institutions to be initiated to handle complaints against the police from the citizens.
- e. Upon reasonable suspicion, the police officer in question must be suspended.

The Military:

The military it was felt must be under the authority of a democratically elected government. Secondly, there is need to vet the buying of expensive military equipments and finally, military courts should not be used at a time of peace but only during a war.

THE Q & A

The Q & A revisited how to tackle corruption. The presenter emphasized objective criteria for appointment. A specific question on how judges are appointed in Kenya arose. The process was explained as contained in the constitution. But it was noted that the practice dictates otherwise in the sense that the Chief Justice takes upon himself to appoint the judges and then suggest to the president.

Participants called for latitude to be allowed for judges to be accused; the introduction of an intervening body that is independent and to tackle ethnic and party politics when appointing such an autonomous body

Interviewee 1: Humphrey Asobie. He responded to the question of what standards are there in creating integrity. He called for disconnection from the constitutional requirement because it invokes the political powers of the president. In the case of Nigeria, the lawyers called for the involvement of the public and the media. He also noted that the other problem is the lack of technological capacity to handle cases in a faster manner because hand writing is slow and time consuming.

Asobie also noted that the media in Nigeria sustains public opposition. It exposed a judge who insisted on handling a particular case in which she eventually decided against the opposing party.

On the police, he noted that the issue of remuneration should not be underestimated in reform agenda; capacity building is crucial and further what they work with is important; the civil society to be involved in monitoring the police; firm administrative actions against suspected corrupt individuals; dramatic action be taken where corruption is involved.

Interviewee 2: Justice Aaron Ringera. On the police he had the following to state. The police are the visible embodiment of any government, and that “in places like Kenya, most people think the police is the government”. As such their behaviour is the face of the government. They should thus be an institution of integrity. They play an important role in prosecution and investigation of corruption cases. How to ensure integrity in the police force:

- a. Rapid transfer to avoid the building of empires within a certain area.
- b. The appointment of senior police officials must be adhered to ensure a leadership of integrity.
- c. Equip them with resources to deal with criminal situations, especially modern techniques
- d. Introduce external mechanisms of investigations.

The question arose on who should initiate reform in the Judiciary? Ringera stated that it depended on state of the institution itself: “if it is rotten, it would require probing from the outside.”

Conclusions and Recommendations

(1) principles for judicial reform:

- Transparency (ex. Publishing judgements, appointments and process of appointments, salaries, distribution of judges, access to court);
- Impartiality;
- Independence;
- Respect for human rights;
- Financial independence.

(2) A critical issue to be considered is the immunity of judges.

(3) Principles for police reform:

- a. Competent, well educated and trained;
- b. Independent institutions for control;
- c. Effective complaint system;
- d. Capacity to deal with Human Rights;
- e. Clear procedures;
- f. Suspend officials upon suspicion;
- g. Rapid transfer (within the police) to avoid building of empires;
- h. Cultivate leadership of integrity within police;

- i. Adequate equipment;
- j. Need to establish independent supervisory mechanism for police.

(the police is the most visible arm of government = importance of police reform for impacting on public opinion)

Question:

- Who should supervise/control the police?
- Centralization vs. Decentralization (do we then decentralize corruption?)

(4) Principles for military reform:

- a. Under the authority of a democratic regime;
- b. Control in military procurement and expenditure;
- c. Avoid having military courts in peace times;
- d. Professionalism;
- e. De-politization.

(5) Strategy for reform:

- a. Political will is key both within the judiciary and the executive.
- b. Capitalize on a crisis by starting reform.
- c. Do it well because you won't get a second chance (seize window of opportunity).
- d. Need for strategic approach to sequencing: priority: supreme court first!!
- e. Holistic approach for justice reform (include police, prosecutor etc.).
- f. Consider crucial role of media in order to investigate corruption cases.
- g. Civil society as an oversight body in providing momentum for reform.
- h. Don't forget the most obvious players (parliament etc.).
- i. Focus of quick wins and symbolic action:
 - i. Remuneration
 - ii. Generating trust by involving civil society
 - iii. Effective complaint system
 - iv. Firm administrative action against reasonably suspected corrupt officials

Caveats

When planning for quick wins, bear in mind consequences, even unintended, resources need and public expectations that are raised

Avoid making big announcements before you act.

Quotations:

- immunity is bad for former presidents
- the security of tenure is not the same as the possibility of dismissal
- in places like Kenya, most people think the police is the government

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Nairobi, 12 October 2004