

POLICY FRAMEWORK FOR PREVENTING AND ELIMINATING CORRUPTION AND ENSURING THE IMPARTIALITY OF THE JUDICIAL SYSTEM

A group of 16 distinguished experts convened by the Centre for the Independence of Judges and Lawyers (CIJL) of the International Commission of Jurists (ICJ) met in Geneva - Switzerland from 23 to 25 February 2000. The meeting aimed at formulating a policy framework to prevent and combat corruption in the judicial system.

The participants came from Australia, Bangladesh, Canada, Egypt, France, India, Indonesia, Malaysia, Nigeria, Palestine, Senegal, Sri Lanka, Uganda, and the United States of America. They included the UN Special Rapporteur on the Independence of Judges and Lawyers, former and current high judicial officials, distinguished lawyers, and representatives of international financial institutions.

The meeting agreed to the following policy framework:

The integrity of the judicial system is central to the maintenance of a democratic society. Through the judicial system the rule of law is applied and human rights protected. Without an impartial judiciary the democratic character of society will be destroyed. To adequately fulfil this rule, the judicial system must be independent and impartial.

The independence of the judiciary is the cornerstone for ensuring that exercise of judicial power is impartial. Impartiality in the judiciary requires that cases be decided only according to evidence and the law. Any other influence on the decision-making process constitutes corruption.

The research carried out by the Centre for the Independence of Judges and Lawyers (CIJL) indicates that out of the 48 countries covered by its 9th annual report, *Attacks on Justice*, on the harassment and persecution of judges and lawyers between March 1997 and February 1999, judicial corruption is pervasive in 30 countries while in 6 countries the problem does not appear to be widespread. The CIJL did not have adequate information on 13 countries.

Recognising the negative effect of corruption on the maintenance of the rule of law and the legal protection of human rights, the CIJL organised this meeting with the aim of elaborating policies that could actively prevent and combat corruption in the judiciary. This policy framework addresses the judicial system and process as a whole with the intention that it would include judges and all other persons exercising judicial power, as well as all court staff. Court staff are included because they play an important part in creating and maintaining the conditions necessary for judicial impartiality. Further, while the focus of this policy framework is on corruption in the judicial system, it recognises that action in this area has to be related to other plans to control corruption generally both in government and in private enterprise.

Objectives

This policy framework aims at:

- preventing and eliminating the corrosive effect which corruption has on the achievement of impartiality and so increasing the accountability of the judicial system as the foundation of its independence;
- encouraging consideration of the corruption of judicial systems as an impediment to the protection of human rights;
- providing the judiciary, policymakers and others with a process by which to combat corruption of the judicial system and to ensure its integrity and impartiality;
- encouraging international, national and local organisations, including bar associations, to assist in preventing and eliminating corruption of the judicial system;
- increasing public awareness and providing encouragement to the public to participate in the process of exposing, preventing and eliminating corruption in the judicial system, and so to increase public confidence in the judiciary; and,
- creating a culture of intolerance to corruption of the judicial system.

Acts Constituting Corruption of the Judicial System

The judicial system is corrupted when any act or omission results or is intended to result in the loss of impartiality of the judiciary.

Specifically, corruption occurs whenever a judge or court officer seeks or receives a benefit of any kind or promise of a benefit of any kind in respect of an exercise of power or other action. Such acts usually constitute criminal offences under national law. Examples of corrupt criminal conduct are:

- bribery;
- fraud;
- utilisation of public resources for private gain;
- deliberate loss of court records; and
- deliberate alteration of court records.

Corruption also occurs when instead of procedures being determined on the basis of evidence and the law, they are decided on the basis of improper influences, inducements, pressures, threats, or interferences, directly or indirectly, from any quarter or for any reason including those arising from:

- a conflict of interest;
- nepotism;
- favouritism to friends;
- consideration of promotional prospects;
- consideration of post retirement placements;
- improper socialisation with members of the legal profession, the executive, or the legislature;
- socialisation with litigants, or prospective litigants;
- predetermination of an issue involved in the litigation;
- prejudice;
- having regard to the power of government or political parties.

These acts may be the subject of various sanctions ranging from criminal law, to law relating to conflict of interest, bias, discrimination, abuse of power, judicial review or may be governed by codes of ethics.

For judicial corruption to occur, it is not necessary to establish that the judicial decision was made on the basis of a corrupting act. It is sufficient that an independent, reasonable, fair minded and informed observer is likely to perceive the judicial act as having been determined by the corrupting act.

Facilitating Public Awareness

Public participation in reporting and criticising corruption of the judicial system is a vital element in combating corruption. This requires the public to be informed concerning the deleterious effects that corruption and loss of impartiality in the judicial system have on them. Civil society coalitions, by a synergy of effort, have the potential to effectively combat and eliminate instances of corruption of, and loss of impartiality in, the judicial system. The judicial system should therefore assume the responsibility, together with other arms of government where possible, of keeping the public informed in a way which enables it to identify and expose corruption.

The role of an independent and responsible media in increasing awareness is vital.

The judiciary should therefore formulate proposals for keeping the public, including the media, informed and educated concerning the operation of the judicial system.

Indicators of Corruption of the Judicial System

Public perceptions of the existence of corruption and loss of impartiality in the judicial system are important as indicators of a serious condition requiring attention. Firstly, they are damaging to the whole judicial system even if formed only in respect of particular persons. Secondly, they may suggest good reason to investigate the extent of alleged corrupt conduct. Social science provides some methodologies to investigate that conduct and identify appropriate indicators. Such methodologies may not yield exact measurement of the dimension of corrupt conduct and may not yield measurement according to legal standards of proof. Nevertheless, as indicators of public

perception they can be important in motivating governments and judicial systems to reform. They can also be important in developing and mobilising public opinion against corruption of the judicial system.

National and International Legislation

International and regional recognition of the need for states to criminalise or discipline all forms of corruption of the judicial system will encourage the prevention and elimination of such acts. This could be achieved through ensuring that multilateral treaties addressing corruption in relation to the legislative and executive branches of government also cover corruption in the judiciary. International recognition could also be achieved by initiatives through the United Nations system.

National legislation should:

- criminalise conventional acts of corruption;
- require the disclosure of assets and liabilities of judges and other officers in the judicial system which is then independently monitored;
- provide for disciplinary or other proceedings against judges, in respect of a breach of a code of ethics, carried out by the judicial system; and
- provide for disciplinary or other proceedings against court officers consistent with any laws relating to their service.

The CIJL will examine present national legislative provisions with a view to identify acts beyond traditional criminal acts of corruption which have been criminalised.

Eliminating Contributing Causes To Corruption

Creating the proper framework and conditions for an impartial judicial system is an essential factor for preventing and eliminating corruption of the system. This requires that the selection and promotion of judges is based on

merit and protects against appointments or promotion for extraneous reasons or improper motives. This necessitates that the independence of the judiciary be strengthened.

Improving the overall conditions of service in the judicial system will also help to bring change in individual conduct. The judicial system requires adequate funding by each state. Such funding must be determined following consultation with the judiciary and be a matter of budget priority. It should take the form of an overall amount allocated directly to the judicial system, which shall be responsible for its internal allocation and administration.

Statements of Judicial Ethics

A statement of judicial ethics, such as in the form of a code, can play an essential part in preventing or eliminating corruption of the judicial system. Such a code may explain the ethical aspects of appropriate conduct to judges and court officers, encourage informed public understanding of the judicial system, and inspire public confidence in the integrity of the judicial institution.

Consistently with the need for independence in the judicial system as a means of protecting impartiality in decision making, a code of judicial ethics should not be drafted by the legislature or executive. It should be drafted and revised by the judiciary with such advice as may be appropriate. In some countries it may be appropriate that the task be assumed by an independent national judicial commission which includes lay representation.

The imposition of sanctions for conduct in breach of a code may require legislative authority. This is particularly the case where the sanction requires the removal of a judge from office. It will then be appropriate for the imposition of the sanction to take place in accordance with any constitutional or legislative provision for such removal.

In the case of non-judicial persons in the judicial system, the imposition of any sanction will need to be consistent with the laws relating to their service. Any breach or failure to act in accordance with such laws should be sanctioned as well.

The development of domestic codes of judicial ethics could be assisted by the development of an international best practice model based on a survey of existing codes, a project that the CIJL will undertake.

Investigation

Complaints of corruption against individual judges or court officers should, consistently with the rule of law, identify the person concerned and specify the alleged conduct. However, complaints based on allegations of a persistent reputation of corruption should warrant investigation, even if specific incidents of corruption are not identified. Such complaints must be dealt with in accordance with due process.

Allegations of widespread corruption of the judicial system should be investigated, but not be dealt with by ad hoc measures such as wholesale dismissals of judges or court officers. Consistently with the rule of law, each case should be investigated individually and should be dealt with according to due process of law.

Where there is no existing independent mechanism or body to investigate complaints, an independent judicial commission of general jurisdiction in relation to judges, dealing with other matters such as selection, appointment, promotion and education, may be utilised. The commission should be supported with necessary resources, means and powers to enable it properly to investigate complaints. Most importantly it should have the power to ensure informants, complainants and witnesses are not victimised. For the purposes of the determination of a complaint, the commission or commission panel considering the complaint may include retired judges of good standing and proven integrity. It should also include lay members of standing.

The law should require disclosure of assets and liabilities of judges and other officers in the judicial system upon their appointment and annually thereafter so that unexplained acquisitions of wealth could shift the burden of proof in investigation and at the hearing of the complaint.

Legal Education

Legal education plays an important role in creating an understanding of the ethical dimensions of the law and the judicial system. Basic legal training should include the teaching of ethics.

Orientation and continuing legal education for judges and court officers should include ethical issues relating to the judicial system.

It is equally vital that associations of lawyers as well as academic institutions discuss and address ethical issues through measures including publications and continuing legal education.

Legal Profession

Lawyers have a crucial role to play in protecting judicial impartiality. Under no circumstances should they engage in or assist corruption in the judicial system. Their duty at all times is to prevent clients from engaging in corruption, to report allegations of corruption and to assist the public in reporting allegations of corruption. Their duty also is to be faithful to their clients and not to falsely charge the judicial system with corruption as an explanation for unsuccessful litigation. They cannot accept instructions from a client to act as his or her agent in furthering execution of any acts of corruption.

Bar associations should provide strong and effective professional mechanisms and sanctions against any such conduct by members of the legal profession.

Finally, it should be recalled that the common form of judicial oath requires judges to exercise the judicial power without fear or favour, affection or ill-will. That guarantee of judicial impartiality is the universal expectation of all persons who access or appear before a court. Without it there will be no rule of law and the democratic quality of society will fail. Therefore it is essential that the above policy be widely supported and implemented.