

## **13.0 Elimination of corruption and the creating of conditions for transparency, integrity and accountability**

### ***Statement of participants of the regional consultation held from 11-15 January 2010 at Hong Kong***

We, the participants of the Regional Consultation on Anti-Corruption Mechanisms in Asia, held at the Asian Legal Resource Centre in Hong Kong from 11 to 15 January 2010, express our deep concern about the acute problems that people of our countries face, particularly for the large majority of people who still live in relatively poor conditions, which affect economic, social and cultural rights as well as civil and political rights. In areas of food and water, education and health, employment and so forth people across Asia face extremely serious problems of corruption. When attempting to gain the basic services to which they are entitled as members of society, corruption remains a serious obstacle.

While budgetary allocations are inadequate to meet legitimate public expectations, state authorities misuse the allocations themselves. Apart from this, foreign aid for socio-economic development projects often ends up in the hands or pockets of corrupt politicians and those in authority, defying all attempts at accountability.

Corruption is also playing a role in stimulating violence and internal insecurity, as it shrivels the prospect of government supplying people with basic services, opportunities, rights and entitlements. As a result, people choose to remain silent on internal conflict and do not support the state in handling crises. Further, people also opt not to participate in governance. In this sense corruption weakens people's democracy and creates space for authoritarian rule.

There are also problems associated with the planning and allocation of resources that are conditioned by the institutional gaps and defects associated with systems of power in society. In the development of policies and their implementation, serious inequalities in the distribution of basic resources often affect the structural issues that engender conditions enabling corruption. On the other hand, in the struggle for the eradication of corruption, obstacles arise due to political and social factors that are associated with inequalities imbedded in society. Therefore, realization of the basic human rights of persons, promotion of the rule of law and achievement of democratic rights in countries of the region are all very much linked to the problems of eradication of corruption.

### **Eradication of corruption as a human rights issue**

The treating of eradication of corruption as a human rights issue speaks to the fundamental indivisibility of socio-economic rights and civil and political rights. In all problems associated with corruption, whether in the form of land grabbing, corrupt development projects, deaths caused by corrupt practices in health institutions or otherwise, our countries lack good policing, independent investigative agencies and wellfunctioning justice institutions that can meet the needs and expectations of people.

Questions of illegal arrest and detention, denial of access to justice and denial of fair trial are often associated with the unaffordability of justice, which is also associated with problems of corruption that beset institutions for the administration of justice, particularly the police, prosecution services and judiciary. The right to life is deeply affected by problems created through institutional malpractices that

are the result of deeply corrupt practices within society. Among the people who face these problems in the most acute way are more vulnerable groups such as women and children, and minorities.

## **Historical and contemporary causes of corruption**

The root causes of corruption are the histories of our society's feudal social structures as well as the problems created during long periods of colonial rule. The development of a basic institutional framework for our societies has been affected by these historical problems and in many of our countries these problems need to be resolved in an attempt to deal with the demands of the times and in order for the societies to develop with a framework of rule of law and democracy. The realisation of people's aims in modern circumstances requires attempts to understand these historical problems and find strategies to deal with them by developing institutions that are relevant to the conditions of our societies in order to ensure equality among all sections of the population and stability through the practice of democratic norms and standards.

Feudal traditions are continued through patronage politics, which are a feature of many countries in the region. Party political systems are often organised on the basis of patronage of one or a few powerful persons. The party systems are often controlled without any kind of observance of democratic norms relating to the relationship between party members and the development of party leaderships. Often there is an inherent system of corruption within the party structure itself. Within the party often there is no transparency in relation to funds and power relationships. Top party leaders are not accountable to their party members and to the inner structure of the party. The inner structure of the party is often developed in a manner to eliminate fair competition. The leadership of some is protected for a lifetime, and family members or very close associates whom the leaders nominate often become their successors.

The absence of democracy within the political party system affects the political system as a whole. The lack of healthy development of leadership within political parties also denies fair competitive practices between parties. The denial of fair competition between political parties is often the source of violence in the political life of a country. This violence also leads to the cooption of the law-enforcement agencies in favour of ruling regimes. Discrimination against those who keep out of party political loyalties develops and often penetrates into the total system of the public service. Thus, the absence of internal democracy within political parties ultimately develops into violence between political parties and corruption within the public service itself.

The absence of democracy within political parties is often the basis upon which authoritarian forms of rule develop. Such authoritarianism in turn destroys whatever freedom may have existed within a political party. Naturally authoritarian rule destroys the capacity for the emergence of other political parties. The internal violence inherent in authoritarian rule develops into societal violence, which suppresses all freedoms. The absence of freedom makes corruption easier. Critics of corruption fail to find supporters within political parties. Thus, the development of organised resistance to corruption through party-based democratic mechanisms becomes difficult and sometimes even impossible.

In recent history, neo-liberal policies have also been considered a source of corruption in state and social services. Increasing privatization is reducing the role of states in governance and provision of services and is functioning to favour profit-based functions and systems, reducing the space for public entitlements. State functions, policies and policy formation processes are under the control of capital and market forces, which decide how to distribute revenue for specific sections of society, not for the

protection of the economic, social and political rights of the people. In a sense states are subsidizing private profits through use of constitutional powers and public resources.

## **Public institutions and prevention of corruption**

One of the major institutional aspects that must be understood and dealt with in the process of achieving equality among all sections of society is policing. Policing systems developed in the past reflect the social contradictions of those times and also the inequalities inbuilt into earlier societies. In most societies policing systems have been used for the suppression of the poorer sections of society as well as other sections that consist of vulnerable groups. Careful studies into the nature of policing in contemporary societies and the development of new strategies to develop policing systems in keeping with democratic norms and standards to safeguard the dignity of all persons are vital for the eradication of corruption.

People are obliged to interact with the police in dealing with their problems and therefore dealing with this institution in terms of the goals of modern democratic societies is a precondition to dealing with most problems in our societies. The capacity of a population to make complaints against authorities without fear is conditioned by the nature of policing. Therefore in creating effective mechanisms for complaint-making into all aspects of the lives of citizens it is essential to ensure that the policing system acts to assist in complaint-making, to prevent it from becoming an intimidating factor within society.

In the development of complaint mechanisms to prevent intimidation there is a need for a law to protect witnesses and complainants. In most countries of the region laws relating to witness and complainant protection do not exist. The same forces trying to maintain corruption are preventing the development of such laws. Those who are fighting against corruption need to make strenuous efforts to build social consensus to ensure the development of law in this direction. The payment of adequate salaries for lawenforcement officers is also a necessary component in developing proper protection for witnesses and complainants.

Democratisation within any society requires that citizens have the capacity to make their voices heard on all occasions without fear and in a spirit of freedom. Therefore freedom of expression and publication are essential in providing for participation in a democracy. Unfortunately, in many countries legislative processes lack transparency. People's participation and accountability are defeated by corrupted party politics. The lack of access to information also adversely affects the capacity of people to participate in the legislative process.

People's participation requires not only participation by way of representatives but also direct participation, with the capacity to make grievances heard on all occasions. Therefore a climate needs to be fostered where all citizens irrespective of their social positions feel confident that they are able to express their grievances freely. Confidencebuilding is a necessary pre-condition for the developing of such a climate, through wellresourced organizations, which must take initiatives to instill confidence by involving isolated voices and making them into a community of strengthened voices so that elected representatives have to take serious note.

The development of machinery for the administration of justice in a manner that legal remedies are made available to people is also an essential component of a strategy against corruption. Where there are inordinate delays relating to the administration of justice these are exploited by corrupt elements.

Corruption often feeds on inefficient systems for the administration of justice. Therefore the elimination of inefficiencies and incompetence in the administration of justice at all levels is essential in dealing with corruption.

Often impediments in justice are caused by the insufficient allocation of funds. Due to insufficient allocations sometimes the salaries of officers involved in the administration of justice are affected. This creates an excuse for corruption among these officers. Therefore, providing sufficient funding for the proper administration of justice is a further precondition to deal with corruption. The salaries of officers should be adequate based on the job analysis and related to the work performance. Towards this end, not only the salaries for the higher judiciary but also the salaries of lower judges must be protected constitutionally and paid out of a consolidated fund.

### **Specific institutions to eliminate corruption**

The development of institutions specifically devoted to the elimination of corruption is a necessity for the maintenance of the rule of law as well as democratic institutions within the countries of Asia. Institutions that are specifically devoted to the elimination of corruption are found in most countries of the region but they have not been designed to achieve their purported ends. Most agencies have very limited powers and work on small budgetary allocations. These agencies often create the impression of the existence of initiatives for the elimination of corruption but in fact these are only cosmetic. This is due to the absence of political will to create effective institutions to eliminate corruption. In the absence of political will, purely rhetorical statements are made about the elimination of corruption while ruling regimes in fact want to continue with the corrupt practices inherent within the system. The will to change among people who are the victims of corrupt practices is strong, but unless people who have the will to change express their will in a forceful manner and replace political leaderships which want to continue with corrupt practices, change for the better will not take place.

### **Institutions specifically designed for the elimination of corruption should have the following characteristics:**

- a. Independence in mandate, powers and appointments—not only for those who are in charge but also for all other employees. Personnel must be provided with security of tenure—if their independence in executing statutory functions is to be a reality—by making provisions in relevant legislation that they are not liable to be removed from office other than for misconduct or bad behaviour. Constitutional safeguards are needed to ensure the integrity of persons appointed to hold public positions in these institutions.
- b. Adequate budgetary allocations to carry out investigation, prosecution, prevention, education and all other associated functions required for effectiveness. An effective law-enforcement component to combat corruption must include an investigation wing with sufficient training and resources. In Indonesia, a special court was set up to adjudicate corruption cases.
- c. Accessibility for people to make complaints through various means, including through branches around the country.
- d. Answerability to parliament and accountability through proper procedures that have been designed to prevent interference by the executive or any other branch of government.

e. Design within the framework of the rule of law and the UN Convention against Corruption.

### **Learning from successful ventures for elimination of corruption: Hong Kong ICAC**

There are successful attempts at the elimination of corruption that need to be studied and replicated with suitable adjustments. The example of the Independent Commission Against Corruption (ICAC) in Hong Kong is one of the more successful in Asia. This legal initiative has transformed Hong Kong, where there was rampant corruption prior to the introduction of the law establishing the ICAC in 1974, into one of the societies where there has been considerable success in the elimination of corruption. The ICAC is fully independent and protected by effective measures to prevent executive interference, or that of any other authorities, in the implementation of its objectives.

The ICAC has played a role in improving the discipline of the public services as well as the private sector in Hong Kong. In the public sector it has been able to improve discipline within the police. This has been achieved by the complete independence of the ICAC from the policing system, with powers to control investigations into corruption of police as well as any other public service. The ICAC also has powers to investigate all citizens, including judicial officers. No one has been excluded from the jurisdiction of the ICAC. The ICAC concentrates on education as an important component in the elimination of corruption and much of its resources are devoted to this purpose. The internal checks and balances within the ICAC have measures against the possible abuse of powers within the institution. Therefore this model for the elimination of corruption needs to be studied comprehensively and introduced into other countries with suitable adaptations.

### **People's movements for elimination of corruption**

The creation of effective anti-corruption agencies as well as the maintenance of these agencies depends on the extent of public involvement and interest in the elimination of corruption. Public movements are essential for the emergence and success of these institutions. Therefore all civil society organizations should carefully examine their strategies for involvement in the creation and maintenance of institutions for the elimination of corruption within our societies.

Public movements for the elimination of corruption should constantly articulate the problems of corruption for people, particularly those who do not belong to the privileged sections of society, and more specifically for the poorer sections of society. Constant articulation of these problems can create the necessary ethos as well as popular support for the creation of agencies to eliminate corruption, and their sustenance. In this respect, the media has a huge role in highlighting issues and increasing public awareness. Utilizing the Internet too we can disseminate a huge amount of information that can reach a large audience.

Some NGOs need to be developed to serve as corruption watchdogs, to get people to complain when they experience or see corruption, to investigate and take cases to the public, and to anti-corruption institutions. These NGOs have to maintain high accountability and credibility to build public trust.

The role of the legal community in the elimination of corruption needs to be emphasised.

The legal community can play an enormous role in educating a population on legal safeguards against corruption and also in providing the necessary services to victims of corruption, as well as to movements fighting against corruption, so that their interventions can be enhanced with a proper understanding of the law. Labour unions and professionals such as medical doctors can play positive roles in fighting corruption in business and the public sector, such as in the public health sector.

In recent times there have been positive developments in the civil society organizations of some countries that have contributed to the possibility of more effective intervention for the creation and sustenance of attempts to eliminate corruption, and these movements need to be closely studied and replicated. Among these are groups that have worked for the right to information. Comprehensive laws on the right to information can provide citizens with the powers necessary to obtain information with which to deal with their problems and those relating to their communities. The poorer sections of society in particular have to depend on public services, and the right to information given to a citizen can reveal details of the entitlements that they have under law and the means by which to obtain them. Thus initiatives to demand such laws could be an effective means of developing strategies to deal with the elimination of corruption. Where such laws already exist, citizens' movements can assist in their implementation, so that people are enabled to fight against corruption through all means available.