

**BUILDING THE CAPACITY OF PUBLIC PROSECUTORS AND  
DEVELOPING THEIR TOOLS AND WORKING SYSTEMS:  
PREPARING BOOKLETS, MANUALS AND GUIDELINES FOR THE  
BEST PRACTICES IN THE TRAINING FIELDS.**

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Thank you for the invitation to speak to you today. It is a great honour to be able to speak to colleagues from the Arab world about this important topic which is relevant in our jurisdictions as much as in yours. In particular I would like to thank the UNDP and the Moroccan Ministry of Justice for the opportunity to share my thoughts with you today.

Let me first of all share some of my own personal background with you which I think has been crucial in informing my view of the topics we are discussing at this conference. I am a lawyer from Northern Ireland and spent my formative legal years working with a leading defense firm in Northern Ireland during the last years of our violent conflict. I was on the other side to the prosecutor and felt proud to be so. I then spent a long time working as a lawyer with the leading human rights organization in Northern Ireland, the Committee on the Administration of Justice (CAJ). In that capacity I spent many years advocating significant change to our criminal justice system and particularly to our prosecutor's office – the Department of the Director of Public Prosecutions. Although that office claimed to be both independent and accountable we did not believe it to be either. As part of the peace process in Northern Ireland there have been significant changes to the prosecutor's office which is now known as the Public Prosecution Service. I am now working with an organization called the Criminal Justice Inspectorate which inspects all of the criminal justice agencies in Northern Ireland to try and ensure they are doing what they are supposed to do. I have particular responsibility for the Public Prosecution Service. I have no doubt that they have made significant progress on

changing into a more effective and efficient service. Whether they have yet reached the standard of being truly independent and accountable is unclear.

I think it is important to share some of these matters with you because I think it is vital that when we are discussing these issues that we realize that none of our systems are perfect and in fact we all face similar problems. That is why international seminars and conferences are important vehicles which allow us to discuss and resolve some of these problems. My talk today will inevitably betray my background as a common law lawyer but nevertheless I hope that the points I will make will have some relevance for you and will help you in the important work you are engaged on.

I intend to cover a number of matters with you today which I hope will go some way to addressing the issue I have been asked to speak to you about. I intend to talk about the training of prosecutors – why it is important and why it needs to be more than simply a legalistic or mechanical exercise. I will also spend time discussing what should be included in codes or standards for prosecutors and therefore what issues need to be covered in training in order to produce effective, independent and accountable prosecutors.

## TRAINING

I mentioned earlier the importance of the international context in addressing the issues of concern to us at this conference. The international context is also important in my opinion in helping us to lay down broad principles for standards of behaviour for prosecutors in all our countries no matter what their domestic legal circumstances. This is particularly true for newly recruited prosecutors. I have tried in these comments to draw where appropriate from international standards which have been produced by all of us and from which we can all draw.

The two most vital aspects of being a prosecutor are in my opinion independence and accountability. These need to be developed during the training process. New prosecutors need to be given the self-confidence to assert their independence in the face of other

pressures but also need to be aware that they will be held to account for decisions made. It is easy to tell new prosecutors to be independent and that they will be held accountable. It is easy to proclaim to the outside world that you are independent and that you are accountable. It is quite another to actually deliver independence and accountability. Prosecutors need to see these two key principles in operation all around them. Independence and accountability must imbue all that their prosecutorial colleagues do. The old adage “I hear I forget, I see I remember, I do and I understand” is particularly relevant here. Paying lip service to independence and accountability is one thing. Delivering them is another. Delivery is central to training. The delivery of these two key principles matter both internally in a prosecutor’s office but also externally in terms of public confidence in the independence and accountability of prosecutors.

Training can serve two broad purposes for new prosecutors. On the one hand, and perhaps most commonly, it can and often does reinforce existing practice and culture in a prosecutorial office. This type of training tends to focus on the legalistic tasks of prosecutors and tends to be delivered in house by those with years and sometimes decades of experience. It is important that this experience be passed on but it should not be the sole aspect of training. Training can, on the other hand, accelerate change within prosecutors’ offices by challenging some of the existing attitudes. In my view, even in organizations with healthy and open attitudes, training should tend towards this approach.

In this context it is important that training and the preparation of in-house standards and codes of practice are not solely delivered by in house trainers – in other words those who already work as prosecutors. Their input is of course vital in order to ensure that recruits are receiving adequate technical skills which will equip them to become effective and legally competent prosecutors. However, it is also important that training should include exposure to the world outside. Insofar as is practicable, training must include a reflection of the concerns and skills of those involved in civil society and particularly those who represent the interests of other users of the criminal justice system. This obviously should include input on the interests and concerns of victims and witnesses. It is also important that prosecutors receive information about the important work done by defence

lawyers. Ensuring that defence lawyers participate to some extent in the training of prosecutors will provide prosecutors with an appreciation of the appropriate role of defence lawyers and lessen the inevitable tensions in the relationship between prosecutors and defence lawyers.

In addition to the input of civil society, it is also important that the interests of the other players in the criminal justice system are adequately reflected in the training given to prosecutors. In our system and I am sure in yours the other key players will be the police, the courts and judges, the prisons, and probation. Most vitally, in all probability, will be the police. Certainly in a common law context, this relationship between the police and the prosecution will be the key to successful investigation and prosecution of crime. While there should perhaps be some constructive tension in this relationship, if it breaks down it can be seriously damaging not just to the proper functioning of the criminal justice system but also to public confidence in that system. Therefore, a good understanding of the close liaison between these two agencies should be central to training prosecutors. Direct involvement by police officers in the training is a pre-requisite to developing this understanding.

It also goes without saying that training must be an ongoing matter. It is not something which can be done once at the start of a prosecutor's career and then not repeated. This applies both to the technical legal aspects of training and also to the broader matters to which I have referred. It is also the case that if training is to be a mechanism to change and challenge the culture of an organization then it must be organization wide. It cannot simply be restricted to new recruits. There are countless examples in organizations which have been subject to change processes where new recruits emerge from training with energy and optimism which is quickly dimmed when they are confronted by the cynicism of long-serving colleagues who persuade them to forget all that they have learnt in training. My following comments therefore focus both on manuals for new recruits and standards which will apply service wide.

## STANDARDS/CODES OF BEHAVIOUR/MANUALS

While ensuring that the delivery of training is provided by a wider group than simply in house lawyers is important, it is also vital that civil society is engaged in terms of drawing up codes of practice and codes of ethics for prosecutors. In Northern Ireland we recently have seen our Public Prosecution Service consult the public about the content of its Code for Prosecutors. While there may have been some debate about the extent and nature of the public consultation involved, nevertheless it was an important symbolic and substantive achievement and is one for which the Public Prosecution Service deserves credit. Involving the public in the development of appropriate standards for the behaviour of public prosecutors has the potential to significantly increase the profile and the standing of prosecutors and also to increase public confidence in the criminal justice system.

While the content and nature of codes for prosecutors and training manuals may of course vary considerably from jurisdiction to jurisdiction, there are several key areas which should be included in any such document. It is important in trying to identify these areas that international best practice be drawn upon and of course prosecutors are fortunate in this regard in having the International Association of Prosecutors as an expert resource. Fundamental principles can be drawn from the IAP standards and from the UN Guidelines for Prosecutors to assist in informing the local standards for training new and existing prosecutors.

It is likely that there are a number of key areas which need to be reflected in any effective training documents and behavioral codes.

- It will be necessary to give some basic background information on the office and the purpose for which it exists, its legal position in relation to the rest of the criminal justice system and its position in relation to governmental and political architecture.

- Secondly, and most importantly, it is of the utmost importance that prosecutors are reminded of their duties in terms of human rights standards, both domestic and international. Prosecuting lawyers are often in a unique position to protect and vindicate the rights of a whole range of people who come into contact with the criminal justice system. Prosecutors will often have first hand knowledge of how suspects have been treated in police custody. They will often have direct interaction with the victims of crime and witnesses to any alleged crimes. In human rights terms they are in the front line. If prosecutors fail in their duty to protect human rights, then those rights will quickly be placed at risk. A full explanation of the relevant rights and the necessary actions to be taken if they are breached needs to be an integral part of any proper code or manual for prosecutors.
- The reason of course that prosecutors are in such a vital position in terms of the protection and vindication of the rights of the accused in particular, is because of their close relationship with the investigators of crime, primarily the police. Obviously the nature of this relationship varies radically between different countries and different legal systems. Nevertheless, this relationship is one which must feature heavily in training for prosecutors and in prosecutorial codes. Prosecutors and particularly inexperienced prosecutors need to be given appropriate guidance on their role in this relationship to enable them properly to discharge their functions. As indicated above, the police/prosecutor relationship is one which is vital to the proper functioning of the criminal justice system. However, it needs to be balanced, and while of course both police and prosecutors should be working in the interests of justice, prosecutors must be prepared to call police officers to account for any unlawful behavior. There are various options which are open to prosecutors if they feel that there has been such behaviour on the part of the police. Depending on the nature of the offending actions, they could refuse to proceed with a prosecution or they could in fact take action against the officers involved. What must not happen and this should be made explicit in

standards for prosecutors, is that the case should proceed and the evidence of criminal behaviour on the part of the police concealed.

- The key aspect of the prosecutor's role is of course the decision which he/she must take in relation to the possibility of prosecuting a case on the basis of the investigation. Obviously therefore this is a matter which must be addressed in whatever manuals or codes are developed. The appropriate tests for prosecution must be clearly explained and also situations outlined where cases should result not in prosecution but in some form of diversion away from the criminal justice system. This is particularly important in cases involving young people. Another aspect of this issue is the procedure for disclosing to the defence the case against the accused and also any material which points to the innocence not the guilt of the accused.
- I have already mentioned the importance of ensuring that the views of victims and witnesses are adequately represented in the training of prosecutors. It is equally important that the concerns of these groups are properly reflected in the training manuals and codes of behaviour. Certainly in the past in common law countries the views of victims in particular were often largely ignored and the legal contest was seen as being between the state and the defendant. That view has changed considerably over recent years and victims are, at least theoretically, in a much more empowered position in relation to prosecutors. Decisions therefore which will impact on victims regarding reduction or withdrawal of charges should be communicated and explained fully to victims. This is a difficult and sensitive area but it is one which goes to the heart of the issue of public confidence in the prosecution system and, by extension, the whole criminal justice system.
- Prosecutorial standards also clearly need to cover matters such as conduct in court and relationships with other criminal justice agencies or partners. Private behaviour is also something which must be addressed as this can also affect the public perception of prosecutors. The development of a code of ethics which can

encompass private and public conduct is something which many prosecutorial offices are now beginning to do.

## ANNUAL REPORTS

In addition to the collation of training standards and codes of behaviour for prosecutors, it is also important that prosecutors' offices be encouraged to publish annual reports on their activities. This again is a new departure for us in Northern Ireland where until not very long ago even the name of the Director of Public Prosecutions would not have been known publicly. However, we have recently seen the publication of the first annual report from the new office of the Public Prosecution Service. It contains details of the number of cases taken, the speed with which decisions were taken, the staffing levels within the office and plans for the full establishment of the new office. These sorts of reports, while to some extent dry and appealing perhaps only to a limited audience, are on the other hand a further mechanism to deliver some degree of accountability to the public. They also importantly send messages to an internal audience within the prosecutors' office that a vital customer of the work of the prosecutor is of course the public. They are also ways of measuring the performance of prosecutorial offices to determine value for money and the quality of the service which is being delivered. It is sometimes difficult for lawyers to think in these terms but these strands of transparency, information, quality assurance, timeliness, all contribute to establishing proper public accountability.

Finally, I want to touch on a topic which has become a hobby horse for me. The most important aspect of any process of change is in terms of delivery. We have had a massive transition process in the policing and criminal justice systems in Northern Ireland as a result of the peace process. Many of you are also embarking on processes of change. What can often happen in these situations is that the process of change becomes a managerial challenge. It becomes a technical exercise. Glossy brochures are produced, public events are held, well-meaning speeches are delivered but when the air clears the most important question is whether there has really been a change to the service which is

to be delivered. If there was something wrong with the system, has the change process fixed it? The test of all of our efforts is whether the public has more confidence in us than before, whether the service they receive is better than before, whether better decisions are taken now. There is little more dispiriting than the promise of change which is not delivered. It is of course vital that we train our prosecutors properly, that we develop for them precise and clear standards and codes of ethics. But the test of all of this is whether at the end of that process they become genuinely independent and genuinely accountable public prosecutors.