

Seventh Regional Workshop for Judges, Prosecutors, and Police Officers in South Asia on Effectively Countering Terrorism

28-30 October 2013
Islamabad, Pakistan

Key Observations

The Seventh Regional Workshop for Judges, Prosecutors, and Police Officers in South Asia on Effectively Countering Terrorism was jointly hosted on 28-30 October 2013 in Islamabad by the Government of the Islamic Republic of Pakistan and the United Nations Counter-Terrorism Committee Executive Directorate (CTED), and organized by the Center on Global Counterterrorism Cooperation, with the financial support of the Governments of Australia, Denmark, and the United States of America.

The workshop was a follow-up to six previous workshops (held in Dhaka, Bangladesh, in November 2009; Colombo, Sri Lanka, in June 2010; Semarang, Indonesia, in November 2010; Thimphu, Bhutan, in May 2011; New Delhi, India, in March 2012, and Kathmandu, Nepal in March 2013 respectively), at which participants indicated the need to examine in further detail areas of mutual interest relating to counterterrorism.

The overall purpose of the seventh workshop was to enhance the counterterrorism capacities of law enforcement personnel in the region. The workshop provided an opportunity for participants to discuss the role of judges, prosecutors, and police officers in combating terrorism and the challenges they face in leading effective investigations, trials, and prosecutions, as well as a forum for discussing effective measures aimed at enhancing domestic and international cooperation in the fight against terrorism.

Participants included experts from all member states of the South Asian Association for Regional Cooperation (SAARC), resource persons from UN member states and relevant international agencies, including the Office of the United Nations High Commissioner for Human Rights, and observers from the United Nations Office on Drugs and Crime and the SAARC Secretariat.

Working group session for judges

- The judges' working group considered issues related to domestic and international cooperation. They shared details of their particular legal systems and engaged in a comparative discussion with a focus on investigations; pre-trial detention; initial appearances; charging documents; and admissible evidence. Criminal trials versus terrorism trials were also discussed, including any additional powers appointed to police, prosecutors, and judges in the handling of terrorism cases.
- Judges affirmed the need for a regional product for the improved handling and management of terrorism cases. A draft outline of a "regional toolkit for supporting the development of national bench books for the effective adjudication of terrorism cases" was endorsed (see below). Participants stressed that such a toolkit should reflect national values, cultures, and codes of conduct of the region while also incorporating international standards, laws, and model legislation.
- Judges identified areas of primary interest and import to them, as detailed in the draft outline below. International judicial cooperation in terrorism matters was recognized as an important element, but judges emphasized the need to further develop sections on the

criminalization of terrorism and criminal justice proceedings in order to facilitate judicial cooperation.

- A total of four varying sample sections of the regional toolkit were shared. Overall, judges found the materials valuable and suggested that additional case studies and best practices, both from within and outside the region should be featured. Sample sections included judicial independence and ethics, judicial security, witness protection, and money laundering.
- Judicial security was an area of particular interest. Practical tips for ensuring the security of the judges' person and family as well as the security of the courthouse were shared by facilitators and participants. The sample section of the regional toolkit was lauded for detailing concrete tips while also providing information for judges, family members, and courthouse security. It was agreed that each state's judiciary needed to improve communication with the intelligence community and lobby for greater investment in security to allow judges to deliver judgments without fear.
- Model legislation was also of great interest as many laws are complex and serve an important function in the prevention of terrorism. Judges emphasized the need for stronger investigations to bring convictions under these laws.
- The counterterrorism-related legislation of each jurisdiction was also discussed. A thoughtful discussion on the powers and limitations of the judiciary to incorporate international law into national law took place. Some countries identified areas where laws are still being drafted while others discussed the process of amending and updating those laws to incorporate additional safeguards.
- Finally, judges indicated that the most effective way to disseminate the toolkit would be through the judicial academies in the region with the endorsement of the chief justices of the region's supreme courts.

Draft outline of regional toolkit for supporting the development of national bench books for the effective adjudication of terrorism cases

<p>1. CRIMES OF TERRORISM</p> <ul style="list-style-type: none"> i. Strengthening the legal regime against terrorism ii. Offences related to terrorism acts iii. Incorporating international law into domestic law <p>2. TERRORISM RELATED CRIMINAL JUSTICE PROCEEDINGS</p> <ul style="list-style-type: none"> i. Judicial independence and ethics ii. Investigation iii. Arrest and detention iv. Defendants v. Evidence vi. Witnesses vii. Victims viii. Attorneys ix. Courtroom management x. Sentencing and incarceration xi. Appeal xii. International human rights obligations 	<p>3. INTERNATIONAL JUDICIAL COOPERATION IN TERRORISM MATTERS</p> <ul style="list-style-type: none"> i. Mutual legal assistance ii. Extradition iii. Transfer of criminal proceedings iv. Execution of foreign sentences v. Recognition of foreign criminal judgments vi. Confiscation of the proceeds from crime vii. Collection and exchange of information between intelligence and law enforcement services viii. Regional and subregional legal forums <p>4. OTHER COMPONENTS OF AN EFFECTIVE CRIMINAL JUSTICE SYSTEM</p> <ul style="list-style-type: none"> i. News, media and the public ii. Security of judges and the courthouse
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Working group session for prosecutors

- Participants in the prosecutors' sessions considered their role in conducting investigations and building cases, including the extent to which prosecutors are or are not involved in developing charges, identify gaps in evidence, and coordinating between investigating agencies. They identified a lack of coordination in that regard especially at the early stages before charges are filed.
- In discussing how to improve cooperation between investigating agencies and prosecutors, it was noted that although most jurisdictions in the region do not explicitly forbid such cooperation, most do not have a legal basis for involving prosecutors in the early stages of an investigation. Participants stressed the need to conclude memorandums of understanding and other agreements between prosecutors and investigating agencies.
- The prosecutors also discussed coordination (or lack thereof) between themselves and the judiciary. The prosecutors' group cited in particular the need for more coordination with the judiciary on case management issues to ensure the timely disposal of cases.
- Delay was a common theme to the discussions. Participants discussed delay on three levels: investigative delays, prosecutorial delays resulting from heavy caseloads, and delays arising from court processes. Participants noted that delays unnecessarily drag out proceedings and ultimately undermine effective prosecutions.
- Participants agreed that legislatively imposed time limits have a role to play in ensuring the timely disposition of cases, but stressed that judicial officers have a great deal of leeway to implement more effective case management procedures, e.g. the use of continuous trials.
- Participants also considered other measures that could contribute to addressing delays, including the use of electronic case management systems; the use of alternative means of submitting evidence; and plea-bargaining and other ways to incentivize the early submission of guilty pleas. Participants also suggested that making case files public – or at a minimum information regarding the status of cases – could help to generate media pressure to keep cases moving forward.
- This led to a discussion of the impact that media coverage has on the prosecution of terrorism, corruption, and other high profile cases. In particular, the group considered the principles of open justice, the right of the accused to confront the evidence against them, the role of the media in building public confidence in the judicial process, and the need to balance between these imperatives.
- The issue of “delay” was also a major theme of the discussion of international and regional cooperation, which focused primarily on formal Mutual Legal Assistance (MLA). Participants acknowledged various frameworks for formal legal cooperation, including the SAARC conventions on MLA and extradition and the Commonwealth's Harare Scheme. Participants also discussed a number of frameworks for legal cooperation on specific issues such as human trafficking, which they described as often quite effective.
- Participants cited a number of challenges to formal MLA, including the inherent bureaucracy of the process, the number of agencies involved, the large number of requests, lack of clarity of requests, the complexity of requests, the resources required to respond, and lack of reciprocity between states.

- In that context, participants stressed the importance of building networks of contacts among prosecutors formally and informally, including through the International Association of Prosecutors and processes such as this.

Working group session for police officers

- The discussions in the police working group session similarly focused on challenges to effective counterterrorism cooperation at the domestic and international level. Having discussed effective mechanisms to promote cooperation among law enforcement agencies involved in counterterrorism investigations, both at the national and international level, police officers identified several challenges to effective counterterrorism cooperation at the international level.
- Among the main challenges identified by the participants were issues caused by the following:
 - delays in supporting requests for MLA, mainly because they tend to reach the relevant law enforcement agency too late;
 - difficulties associated with requesting and using telecommunications data from second and third countries; and
 - lack of implementation of the regional legal framework for police cooperation and MLA in the context of counterterrorism investigations.
- In order to address these issues, police officers discussed a number of concrete initiatives that, in their opinion, should be promoted by SAARC member countries. With a view to expediting MLA requests, attending police officers recommended the creation of a “Police Contact Officers Network” in the SAARC region, where each country would appoint a police officer to be part of a network that meets at least once a year to discuss relevant issues and cases. The network, they suggested, could also be the recipient of specialized trainings on a regular basis.
- To help address difficulties associated with requesting and using telecommunications data, police officers encouraged the United Nations to lobby for specific laws relating to the preservation and disclosure of communication data required for counterterrorism investigations. Furthermore, participants stressed the importance of enforcing existing national legislation and oversight relating to the purchase of SIM cards.
- To improve the implementation of regional legal frameworks for cooperation, the police officers suggested the creation of a handbook on operational procedures related to counterterrorism and for the SAARC regional legal instruments to promote a common understanding and effective application of such procedures.
- With the intention of “jump-starting” a regional mechanism for information sharing, police officers in attendance also recommended the creation of a regional database following the model of ASEANAPOL and using INTERPOL’s I-24/7 Secure Communication System as a platform.
- Finally, the police officers urged further efforts be made to conduct trainings on common operational procedures and exchange of best practices at the national and regional levels and that such training should also incorporate prosecutors and judges.