

WORKSHOP 1.4 – FULL WORKSHOP REPORT

Laws are not Enough: Citizens against Corruption in Police and Judicial Institutions

Coordinator: Cathy Stevulak

Date and time of workshop: 17:30 – 19.30, Meeting Room 1

Moderator: Anabel Cruz, Partnership for Transparency Fund

Rapporteur: John Clark, The Policy Forum

Panellists:

- *Joseline Korugyendo*, National Foundation for Democracy and Human Rights in Uganda (NAFODU), Head of Programmes
- *Sylvia Mukasa*, Uganda Law Society (ULS), Executive Director
- *Sukhee Dugersuren*, Transparency International Mongolia (TI-M), Executive Director
- *Ezequiel Nino*, Asociacin Civil por la Igualdad y la Justicia, Argentina (ACIJ), Founder and Co-Director

The Topic:

The workshop contributed to IACC's *Restoring Trust for Peace and Security* theme. Police and judicial corruption undermines the ability of less powerful or less wealthy citizens and businesses to obtain fair judgements, thus impacting human rights, economic potential, and the functioning of basic services. The 'big fish' may act with impunity, while the poor and marginalized suffer most.

The workshop discussed both the ethical dimensions of a sound police and judiciary as well as monitoring measures to advocate for proper conduct — all citizen-driven initiatives that focus on the rights of the marginalized.

Presentations:

The workshop started with the presentation and discussion of 4 case studies (all supported by grants from Partnership for Transparency Fund) illustrating issues of corruption within the police and judiciary, and civil society endeavours to address these..

- ***Citizens Against Corruption in Police and Judicial Institutions in Uganda:***
NAFODU described how it formed a partnership with Uganda Police in 5 districts of south-western Uganda with the aim of preventing corruption and restoring trust in the police. The work started with a few more responsive Police Commanders. It included a community radio programme enabling citizens to talk with police about abuses of police powers, a baseline survey for better understanding of public perception of police corruption, community monitoring of police behaviour, public information campaigns about police conduct laws, and ethics training for police. This has exposed issues of corruption and increased confidence of citizens to take concerns directly to the police.
- ***Prevention of corruption in the Judiciary in Uganda:***
ULS described how its advocacy efforts with judicial authorities led not only to interdiction of an alleged corrupt magistrate, but also to increased staffing of magistrates to more efficiently handle cases. The courts have a tendency to tackle some token small cases and not deal with the "big fish". ULS monitored court processes and organized multi-stakeholder roundtable discussions on the findings. A legal experts committee on anti-corruption was

formed and the anti-corruption court has reportedly led to increased public confidence in the judiciary. ULS discussed its efforts to increase the involvement and awareness of lawyers in anti-corruption issues, especially through its monitoring of the proceedings of a new Anti-Corruption Court in Uganda. ULS has been able to be a link that connects the regions with the centre.

Discussion

*Is the Uganda court a special one or general (a division of the high court); what about levels of salaries for police (pay is low which demotivates service and motivates bribe-taking, but low salaries do not **justify** bribe-taking); how does this work get supported; do people feel safe to speak about bribes they pay to police (NAFODU local offices held a survey in 5 districts, showing that Police is seen as the most corrupt service); how to make this sort of work sustainable (both Ugandan NGOs get funds from other donors, not just PTF, and increasingly from local people; they both enjoy a great deal of support from volunteers, not just staff; ULS is a professional association, getting fees from members).*

- **Anti-corruption Training on Preventing Corruption in Public Procurement and Judicial Systems and Improvement of the Judicial Code of Ethics in Mongolia:**

After the transition from the Soviet era and ensuing legal reforms (supported by donors), the old ways did not change easily, public confidence in the legal system was low, and corruption in public life remained high and unchecked. TI Mongolia worked with judicial authorities on an extensive training programme for judges and teachers of law and on a participatory process for developing an improved judicial code of ethics. Experience showed that the commitment of judicial authorities and the involvement of peer trainers provided for credibility and sustainability. TI-M helped the judges' association develop a new Code of Ethics for the courts; the evidence shows a steep decline in malfeasance within the courts. The work is also informing the on-going programme of judicial reform.

Discussion

But judges know they shouldn't take bribes (yes, but the standards of the courts needed to be strengthened and the mindsets needed to be changed, so that the ethical codes are honoured); in Kazakhstan the situation is even worse than before the transition, because the Russian intellectuals are no longer there to enforce discipline.

- **Access to information on corruption files in Argentina's courts:**

ACIJ followed 50 corruption cases through the judicial system in Argentina to understand how they were handled. In general the corrupt enjoy impunity and will continue to do so until the public are aware of the situation. On the basis of this experience, ACIJ has advocated opening the files on corruption investigations that are generally kept secret to enable greater public scrutiny. This has been partially successful but there is now an ambiguity (currently awaiting clarification) as to whether such files should be disclosed. Two Courts have different opinions on the issue, but about half of the files are now made available. ACIJ uses new technology to disseminate this information on corruption cases, leading to greater media coverage. It also helps to draw synergies with other sectors (e.g. the effective courts that have addressed with the "disappeared" in Argentina), and would welcome further connections with those in international institutions and other countries where reforms have been successful. ACIJ is also looking into how private prosecution could address cases that public prosecutors are not proactively advancing.

Discussion:

Ambiguities are to be expected e.g. regarding who has access to the files (this is awaiting clarification, but there is a momentum for openness); how do you judge success; what are the criteria for selecting judges for AC court and how effectively are the cases processed in practice (recent reforms have given a higher say in selecting magistrates and judicial councils; there are different levels of prosecutors, they often demand more and more information; cases may take up to 20 years; prosecutions are very rare); private prosecution on part of the victim is part of Hungary's criminal law, but in "victimless" crimes of corruption how can this be used (the "victim" voice is rarely heard in court;

defendants have very powerful law firms representing them, and prosecutors are often not well-informed, so it is difficult to get prosecutions).



Common Themes

Although the case studies illustrated very different civil society activities in different contexts, they all there were some common themes and messages, supplemented by the workshop discussion. These included in particular:

- The importance of having a sound legal framework designed to require and enforce **integrity** and to enable meaningful civil society oversight of this integrity (e.g. ACIJ seeks legal reform to ensure public access to information about corruption investigations)
- Good laws by themselves do not guarantee good outcomes, determined leadership is needed to ensure they are implemented and that they enjoy public confidence (e.g. post-transition law reforms in Mongolia have not stopped officials working in the “old ways”; on Kazakhstan malfeasance in courts may even be worse.)
- CSOs can *expose and shame* those responsible for the types of corruption described but they can also be very effective in fighting corruption by helping public agencies make **systemic changes** that herald integrity and increase individual and/or institutional respect. For this, CSOs must be highly professional, disciplined and constructive, in particular reaching out to and working with **reform champions** in government. Key lessons discussed were:
 - The monitoring work should be scrupulously accurate and objective to gain respect from officials and the public;
 - Wherever possible the approach should be non-confrontational;
 - CSOs need to patiently build networks of influence in order to identify and gain the trust of the champions of reform within the power elite; and
 - It is more effective to focus primarily on reform of accountability systems rather than pursue contentious individual cases of corruption
- CSOs can help these champions in many ways, including in particular:
 - Researching the extent of the problems and citizens’ experience of them
 - Developing codes of ethics and other tools for reform champions to use
 - Designing/implementing integrity training and other capacity building
 - Building bridges between police/judiciary and the public
 - Pointing out, and encouraging resolution of, inconsistencies and ambiguities within the law
 - Building professional associations (lawyers, judges, police etc) and working with them to promote integrity amongst their members
 - Connecting reform champions to peers in other countries or sectors who can lend support
 - Helping to develop new legislation, e.g. to prevent collusion in procurement processes
- Reform is more likely to flourish in sunshine, hence fostering public debate and responsible media coverage of corruption is important – but this presents a dilemma: while it heightens the demand for integrity, if the coverage is seen as hostile it can push even reformers onto the defensive (e.g. in Serbia, CSO pressure now means that the Public Prosecutor must be prepared to explain publicly why they choose *not* to take forward a prosecution). Responsible media coverage can actually foster community confidence to take concerns directly to public authorities (e.g. in Uganda with police radio programmes in which citizens phone in questions for discussion with the police).
- CSOs can also help ensure voices and experience from the regions, not just the capital, come to decision-makers attention, and can help “break the silos” in bringing people from different disciplines together.

General Discussion

Legal systems differ greatly and hence what CSOs can achieve vary. In Serbia CSOs have been able to scrutinize public prosecution offices, and now they are required to explain publicly why they choose not to take up a prosecution. They have also helped prepare new legislation to guard against collusion and other malpractices in procurement.

In some cases (Uganda), judicial offices are given immunity from legal actions themselves because they are assumed to be acting in good faith (such immunity is in effect impunity)

There is a need to develop synergies and cooperation across different sectors (donors, governments, CSOs, private sector); the battle against corruption is a long haul.

Main Outputs

- Written 5-page papers on each case study, available on IACC and PTF websites (www.partnershipfortransparency.info)
- Power-point presentations of the case studies
- Workshop report

All these are available on IACC and PTF websites (www.partnershipfortransparency.info)

Recommendations, Follow-up Actions

- International forums and standards can be used to reinforce national CSO actions and provide professional resources for champions in government.
- Funding and other support for such CSO actions must be sustained over a long period, and also indigenous support (local contributions and volunteer support) needs to be promoted
- Stronger channels for sharing information and experience between CSOs tackling similar challenges need to be developed.

Workshop Highlights (including interesting quotes)

Immunity from personal prosecution enjoyed by some public servants shouldn't be a blanket impunity; legislation must be clear on this.

The battle against corruption is a long haul, we can not expect quick results, and it requires the cooperation and perseverance of all stakeholders (government, donors, CSOs, private sector).

There needs to be greater public accountability of judicial officials, but this entails questions about who speaks for the public, who represents the victims of the victimless crime of corruption.

We need to help restore trust in the judicial system, but this will not be possible unless there is greater openness, e.g. the public must be informed about outcomes of prosecutors' decisions.

Heightening a sense of honour and public trust (e.g. amongst judges) is a motivating factor for partnering with civil society in addressing corruption concerns.

Signed and date submitted

Cathy Stevulak and John Clark 13 November, 2010