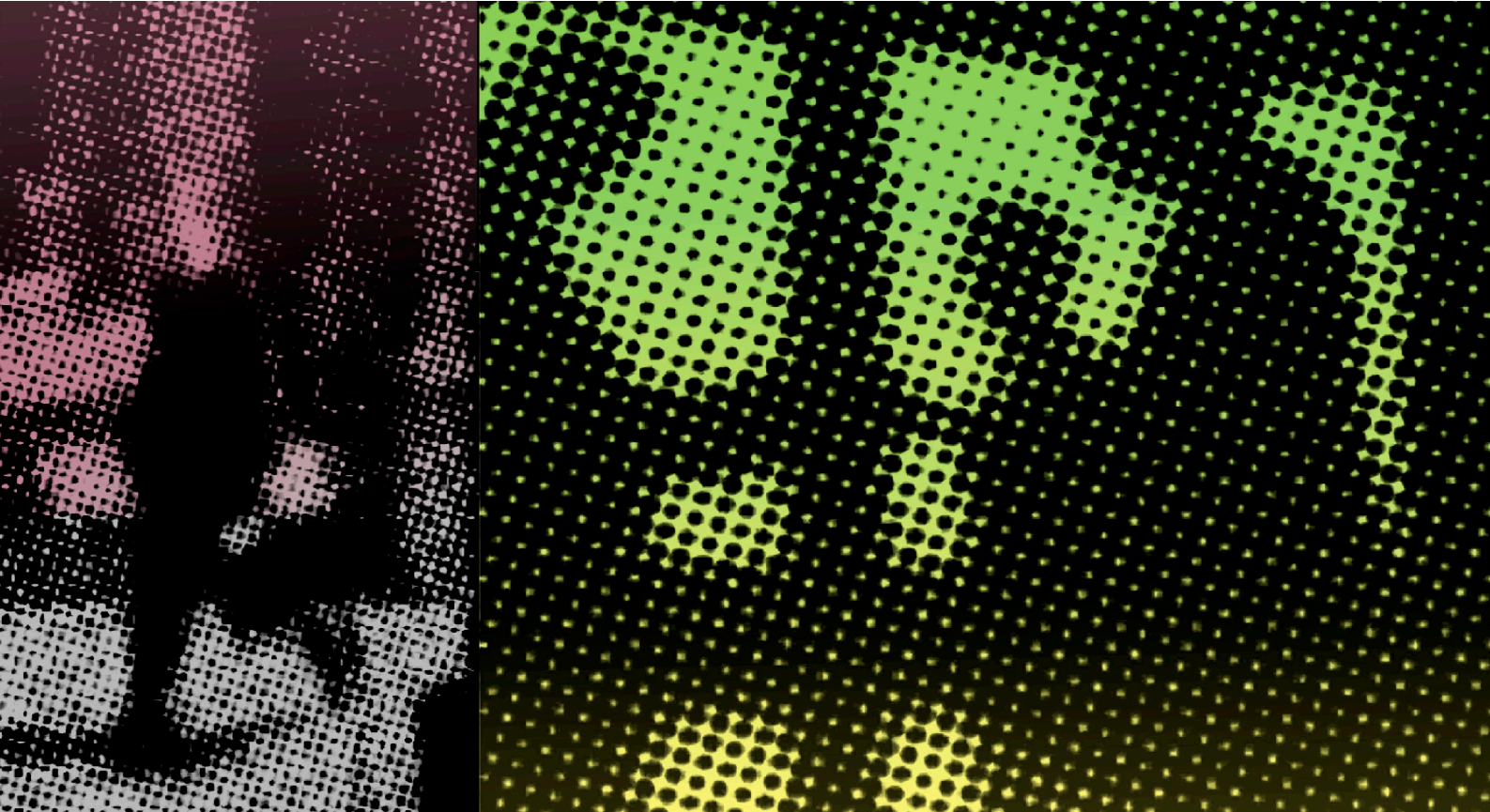




Preventing Corruption in the Judiciary System

A Practical Guide



Deutsche Gesellschaft für
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**Federal Ministry
for Economic Cooperation
and Development**

Division 42

Sector Project: Development and Testing of Strategies and Instruments for the Prevention of Corruption

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Sector Project: Development and Testing of Strategies
and Instruments for the Prevention of Corruption

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Foreword

Corruption constrains development and reforms: Development potentials go unutilised, public funds are squandered, and processes of democratic consolidation are jeopardised. Corruption calls into question the possible success of development initiatives in all areas where the distribution and wielding of political and economic power come into play. Corruption prevention is therefore a cross-cutting task.

Corruption is everywhere, which is why our advisors on the ground are specially trained to make them aware of the problem. Yet there is a need for analytical tools and recommendations for action to prevent corruption in the specific areas of work.

Germany's Federal Ministry for Economic Cooperation and Development (BMZ) has therefore contracted the GTZ "Development and Testing of Strategies and Instruments to Prevent Corruption" project to prepare the present studies and practical guidelines.

They are designed primarily for seconded experts responsible for preparing and implementing projects and programmes in the areas covered, or who address the theme of corruption prevention at the level of political dialogue. We would be delighted to receive feedback on your experiences when using the guides, and helpful suggestions as to how we might improve them.

The **Chapeau Paper** "Mainstreaming Anti-Corruption" defines the analytical framework for all papers.

The **Practical Guides** cover the following themes:

- ◆ Public Finance
- ◆ Public Administration at the National and Local Levels
- ◆ the Legal and Judicial System
- ◆ Education
- ◆ Resource Allocation (Land, Forests, Water)
- ◆ Privatisation
- ◆ Tools for the Analysis of Anti-corruption Measures.

Two more extensive **studies** cover:

- ◆ Combating Poverty and Corruption – Institutionalising Corruption Control in the PRS
- ◆ Corruption and Gender.

Our thanks to the authors who through their professional expertise and personal commitment made these publications possible, as well as to all the commentators and professional advisors whose valuable contributions helped make them a success. Dr. Mechthild R nger initiated the project and set it on course, Birgit Pech brought it to a successful conclusion.

Bernd Hoffmann	Dr. Albrecht Stockmayer
Director of Division	Head of Section
Governance and	Governance and Gender
Democracy	

Please also visit our homepage:
www.gtz.de/

Summary

The judiciary performs a number of tasks to preserve the democratic order and guarantee the agreed legal foundations of the state. In the field of corrupt practices in particular, the judiciary is the (final) instance which can ensure that perpetrators are brought to task under criminal law and that claims for damages can be made under civil law. This is only possible if alleged corruption leads to charges being pressed and if the judiciary itself is not part of the corrupt system, thus preventing any sanctions being imposed under criminal or civil law. The failure to prosecute where there is a reasonable suspicion that an offence has been committed or where offences are known to have been committed is a typical feature of corruption. At the same time, this impunity for perpetrators, i.e. the lack of risks of sanctions being imposed for criminal corrupt conduct, further strengthens and consolidates corruption as a prevailing condition.

The forms of corruption may be an indication of different types of shortcomings in governance:

- ◆ shortcomings in the democratic order: imbalances in the separation of powers and the way power is distributed;
- ◆ shortcomings in the system of democratic values: lack of openness, transparency, accountability;
- ◆ shortcomings in the provision of services at the administrative interface where citizens come into contact with the judiciary;
- ◆ shortcomings in the level of professionalism and integrity of members of the judiciary and perhaps also of the state prosecutor's office.

Corruption can typically find its way into the **court system** through the interpretation of acts of parliament, ordinances, administrative regulations and legal practice, or through political and economic influence being brought to bear on the decisions made by judges; this applies to general state courts, those specialising in crimes pertaining to corruption and even traditional courts. Possible weaknesses or indications that corruption may have found its way into the court system include the unforeseeability and unpredictability of court decisions; incomprehensible judgements and administrative decisions, with unfathomable reasoning, or judgements and decisions which are clearly discriminatory in nature; complex, tortuous procedures and the use of a language which is all but incomprehensible to laypersons; the lack of any system of checks and balances or sanctions; and the lack of any transparent system for assigning cases to judges, with no objective criteria being used. Inappropriate discretionary powers in legal proceedings, e.g. when individuals decide whether or not to open proceedings or the form these should take, or the "further development" and interpretation of traditional laws on a one-sided basis without the acceptance of the community as a whole also allow individuals to exert an inadmissible influence.

The following principles should be observed:¹

- ◆ independence of the courts;
- ◆ transparency in appointments and promotions;
- ◆ quality assurance for judgements and decisions, e.g. by requiring the reasoning behind decisions to be made public, as well as the documentation and publication of decisions;
- ◆ disclosure of conflicts of interest and enforcement of rules on impartiality, e.g. in the form of clear regulations on impartiality with the obligation to disclose all pertinent information and strict enforcement of these regulations;
- ◆ increased guarantee of accountability towards the general public, e.g. opening court proceedings to journalists and independent observers;
- ◆ transparency and control², e.g. by establishing a contact unit for anonymous or open reporting of incidences of corruption and a hotline for reporting corruption, or by regulating the acceptance of gifts and benefits (generally within the scope of a code of conduct, etc.);
- ◆ documentation of traditional judgements and procedures.

The same principles should apply in the field of decision-making³ to the interpretation of ordinances and the passing of **administrative orders**.

In the **judicial administration**, corruption occurs in particular within the framework of office management at organisational or administrative level in the form of *petty corruption*. Appropriate counter-measures in the judicial administration primarily involve improving court infrastructure, for instance by ensuring efficient technology-assisted office management with monitoring duties. Improving procedural management can go a long way to eliminating weaknesses. Possible measures include avoiding the planability of human resources and specialists, introducing rotation of staff, and of the allocation of fields of law and cases, as well as introducing binding deadlines for individual steps in the procedures or for court proceedings as a whole.

On the basis of its investigations and charges, the **public prosecutor's office** decides whether to go ahead with court proceedings or drop charges, thus affecting economic and individual goods and property. These might be personal liberty, fines, the confiscation of profits obtained through criminal activities, early release from prison, refraining from enforcement of arrest, or exclusion from the holding of political offices.

In principle, comparable measures apply to the public prosecutor's office as to judges. As regards its duty to comply with instructions, the public prosecutor's office also runs a

¹ The use of Latin legal principles, case law or abstractions of legal theory, for instance.

² The Bangalore Principles for Judicial Conduct. www.UNODC.org are exemplary for integrity in the judiciary

³ For the administrative side cf. GTZ (2004): Praxisleitfaden: Korruptionsprävention in der öffentlichen Verwaltung auf nationaler und kommunaler Ebene, Eschborn.

serious risk of political influence being brought to bear on decisions to press or drop charges. There is thus a special need for anti-corruption measures in this field for the public prosecutor's office:

- ◆ create options for citizens to lodge complaints, e.g. contact units for poorer sections of the population too, enabling them to defend themselves against unjustified investigations and arrest;
- ◆ strengthen the obligation of the public prosecutor's office to give reasons for suspending proceedings and make it compulsory to have such decisions approved.

The **legal profession** is often not seen as part of the administration of justice (e.g. in Africa), and is thus not obliged to help ensure that the judicial system functions or establish the truth. Public opinion sometimes sees lawyers in a negative light as mediators of corruption and violent ways of resolving legal and resource-based conflicts, thus actually worsening corruption. It would thus make sense to make the legal profession part of the administration of justice, e.g.

- ◆ obliging them to act ethically (code of conduct) to help establish the truth;
- ◆ creating options for clients of the legal profession to lodge complaints or report inappropriate activities to an independent authority or a bar association;
- ◆ appropriate working conditions, e.g. fixed, predictable and appropriate fees for lawyers, also help improve the quality of the legal profession. Fixed fees allow for improved monitoring of the profession by the general public.

Within Development Cooperation, the field of law enforcement is particularly concerned with restraint procedures and the penal system (i.e. the activities of the executive in criminal justice in terms of monitoring the penal system). German Development Cooperation works in this field in Latin America in particular, while in Central and Eastern Europe and the Caucasus states support is geared more to the rule of law and ensuring the efficiency of the bodies and systems of law enforcement in the field of civil law.

To avoid corruption, transparency and control of the system of enforcement and execution of sentences must be ensured, and it must be possible to impose sanctions where law enforcement bodies overstep the line. An effective complaints system and administrative and organisational management need not only clear procedural structures and decision-making authority, but also appropriate technical equipment to ensure effective enforcement of the law.

In the **penal system**, bodies involved in the prison sector can act repressively and facilitate the unauthorised procurement of goods (drugs, alcohol, luxury items) and services (allowing women to visit prisoners) by opening up supply channels. They can also help inmates escape or take unauthorised leave. Sometimes, their comments about a prisoner's conduct can influence decisions on early release. The following measures can help reduce corruption:

- ◆ limiting discretionary powers relating to prison conditions and release;

- ◆ disclosure of conflicts of interest and enforcement of impartiality regulations;
- ◆ transparency in the prison infrastructure and case management, access for the public and NGOs, or human rights watch groups;
- ◆ creation of effective complaints and supervision systems; establishment of a contact unit for anonymous or open reports of corruption and of a hotline for reports of corruption.

Possible forms of corruption in **distrain procedures** include announcing distraint measures to insiders only. Distrainable objects can be transferred, enforceable objects are "overlooked" by the pertinent bodies, and public auctions are not properly advertised. Special measures here can include:

- ◆ guaranteeing verifiability of discretionary powers in distraint procedures and forced sale;
- ◆ guaranteeing regular internal and external controls (including system and integrity controls);
- ◆ investigation of all obvious discrepancies between the value of goods to be disposed of and the amounts actually realised;
- ◆ transparency of office administration of the debtor's court; terms of business and costs of procedures ("list of services") to be displayed in all offices.

At the level of **judicial administration**, unofficial costs which make access to the courts prohibitively expensive for poorer population groups (petty corruption) can seriously restrict access to the law. The following measures can help counter this:

- ◆ within the scope of a court users' charter, lay down appropriate deadlines for the submission and processing of statements of claim and other documents; set up an effective complaints unit which can be contacted if these deadlines are not respected;
- ◆ guarantee the genuine local accessibility of the courts and the option of filing an action, for instance by imposing obligatory opening hours and through decentralisation.

The **legal profession** is often a mediator in court proceedings. The costs of corruption among judges must be added to the costs of inappropriate conduct on the part of lawyers. Access to the law can thus become prohibitively expensive for the individuals who have to pay the costs. Suitable counter-measures may include:

- ◆ laying down predictable and appropriate fees for lawyers;
- ◆ introducing a code of conduct for lawyers and an effective complaints unit at the bar association.

I. Introduction

The Context

This practical guide primarily addresses project managers in development cooperation projects aiming to bring about reforms in the field of law and justice. It aims to provide ideas and practical support to help project managers integrate corruption prevention components into projects of this kind in an appropriate way.

The importance of the judiciary for sustainable development and good governance – including the lack of corruption – is laid out in detail in the 2002 BMZ position paper "Recht und Justiz in der deutschen Entwicklungszusammenarbeit" (Law and justice in German Development Cooperation). This practical guide complements the position paper, also looking at the aspect of systemic inefficiency as a result of corruption and possible approaches that consultancy can take to strengthen integrity in the judicial sector.

The constitution, laws and standards that do not have the status of a full law (legal ordinances, statutes) form the framework for the democratic order, on the basis of which citizens can exercise their political, civil, economic and social rights. They are the foundations for the dispensation of justice and conciliation proceedings designed to keep the social peace. Law and justice play a pivotal role in the sustainability of development and the enforcement of the legal order, human rights and civil rights as well as ensuring security of investments within the framework of a market economy.

The judiciary performs various tasks to preserve the democratic order by deciding what action to take where the agreed rules that make up the legal foundations of the state are violated. In the field of public law, in particular administrative law, the actions of the executive are subject to review. In the civil law sector, the legal positions of citizens to one another are clarified and become enforceable, thus establishing legal peace among citizens. In the field of criminal law, sanctions are imposed on failure to comply with the accepted standards of society, within the scope of the state's monopoly on power.

The link between corruption and poverty is considered proven. In its capacity as part of the system of checks and balances, the judiciary must make a major contribution towards fighting and preventing corruption, over and above the topic of corruption within the judiciary that we are focusing on here. It is responsible in particular for:

- ◆ controlling the legality of the activities of the administration;
- ◆ controlling standards, e.g. constitutionality of laws, legal ordinances, statutes;
- ◆ guaranteeing protection of witnesses.

The failure to prosecute where there is a reasonable suspicion that an offence has been committed or where corruption-related offences are known to have been perpetrated is a typical manifestation of corruption. At the same time this impunity for perpetrators, i.e. the

lack of risks of sanctions being imposed for criminal corrupt conduct further strengthens and consolidates corruption as a prevailing condition. Legal norms can only perform their function effectively if the law is actually enforced. In the field of corrupt practices in particular, the judiciary is the (final) instance which can ensure that perpetrators are brought to task under criminal law and that claims for damages can be made under civil law. This is only possible if alleged corruption leads to charges being pressed and if the judiciary itself is not part of the corrupt system, thus preventing any sanctions being imposed under criminal or civil law. For the effective monitoring of compliance with norms and for individuals to demand their rights, there must also be adequate access to legal institutions and legal advisory services so as to avoid disadvantaging individuals or particular groups as a result of corrupt influence being wielded.

By interpreting norms and enforcing them, the judiciary allocates economic and social power and values, thus creating economic incentives for corruption and the manipulation of the system. This manipulation can range from active bribery involving employees of the judiciary or witnesses, to influence peddling or the decision not to pursue investigations or take legal action in return for expected rewards or for avoiding disadvantages: the rich and powerful in a state then stand above the law.

Corruption in the judiciary undermines the rule of law and legal certainty. The dysfunction of the judiciary can result in the disintegration of the state, or at least the loss of the supervisory function of the third estate within the system of the separation of powers. If the population does not accept the judiciary as the custodian of the rule of law, the result will be uncontrollable conduct, and the emergence of the law of the jungle where the stronger party wins, whether this takes the form of crime going unpunished, organised crime, the use of violence to enforce legal positions or the misuse of state services and resources.

However, many factors play a part, preventing charges being pressed in cases of corruption. This makes counter-measures vitally important to foster systemic reform leading to the emergence of transparent and accountable democratic institutions, including effective supervisory institutions.

Structure of the Practical Guide

The practical guide, like the BMZ position paper, is geared to the results levels⁴ of the application of the law, law enforcement and access to the law, but it looks at access to the law as a cross-cutting topic. For these levels of results, typical manifestations of corruption and possible weaknesses are first presented. This is done in a fairly brief form, while the text then goes on to look in more detail at possible interventions to prevent corruption in the judiciary and in law enforcement, giving examples of good practices. The individual actors in the environment, the weaknesses and possible interventions are also presented.

Further training and the promotion of effective further training facilities with the aim of preventing corruption and capacity development in general are integrated as cross-cutting topics, and are not dealt with separately. You will find more information in the annex.

Principal Forms of Corruption in the Judiciary

If the judiciary does not or cannot discharge its duties properly, a variety of causes can be responsible. It need not automatically mean that the judiciary is corrupt, although these general conditions can favour the emergence of corruption (e.g. inefficient, non-transparent procedures, wide and unmonitored discretionary powers, unclear legislation and issuing of ordinances, inadequate resources, salaries that employees cannot live on, etc.). The disappearance of case files, for instance, might be caused by sloppy registration, or might equally be a conscious attempt to suppress information. We must always examine the facts of the matter carefully to determine whether inefficiency or corrupt conduct is behind phenomena of this sort, since the entry points for overcoming dysfunctions like these can be seen at various levels, and a variety of tools can be used.

The principal forms of corruption can indicate a variety of categories of shortcomings in governance:

Shortcomings in the democratic order: imbalances in the separation of powers and distribution of power:

- ◆ independence of the judiciary jeopardised by options for exerting political influence, in particular as regards the appointment of judges;
- ◆ lack of orientation in procedural law in the various legal fields; in some cases, lack of clear legal procedures to be followed, in particular as regards cases against political decision-makers;
- ◆ inadequate resources for the judiciary: unattractive jobs within the judiciary, e.g. no technical aids or undisturbed working area, access to materials;
- ◆ complex and imprecisely worded legislation (vague fields of application, statutory definition of an offence and/or the legal consequences thereof, broad scope left for

⁴ We will not be looking at the results level of law-making here.

interpretation and discretionary powers, obvious account taken of certain interest groups);⁵

- ◆ inadequate payment and pension provision for legal professions and occupations.

Shortcomings in the system of democratic values: lack of openness, transparency, accountability:

- ◆ accountability obligations ignored and no sanctions imposed;
- ◆ lack of openness during decision-making processes;
- ◆ systematic weakening of the judiciary in its capacity as a check and balance on the executive (lack of resources, influence of the executive on the appointment of top-level judges, etc.);
- ◆ few institutional forums to discuss decisions of the courts.

Shortcomings in the provision of services at the administrative interface where citizens come into contact with the judiciary:

- ◆ lack of efficiency and poor quality of the judiciary, in particular in court and administrative management at the interface to the general public; long waiting times;
- ◆ no effective control mechanisms or sanctions available within the scope of public complaints procedures (complaints about the conduct of an official, etc.);
- ◆ available sanctions are not imposed or not enforced.

Shortcomings in terms of professionalism and integrity of employees working in the administration of justice:

- ◆ selection not based on the personal and professional aptitude of candidates, low level of transparency in the process of selecting judges;
- ◆ no specific accountability required of judges, low level of obligation to give reasons for decisions, little documentation of proceedings and results of legal findings;
- ◆ obvious legal errors in the way the law is applied, (un)predictability of decision making;
- ◆ internal regulations on conduct, e.g. a code of conduct and regulations on avoiding conflicts of interests or other disciplinary instruments, not applied;
- ◆ no obligation to disclose private assets, shares in companies, personal relations;
- ◆ practically no opportunities (or only involving a high level of risk) to express an internal suspicion of corruption anonymously (*whistleblowing*).

Various strategic counter-measures are listed in the main section of this guide under each of the individual activity areas. Measures of this sort can be integrated into overarching

⁵ Cf. Messick, Richard E./ Kleinfeld, Rachel (2001): Writing an effective anticorruption law, PREM Notes No. 58, The World Bank.

governance programmes and projects as components (*mainstreaming*), if the partner government agrees to this.

In the concrete planning and realisation of anti-corruption strategies, we must not forget that these are **long-term processes**. Many reasonable and necessary measures can only be successful in the long term. This, however, is often not enough for stakeholders, in particular if there is little hope of improvements in their own income situation. Because of the level of salaries paid, which are often de facto hopelessly inadequate, employees' efforts to supplement their income in this way are often tolerated. But the willingness of all stakeholders to implement the planned reform is of paramount importance. Priority should be given to ensuring access to information and PR work in high-risk areas. Salary-related incentives and compensation of the loss of illegal revenue must be integrated into the reform strategy.

Good Practice: Integrity of the Judiciary in Nigeria

UNODC/CICP⁶ and GTZ together implemented a project in 2002 to support the Chief Justice of the Federal Republic of Nigeria; the project was designed to improve the integrity and capacity of courts in a "self-cleansing" process. The following corruption-prevention measures were introduced in three pilot states in Nigeria (Borno, Delta and Lagos States):

In Borno, a complaints unit was established under the aegis of the Chief Justice of the state, and posters were displayed in courts and the administrative offices of the judiciary explaining the rights of citizens (*Court User Charter*). Radio programmes were also broadcast to provide information on proceedings, costs, rights and obligations relating to courts.

In Lagos and Delta States, tape recorders were introduced for courts to record evidence, and law students were used to observe court proceedings and monitor any irregularities or peculiarities. Students' visits were not announced in advance, and they were not known to the courts they attended.

It is important here that the ownership displayed by the Chief Justice brought the other Chief Justices of Nigeria's federal states to embrace reforms aiming to stem corruption as a result of his position in the hierarchy. The initiative continues to be supported by other donors, in some cases also covering other states of the country.

Source: UN Global Programme Against Corruption, UNOD/Centre for International Crime Prevention (2002)

⁶ UNODC = United Nations Office on Drugs and Crime; CICP = Centre for International Crime Prevention. Cf. www.UNODC.org/corruption_judiciary.html.

II. Corruption Prevention in the Judiciary

1. Application of the Law

1.1 Typical Manifestations and Possible Weak Points

1.1.1 State and Traditional Courts, Anti-corruption Courts

"Because judicial decisions help determine the distribution of wealth and power, judges can exploit their positions for private gain."⁷

Corruption can typically find its way into the **court system** through the interpretation of acts of parliament, ordinances, administrative regulations and legal practice, or through political and economic influence being brought to bear on the decisions made by judges.

Possible weaknesses or indications that corruption may have found its way into the court system include:

- ◆ inefficiency in decision-making:
 - ◆ lengthy, protracted proceedings;
 - ◆ complex, non-transparent procedures and decision-making structures; lack of transparency in internal procedures, i.e. no proper case files or other documentation or records; no reasons given for steps taken and decisions made in court proceedings;
 - ◆ inadequate law on witnesses; lack of measures to record statements made by witnesses and protect witnesses;
 - ◆ inadequate means of securing evidence; loss of documents;
 - ◆ inadequate possibilities to investigate suspicions of corruption;
- ◆ inappropriate discretionary powers in proceedings:
 - ◆ wide, unmonitorable or unmonitored scope for discretionary decisions to be made by individuals regarding the opening of court proceedings and the form taken by these proceedings;
 - ◆ lack of clear division of employees between organisational duties and the dispensation of justice; high concentration of organisational authority on a small number of decision-makers;
 - ◆ lack of transparent allocation of cases to judges on the basis of objective criteria; predictability of which judges will be responsible for which cases, increasing the chances of establishing and using contacts;

⁷ Rose-Ackerman, Susan (1999): Corruption and Government. Causes, Consequences, and Reform, Cambridge University Press: p. 151.

- ◆ wide scope for discretionary decisions regarding the degree of openness of proceedings;
- ◆ unpredictable decisions; incomprehensible judgements and administrative decisions, with unfathomable reasoning, or judgements and decisions which are clearly discriminatory in nature with no rational arguments given;
- ◆ incomprehensible decisions regarding rights to appeal;
- ◆ use of a language which is all but incomprehensible to laypersons;⁸
- ◆ shortcomings in the personnel system and in the obligation of office bearers to be accountable;
- ◆ lack of clear, performance-based criteria for appointments, promotion, transfer, and other human resources policy measures;
- ◆ no obligation to disclose assets, shares, personal relations and resulting conflicts of interest;
- ◆ lack of adequate control and sanctions systems.

1.1.2 Judicial Administration

In the judicial administration, corruption occurs in particular within the framework of office management at organisational or administrative level in the form of petty corruption. There may also be irregularities in the procedural management of operations. A lack of transparency in internal procedures, e.g. scheduling sessions or inviting witnesses, encourages the emergence of corruption. This state of affairs is generally accompanied by poor equipment at the workplace, including a lack of management systems. The disappearance of case files or parts of files relevant for decisions might be an indication that inadmissible influence is being exerted.

1.1.3 The Public Prosecutor's Office

The public prosecutor's office decides on the basis of investigations and charges (whether to go ahead with court proceedings or abandon them) on issues that affect economic and individual goods and property. These might be personal liberty, fines, the confiscation of profits obtained through criminal activities, early release from prison, or refraining from enforcement of arrest. Shortcomings in investigations can be due to the lack of technical back-up or due to a lack of professionalism. Equally, however, investigations and the decision whether or not to press charges can be manipulated and may thus be an indication of corruption.

During investigations, for instance, less effort may be made to pursue the purported offender, evidence is suppressed, preferential treatment given, case files suppressed, etc. to help alleged criminals escape punishment. Likewise, corruption may result in unjustified investigations and the prosecution of innocent individuals. The aim might be to unseat a

⁸ For instance, the use of Latin legal principles, case law or abstractions of legal theory.

political opponent during an election campaign, to destroy somebody's business or just to intimidate an individual or take revenge.

1.2 Corruption Prevention Measures

1.2.1 State Courts

To prevent corruption, it is of paramount importance to ensure independent courts and to establish the confidence of the population in the judiciary by guaranteeing transparency and integrity of proceedings and decision-making. An independent, efficient, effective system of justice rules out any obligations to follow directions in technical or financial terms. The assignment of cases to the individual judges should be performed on a random basis. It is equally important to prevent any political influence being exerted on appointments of influential judges, in particular the Chief Justice and the constitutional court. The same principles should apply in the field of decision-making⁹ to the interpretation of ordinances and the passing of administrative orders.

Good Practice: The Ten Commandments Approach in Singapore

The Ten Commandments for Ethical Standards in the Judiciary drawn up in Singapore is a pithy and successful example of how to lay down principles for the judiciary, which should see itself not as a rigid institution but as a learning organisation. Every commandment can be taken as an entry point for consultancy services provided by Technical Cooperation.

Commandment One: Transparency in the selection of judges

Commandment Two: Adequate remuneration for judges and court staff

Commandment Three: An independent yet accountable judiciary

Commandment Four: A coherent system of case management

Commandment Five: Performance indicators for the judiciary and the judges

Commandment Six: Consistent and objective criteria in the administration of justice

Commandment Seven: Clear ethical markers and guidelines for the judges

Commandment Eight: A common vision for the judiciary and leading by example

Commandment Nine: Full transparency in the justice process at all times

Commandment Ten: Learn from lessons of forward-looking institutions.

Source: *UNODC Anti-Corruption Tool Kit*¹⁰

⁹ For the administrative side, cf. GTZ (2004): Praxisleitfaden: Korruptionsprävention in der öffentlichen Verwaltung auf nationaler und kommunaler Ebene, Eschborn.

¹⁰ Cf. United Nations Office on Drugs and Crime (2004): Anti-Corruption Toolkit, Second Edition, Vienna.

One of the first steps in strengthening confidence in the judiciary can be to ensure a professional selection process for the appointment of judges, based on the personal and professional aptitude of the candidates, free of any major influence on the part of the executive. Moreover, the independence of the courts can be strengthened by introducing self-management on the basis of a budget approved by parliament for the judiciary.

Good Practice: Transparent Administration of Criminal Law in Chile

German Technical Cooperation is supporting the Chilean Government and various institutions in the administration of criminal law, where accusatory oral and public criminal proceedings are to be introduced. This is to foster a transparent legal culture. Within this framework, we work in particular with the public prosecutor's office and the Chilean police in the fields of training, upgrading and organisational development. Since the public prosecutor's office now monitors police investigations, as the body with the overall responsibility for preliminary proceedings, corruption too can be countered.

- ◆ Ensuring the independence of the courts:
 - ◆ appointment of judges on the basis of professional and personal aptitude and criteria laid down in an (operational) law on judges and by a neutral appointments committee;
 - ◆ ensuring independence vis-à-vis the executive or other interest groups;
 - ◆ guaranteeing de facto independence in the discharge of their duties, including an appropriately equipped workplace, e.g. making it possible to call and question experts and witnesses;
 - ◆ ensuring the financial independence of judges through appropriate salaries and pensions;
 - ◆ creating a legal framework to protect witnesses and experts.
- ◆ Transparency in appointments and promotions procedures:
 - ◆ publishing vacancies with a pre-determined procedure for the selection of candidates;
 - ◆ publishing lists of candidates for important posts within the judiciary;
 - ◆ public discussion and heed taken of public comments with respect to clearly inadequate personal or professional qualifications of candidates;
 - ◆ fixed, comprehensible, professional appointment criteria which should be documented at a later date; judges should be sworn in, undertaking to comply with a code of conduct for judges;
 - ◆ judges nominated and selected by a separate body made up of a balanced range of members with the relevant ability to assess candidates (judge selection committee).

Good Practice: Support for the Introduction of a Code of Ethics for Judges and Administrative Employees in Ghana

In Ghana, GTZ is working on behalf of the Federal Ministry for Economic Cooperation and Development (BMZ) through the Good Governance Programme Ghana and the sector advisory project to implement the UN anti-corruption convention to support the training and swearing in on the new Code of Ethics of the entire judiciary. Parallel to this a Judiciary Watch Initiative is monitoring implementation.

- ◆ Quality assurance for judgements and decisions:
 - ◆ decisions to be justified, documented and published;
 - ◆ appropriate facilities needed to record evidence, e.g. electronic recording of proceedings using tape recorders or video cameras;
 - ◆ ongoing controlled access to documents and evidence;
 - ◆ internal and international networking to procure information relevant to trials;
 - ◆ production of overviews of the dispensation of justice and of cases;
 - ◆ dissemination of legal journals to share and discuss decisions and the latest legal developments;
 - ◆ appropriate, regular upgrading for judges;
 - ◆ systematic coaching and introduction for new judges provided by experienced colleagues.

Good Practice: Transparent Rationale Behind Decisions in Georgia

In Georgia, German Technical Cooperation is promoting the transfer of knowledge and experience with a view to improving the rationale behind court decisions. This is intended to help gear the dispensation of justice in the fields of commercial and administrative law to the rule of law. For economic players, this becomes clear above all in the reasons stated by a court for the decision made, which they are able to understand. The facts on the basis of which the decision was made should be listed, and well-founded reasons given for the decision made, quoting pertinent legal principles, for instance. On behalf of the Federal Ministry for Economic Cooperation and Development (BMZ), GTZ is supporting relevant case- and participant-oriented further training activities for Georgian judges. One spin-off of the desired high level of reasoning based on the rule of law is that it is made more difficult to take into account facts that have nothing to do with the case in hand.

- ◆ Disclosure of conflicts of interests and enforcement of impartiality rules:
 - ◆ clear impartiality rules;

- ◆ obligation of decision-makers and members of their immediate family to disclose details about their personal assets and shares in companies, strict enforcement of disclosure obligations;
- ◆ relatives of decision-makers or otherwise non-impartial individuals from the immediate environment of decision-makers not to be employed;
- ◆ establishment of contact units led by independent individuals that can be contacted if corruption in the judiciary is suspected.

Good Practice: Bangalore Principles of Judicial Conduct

The *Bangalore Principles of Judicial Conduct* were adopted in 2002 by the *International Judicial Integrity Group*. This group is a network of *Chief Justices* from many countries around the globe. It was initiated by UNODCCP. The *Bangalore Principles of Judicial Conduct* are a detailed code of conduct for judges, public prosecutors and judiciary staff. They set global standards for professional ethics in the field of the judiciary. The principles guide the actions of these professional groups with the aim of realising Article 11 of the UN Convention against Corruption (integrity of the judiciary). The Judicial Integrity Group also acts as a *Peer Review Group* and is instrumental in mutual consultancy services in the realisation of the planned reforms. UNODC play the part of secretariat.

Source: UNODC

- ◆ Increased guarantee of accountability towards the general public:
 - ◆ conducting regular surveys among the general public;
 - ◆ public court hearings, access for the press and independent observers; interested members of the public guaranteed access to decisions (while respecting the tenets of data protection);
 - ◆ publication of a *Judicial Charter* containing the main information on court proceedings and costs;
 - ◆ processing and providing information on reform needs.
- ◆ Transparency and control of internal operations:
 - ◆ involvement of lay judges;
 - ◆ conducting integrity checks on a routine basis or in response to specific circumstances;
 - ◆ establishment of a contact unit to accept anonymous or open reports of cases of corruption and of a hotline for reporting corruption;
 - ◆ regulation of the acceptance of gifts and benefits (generally within the framework of a code of conduct).
- ◆ Diversification of conflict settlement mechanisms:
 - ◆ creation of and support for alternative settlement procedures;

- ◆ creation of the post of ombudsperson or a public protector whom members of the general public can contact with their complaints.
- ◆ Clarification of the role of lawyers as part of the administration of justice:
 - ◆ creation of legal and institutional framework conditions for transparent and ethical cooperation with the public prosecutor's office and judges.

1.2.2 Specialised Anti-corruption Courts

In countries in which corruption is endemic, anti-corruption courts are sometimes introduced, for instance in Pakistan¹¹ in 1999 and in Kenya¹² in 2002. No general recommendation can be made. As is the case with special public prosecutors, the efficiency of courts of this sort depends largely on the political environment in which they operate, in particular the political will to punish corruption-related crimes and on the specialisation in the field of corruption. The establishment of a special court should not, in any case, be an isolated measure, but should be part of a comprehensive national strategy. A series of recent recommendations exist with respect to the creation of special courts of this sort¹³.

1.2.3 Traditional Courts

In pluralist legal systems, a large percentage of the rural population in particular (must) initially turn to traditional courts. The traditional judicial structures differ from the governmental fields of action and levels of activities particularly in terms of the different control mechanisms to regulate power. Whereas in a modern state based on the rule of law the three branches of power control one another, albeit not always effectively, traditional courts bring together all three powers. This is because of the traditional distribution of roles in less specialised societies. By definition, the law dispensed comes from the heart of the society in question and represents customary law with which everyone is familiar, and which has emerged gradually over a very long period of time. Laws are generally enforced because of the pressure of the community, which recognises the jurisdiction of the court and actually plays an active part in the dispensation of justice in the form of an open assembly.

Misuse of power for one's own advantage or for the advantage of third parties is also found in traditional structures. In smaller, closed societies, however, the strong social controls and mutual economic dependence tend to limit non-transparency and corruption.

In societies with pluralist legal structures, which have emerged in the wake of colonialism, globalisation and post-colonial modernisation processes, there are plausible reasons (in

¹¹ Cf. for detailed information, see <http://www.u4.no/helpdesk/helpdesk/queries/query19.cfm>.

¹² Kenya Prevention of Corruption Act.

¹³ e.g. Nigeria, Romania, Morocco, Bangladesh, cf.
<http://www.u4.no/helpdesk/helpdesk/queries/query19.cfm>.

addition to the greater incentives generated by aggregated political power and economic resources) that explain the alleged increase in corruption, although empirical data does not confirm any such rise:

- ◆ A decline in social controls and/or (social) accountability: the hard-working and efficient members of local communities shrug off the constraints of their home communities and leave for the towns, have different economic interests and are therefore no longer available to enforce traditional law. Apart from the system of social checks and balances there is of course the option of calling on state courts, but not (yet) to review the decisions of traditional courts.
- ◆ A decline in legal certainty: applicable law is no longer unambiguous on modern questions of law; new situations emerge, which traditional courts decide over, without having the legitimation provided by a common legal perspective and understanding of the community. Examples include property rights and rights of disposal with respect to land, or dealing with investment capital coming from outside the community. There is a danger that the ruling elite of a community retains only those rules from the various legal systems which best serve their own interests (forum shopping), or that a state court must be called on, whose rules do not correspond to those of the traditional society.
- ◆ A rise in economic interests thanks to the emergence of markets for land, and the concomitant increasing scarcity of resources.

1.2.4 Judicial Administration

- ◆ Court infrastructure:
 - ◆ guarantee of efficient, technology-assisted office management with monitoring, e.g. word processing programmes for court proceedings and decisions, documents recorded electronically, websites providing legal advice, establishment of a database.
- ◆ Procedural management:
 - ◆ avoidance of human resources and technical planability: rotation of personnel and in the allocation of legal fields and cases;
 - ◆ creation of streamlined procedural structures and clear decision-making authority;
 - ◆ transfer of administrative duties to specialised administrative staff;
 - ◆ clear and general criteria and regulations regarding terms of bail;
 - ◆ directives on deadlines and time schedules for the individual steps involved in court proceedings and for the proceedings as a whole;
 - ◆ efficient coordination and cooperation among lawyers, the public prosecutor and judges.

Good Practice: Judicial Reform in Mongolia

In Mongolia, GTZ is working on behalf of the Federal Ministry for Economic Cooperation and Development (BMZ) to support legal and judicial reforms designed to establish an enabling framework for the market economy. The spotlight is on improving legal certainty for economic players, including support for measures within the Mongolian court organisation, which will ensure that the assignment of the cases to judges of a court is no longer based on arbitrary decisions by the chief presiding judge of that court. With the help of consultancy services provided by Technical Cooperation, allocation plans have now been firmly established in important Mongolian civil courts. These make the decision to assign a case to a certain judge transparent, also for the parties involved in the case.

1.2.5 Public Prosecutor's Office and Anti-Corruption Authorities

In principle, the same measures as already laid out for judges are appropriate for the public prosecutor's office. In addition, because the public prosecutor is bound to follow directions, there is a great risk that political influence can be exerted, affecting the decisions of the public prosecutor to press or drop charges. This applies all the more to public prosecutors with special powers.

Anti-corruption authorities include, in particular, special public prosecutors¹⁴, who are to counter endemic corruption, especially where this affects the authorities which would normally investigate pertinent cases. This is intended to address the consequent failure of the state to take guilty individuals to task (*impunity, impunidad, impunité*). Anti-corruption authorities also perform, to varying degrees, preventive work and education. This is generally done in cooperation with other relevant institutions or civil society organisations.

Anti-corruption authorities, however, can only ever be as good as their institutional environment permits. Experience indicates that authorities of this sort can only be successful if the entire environment (prosecution of criminal offences, awareness among civil society, protection for victims and witnesses) is reformed and if support exists at top political level. This also includes the provision of adequate resources in the long term.¹⁵ If a partner country requests advisory services to help it promote anti-corruption authorities it is important to be aware that the problems involved vary from country to country, necessitating different forms of support in each instance.¹⁶

¹⁴ Anti-corruption authorities generally have the same core tasks as a public prosecutor's office, i.e. the investigation and preparation of charges, which in most cases, however, are complemented by general corruption-prevention measures.

¹⁵ Cf. Kaufmann, Daniel (2003): Anti-Corruption within a Broader Development and Governance Perspective – Some Lessons from Empirics and Experience, Statement by Head of World Bank Delegation on the High Level Political Signing Conference for the United Nations Convention Against Corruption, Merida, Mexico.

¹⁶ Cf. Alan Doig, David Watt, Robert Williams, Measuring success in 5 African anti-corruption commissions (ACC): Ghana, Malawi, Tanzania, Uganda, Zambia, U4 2005.

Good Practice: Support for the Serious Fraud Office in Ghana

The Good Governance Programme Ghana is helping to strengthen the *Serious Fraud Office* (SFO) in Ghana on behalf of the Federal Ministry for Economic Cooperation and Development (BMZ). Support takes the form of advisory services and implementation of a case management system important for the SFO management. This new system makes it possible to monitor cases and preserve evidence in electronic form, thus limiting the opportunities for corruption and boosting efficiency overall. The SFO has a mandate to investigate economic offences directed against the state (and press charges), and to encourage corruption prevention.

Successful individual examples of anti-corruption authorities are taken over and over again as best practices for other states. In this context, the anti-corruption commissions in the city states of Hong Kong and Singapore are often cited. They work under good conditions and have enough funds at their disposal: expensive effective commissions in an environment in which criminal proceedings are dealt with and enforced rapidly. Neither of these city states, however, are developing countries, in which the environment is generally quite different. The anti-corruption authority in Botswana is often given as a positive example of a body of this sort in a developing country, but here too the environment is unusually positive: the state is rich in resources (diamonds), and the population of only just over 1 million is very homogenous. These conditions cannot be compared with those prevailing in other populous, poor countries of Africa, Asia or Latin America. For this reason, experience gained in one country cannot necessarily be transferred one to one to another country. It is politically untenable to demand of poor countries that their budget for anti-corruption measures should be greater than that allocated for primary education if an effective anti-corruption authority is to be established, for instance.

Moreover, anti-corruption authorities often do not have the leeway required to make independent decisions. The monopoly of the state in pressing charges, for example, is often uncontested. Frequently, anti-corruption authorities can only advise the executive, as is the case in Nepal for instance. They have therefore been designed from the outset to have limited efficiency.

When establishing or reforming anti-corruption authorities, the following problems ought to be taken into account:

- ◆ Lack of independence: state approval needed before charges can be pressed, e.g. by the general public prosecutor, which means that there is (political) control over proceedings. This is the case in most Anglo-American legal systems, e.g. in Kenya or Ghana.
- ◆ "Localisation of corruption prevention": the establishment of a special authority may mean that efforts to tackle and, where appropriate, prevent corruption are limited to this special authority rather than being perceived as a cross-cutting task.

- ◆ Excessive concentration of power: In this case, the anti-corruption authority has wide-ranging police and public prosecutor powers; legal tools and internal controls¹⁷ must make it possible to review how it uses this power. Problems emerge in particular where there are weak points within the authority. It is thus essential to lay down strong internal controls, since the anti-corruption institution presents incentives for corruption, as does every individual criminal investigation. The authority itself can also be "infiltrated" by individuals with more interest in covering up than clearing up cases of corruption.
- ◆ Lack of power to enforce decisions: Some anti-corruption authorities are merely accorded an "advisory" role.
- ◆ Mass proceedings: Bottlenecks in capacity result in selective actions being taken. If charges are pressed in all cases, the anti-corruption authority will sink under the caseload. It is thus forced to select cases, and must demonstrate quick successes to remain credible. Investigations into the "big fish", however, are protracted and costly and strewn with obstacles. If charges are pressed against the "small fry" only, though, the population will quickly lose faith in the anti-corruption institution.
- ◆ Dilemma with respect to qualified staff: Generally, high-ranking successful public prosecutors and police officers are tainted by the hitherto corrupt system. "Fresh" young police officers and public prosecutors, however, usually lack the experience to investigate complex cases efficiently and win court cases.
- ◆ Political selectiveness: In provisional governments, amnesties are often agreed, which make it impossible for anti-corruption authorities to take action. For the public prosecutor and corruption authorities as special public prosecutors, there is thus a particular need for anti-corruption measures in this field.
- ◆ Options for citizens to lodge complaints:
 - ◆ contact unit for poorer sections of the population to prevent unjustified investigations and arrests;
 - ◆ options for affected individuals to instigate investigations (e.g. through complaints about the conduct of officials, or through an ombudsperson) where they suspect criminal activities, should there be indications that incomplete investigations are covering up criminal offences.

¹⁷ Cf. on the FBI: DeFeo, Micheal A. (n.y.): Prevention and Repression of Corruption within a Law Enforcement, Agency, 113th International Training Course, Visiting Expert Papers: p. 440 ff., <http://www.unafei.or.jp/pdf/56-34.pdf>.

Recommendations of the 11th International Anti-Corruption Conference (IACC) on Anti-Corruption Institutions

Within the framework of the workshop "*Anti-corruption agencies vs. institutional mainstreaming*" at the 11th International Anti-Corruption Conference held in Seoul in 2003, recommendations were drawn up for anti-corruption institutions. It is not possible to make a blanket recommendation for any one model, neither for an anti-corruption agency nor – as an alternative model – for moves purely to mainstream anti-corruption mechanisms.¹⁸ The path that offers the best chances of tackling and preventing corruption (which might also be a combination of the two) will always depend on the prevailing circumstances.

However, the following preconditions are important for all models:

- integrity within the judiciary and an operational system of enforcing the law;
- intensive inter-institutional networking and the creation of strategic alliances with (all) other affected parties in order to develop effectiveness;
- support for and strengthening of good governance in all institutions at every level;
- The incorruptibility of the judiciary and the judicial administration is especially important to implement anti-corruption strategies, since the expectation of impunity rather than the lack of knowledge of existing cases of corruption is the norm in countries suffering from endemic and systematic corruption. Cooperation between the various constitutional powers is essential here;
- In countries with endemic corruption, the political will that is missing to take action can be demanded and generated through activities of civil-society actors and the media in cooperation with dissatisfied citizens;
- Anti-corruption institutions are often a response to an institutional crisis. It is then necessary to see special anti-corruption institutions as an interim solution, and at the same time to set up anti-corruption capacities within regular institutions such as the police and the public prosecutor's office. This is designed to prevent any isolation of anti-corruption work within a single institution, while no changes are made to governance standards in other institutions.

Source: IACC¹⁹

- ◆ Increased obligation to provide evidence and obtain approval before charges are dropped:
 - ◆ precise and comprehensive reasons given before charges are dropped; the parties affected must be informed;
 - ◆ plausible evidence provided by the public prosecutor's office that the decision to close a case is correct;

¹⁸ Mainstreaming corruption prevention means integrating mechanisms of corruption prevention into the mandates of all actors involved. e.g. all international financing institutes, NGOs, state institutions, the judiciary, etc. in order to create a global responsibility for the shared goal of corruption prevention.

¹⁹ Cf. http://www.11iacc.org/iacc/html/confer_3_s4.html#a6.

- ◆ strengthening of the principle of legality, limitation of the principle of opportunity, i.e. the scope for discretion on the part of the public prosecutor's office as regards pursuing criminal offences and pressing charges;
- ◆ increased supervision where charges are dropped (double-check system);
- ◆ increased rotation of the investigating public prosecutors, especially in the field of organised crime.

1.2.6 Role of Lawyers

Lawyers are frequently not seen as part of the administration of justice and therefore not obliged to help ensure that justice is done and the truth revealed. In some cases, public opinion sees them in a negative light as mediators of corruption, fostering violent ways of resolving legal and resource-based conflicts.

- ◆ Making lawyers part of the system of the administration of justice:
 - ◆ discussion of the way lawyers see their own role;
 - ◆ obliging lawyers to observe a code of conduct to help establish the true facts of a case;
 - ◆ mechanisms to impose sanctions, e.g. barring lawyers found guilty of corruption-related offences from the bar association.
- ◆ Creating options for clients to lodge complaints or report lawyers; the complaints authority should be an independent authority or the bar association.
- ◆ Appropriate working conditions for lawyers:
 - ◆ establishment of calculable and appropriate fees for lawyers;
 - ◆ call for predictable deadlines for proceedings for the work of lawyers.

1.2.7 Role of Civil Society

Non-governmental organisations²⁰ working in the fields of poverty reduction, gender mainstreaming and the rule of law can give clear indications as to where corruption exists as a result of their work with the judiciary, since the groups they represent are generally negatively affected by corruption: they cannot assert their own rights. Simply admitting observers to court proceedings, as has been introduced in some states of Nigeria, can have an anti-corruption impact. Independent media, such as those seen in Kenya during the Moi regime, can also play an important part in uncovering systematic or individual cases of corruption.

Suitable measures include:

²⁰ International women's rights NGOs with local representatives, for instance.

- ◆ enabling civil society groups to understand court institutions and proceedings and to develop suitable forms of interaction;
- ◆ Establishing public forums for discussion of decisions made by courts;
- ◆ disseminating information about candidates for high-ranking positions within the judiciary, and about any possible conflicts of interest;
- ◆ providing journalist training in observing court deliberations.

Good Practice: Integrity Initiative's Judiciary Watch in Ghana

In Ghana, GTZ is working on behalf of the Federal Ministry for Economic Cooperation and Development (BMZ) to support corruption prevention through civil society. The local chapter of Transparency International, *Ghana Integrity Initiative (GII)*, has begun observing court proceedings in cases involving land law and commercial law in order to identify any indications of corruption. *GII* will be working closely with the Judicial Complaints Committee to put observations in context and achieve any necessary systemic changes in the judiciary.

2. Enforcement of the Law (Penal System, Dstraint Procedures)

2.1 Typical Manifestations and Possible Weak Points

The field of law enforcement is partly the responsibility of the courts; in Development Cooperation, the main areas concerned are dstraint procedures and the penal system (i.e. the activities of the executive in the criminal justice system in terms of monitoring the penal system). In some cases, the ministry of the interior or a special ministry for prison affairs is responsible for the penal system.

In Latin America, projects and programmes of German Development Cooperation deal with the penal system in particular, whereas in Central and Eastern Europe and in the Caucasus states, support focuses more on the rule of law and the efficiency of enforcement bodies and systems in the field of civil law.

2.1.1 The Penal System

Enforcement organs in the prison sector have the opportunity to undertake repressive acts or, through supply channels, to procure goods and services not designed for prison inmates. Sometimes, statements they make regarding the conduct of inmates can influence decisions on early release. The procurement of privileges and release are the main points of entry for corruption in the penal system.

Possible indications of corruption or weak points in the penal system include the following:

- ◆ lack of transparency in decisions; no real accountability;
- ◆ little documentation of administrative procedures and decisions;

- ◆ no opportunity to lodge complaints anonymously, no system of sanctions;
- ◆ lack of transparency in appointments and promotions;
- ◆ no obligation to disclose personal relationships with inmates.

2.1.2 Distrain Procedures

When decisions in the field of civil law, including family law, are enforced by the bailiff (e.g. regarding alimony), cases of corruption may arise in conjunction with forced sale and the distraint of goods. Possible forms of corruption include the following:

- ◆ announcements of distraint measures available only to insiders;
- ◆ distrainable objects transferred;
- ◆ goods to be auctioned off are "not seen" by the body responsible;
- ◆ lack of openness of auctions; control of the prices paid.

2.2 Corruption Prevention Measures

For enforcement bodies, the transparency and monitoring of the enforcement and penal system must be guaranteed, and where the enforcement body oversteps the law it must be possible to impose sanctions. An effective complaints systems and administrative and organisational management need not only clear procedural structures and decision-making authority, but also appropriate technical equipment to ensure effective enforcement of the law. It must also be ensured that enforcement officials have the personal aptitude required of individuals entrusted with sovereign tasks. The appointments and promotions system must be transparent and objective.

2.2.1 The Penal System

In connection with support for the elaboration of a new criminal justice act, it can be very helpful to survey and involve the population (civil society, human rights NGOs) at least to the extent that they have information about conditions in prisons. This can provide indications of weak points and corrupt practices that ought to be taken into account within the framework of a new revised version of a law on prisons.

Further recommended measures include the following:

- ◆ limit the scope for discretion concerning conditions of imprisonment and early release:
 - ◆ lay down clear directives for prison conditions and recommendations on early release with the participation of external institutions;
 - ◆ have independent bodies or individuals conduct regular surveys of inmates;
- ◆ ensure transparency in the appointment and promotions system:

- ◆ ensure transparency in appointments and promotions; publicise vacancies, specify profiles required and issue job descriptions; make it obligatory to give reasons for any deviations from this procedure;
- ◆ investigate the personal background of applicants for the penal system, identify any links to inmates or structures in the prison administration that would facilitate corruption;
- ◆ disclose any conflicts of interest and follow up impartiality regulations:
 - ◆ follow up impartiality regulations;
 - ◆ regulate the acceptance of gifts and privileges (generally within the framework of a code of conduct or similar document);
 - ◆ make it obligatory to disclose personal assets, shares in companies and personal relationships;
 - ◆ ban professional contact between inmates and supervisory staff where they are known to one another on a personal level;
- ◆ prison infrastructure and case management:
 - ◆ create a transparent penal system;
 - ◆ create an effective complaints and supervisory system;
- ◆ protect the rights of prison inmates:
 - ◆ create an opportunity for inmates to lodge anonymous complaints;
 - ◆ ensure access for the general public through NGOs or human rights watch groups;
 - ◆ introduce a report card system for inmates, run by NGOs;
 - ◆ create an independent body to review and impose sanctions (e.g. loss of rights or privileges).
- ◆ guarantee regular internal and external controls (including checks on systems and integrity):
 - ◆ ensure internal and external auditing, e.g. through an ombudsperson;
 - ◆ have an independent body conduct routine or situation-specific integrity checks, and impose sanctions if required;
 - ◆ establish a contact unit and a hotline for anonymous or open reports of corruption;
 - ◆ Ensure accountability when lifestyles appear not to reflect an individual's actual income.
- ◆ Working conditions of prison staff:
 - ◆ Ensure appropriate income and pensions for prison staff;
 - ◆ Create incentives and rewards for conduct in line with regulations;

- ◆ Open up performance-related professional prospects;
- ◆ Ensure public recognition, e.g. in the form of positive reports in the press (PR work).

2.2.2 Distraint Procedures and Forced Sale

In principle, the maximum return for creditors and debtors should be ensured in distraint procedures. Corruption in the form of auctions that do not comply with regulations transfers resources belonging to the debtor to the purchaser, resources to which the creditor is entitled as a result of his/her claims on the debtor's assets (and where the sum realised exceeds the sum to which the creditor is entitled, the debtor is entitled to the remainder). Where state property is being privatised, the failure to achieve a maximum price at auction damages the state, and thus the people.²¹ In the case of frustration of distraint through corrupt behaviour, the bailiff and the debtor benefit to the disadvantage of the creditors (often businesspersons but also individuals entitled to alimony payments, etc.). Suitable measures to prevent corruption may include the following:

- ◆ guarantee that scope for discretion can be reviewed in cases of distraint and forced sale:
 - ◆ ensure that the options of enforcement open to the bailiff or debtor's court can be reviewed;
 - ◆ introduce clear procedural structures and decision-making authority for enforcement organs;
 - ◆ regulate by law the scope for discretion in organising the forced sale of assets;
- ◆ ensure transparency in appointments and promotions procedures (see Section 3.2.1);
- ◆ disclose conflicts of interest and follow up impartiality regulations (see Section 3.2.1);
- ◆ introduce investigations where there is an obvious discrepancy between the value of the goods to be disposed of and the sum achieved:
 - ◆ have independent bodies and interest groups of creditors (banks, businesspeople) conduct controls;
 - ◆ ensure the systematic observation of disposal of goods and auctions (e.g. students of law in line with the good practice case study from Nigeria);
 - ◆ ensure rotation of responsibilities among bailiffs;
- ◆ office administration of the debtor's court:
 - ◆ documentation of proceedings in the form of recordings, protocols, reports, etc.;
 - ◆ effective, possibly technology-assisted administrative and organisational management of the debtor's court, appropriate technical equipment;
- ◆ instruments to protect creditors:

²¹ Cf. GTZ (2004): Guidance Paper: Avoiding Corruption in Privatization, Eschborn.

- ◆ establishment of effective complaints systems for creditors;
- ◆ legal regulations in particular preconditions for liability where there are irregularities of form or procedural irregularities;
- ◆ have an independent body review actions and impose sanctions if required, e.g. loss of rights and privileges;
- ◆ ensure regular internal and external controls (including checks on systems and integrity):
 - ◆ ensure the public discreditation of corrupt bailiffs, e.g. removal of responsibility for sovereign tasks;
 - ◆ conduct regular surveys of affected individuals, e.g. banks and other clients of the services of debtor's courts and bailiffs;
 - ◆ put up a notice of terms of business and costs (list of services) in all offices;
 - ◆ set up a complaints hotline;
- ◆ working conditions in distraint procedures and forced sale:
 - ◆ review working conditions outside the offices, e.g. registration system, auction rooms, publication options;
 - ◆ lay out clear, legally regulated rules of procedure and conduct, which can realistically be put into practice;
 - ◆ ensure the greatest possible compliance of the actions of enforcement bodies with the rule of law;
 - ◆ create clear procedural structures and decision-making authority;
 - ◆ ensure transparency in appointments and promotions, publish vacancies;
 - ◆ draft and put into practice a code of conduct.

Annex I: Examples of Results Indicators

Topic Results chain	Possible indicators	Further hints
Application of the law – courts and court administration, integrity of the courts Outcomes: - Legal, contractual and investment-related certainty extends the scope for manoeuvre of citizens (ability to enforce compliance with the law and contractual terms, investment guarantees). - NGOs and court users can increasingly make use of their rights to obtain information on and review decisions made within the framework of court proceedings. Output: - Advisory services on procedural and court reforms, improving the training of judges, advice/training with respect to the quality of reasoning behind decisions. - Advisory services on courts' PR work.	Indicators: - Household and business surveys confirm a decline in corruption in the field of the judiciary and/or the judicial administration/increasing confidence of the population in the judiciary). - Breaches of contract can increasingly be decided by courts within an appropriate time (on average x months) at an appropriate cost (ratio of sum in dispute to costs up x % in the target year as compared to the base year). - A public forum (internet site, legal journal) to discuss decisions and the legal basis on which they were made attracts increasing public attention (number of visitors to the website rises by x %).	- Surveys or appendices to international surveys, for instance of the World Bank Institute for certain institutions; if possible, select indicators such that the perception of larger-scale studies makes the impact plausible. These studies can also be contracted out within the framework of other scientific or academic work, such as dissertations or in the field of advocacy. - Survey of legal occupations, e.g. bar association, legal aid boards, which are regularly called on to decide cases in which they themselves are not directly affected. - Public attention can also mean journalists tackling the topic or the specialist public increasingly looking at reform needs.

Topic Results chain	Possible indicators	Further hints
Court administration Outcomes: - The integrity, performance capacity and service orientation of the court administration (administrative unit x) has been improved. - The legality of the administrative actions taken by the judiciary has improved. - NGOs and court users can increasingly make use of their rights to obtain information on and review decisions made within the framework of court proceedings. Output: - Advisory services on the reform of operations and organisational structures in court administration, in particular with respect to preventing corruption and making it more difficult. - Advisory services on the introduction of effective complaints procedures. - Advisory services for the court administration on the introduction of lists of public services provided by the administration. - Support for civil society on monitoring the quality of services (e.g. court users' charter).	Indicators: - The respective administrative unit of the judiciary conducts regular user surveys (x times per annum) regarding the quality of services and incidences of problems, including corruption, and publishes the results. - The number of implemented recommendations made by an internal monitoring body on dealing with complaints/the number of counter-measures (including appropriate sanctions, changes in operations and in the organisational structure) rises from x in the base year to a minimum of y per annum in the final year. - Citizens' complaints have led to improvements in proceedings or the administration (survey of the correlation between lodging complaints and changes/concretisations/ production of guidelines and official directives; x % of complaints relating to concrete facts). - Representative surveys (in households with an income of less than) indicate that % of those surveyed are aware of the citizen information about rights, obligations and services in the field of the judiciary (court users' charter), and that they have made use of this at least ... times in order to obtain information about their rights.	

Topic Results chain	Possible indicators	Further hints
Enforcement of the law Outcomes - Prison inmates can increasingly demand their rights. - Prisons increasingly operate in line with regulations especially with respect to privileges (release, visits, procurements). Use of outputs - Prison employees have clear guidelines on prison conditions, how inmates can exercise their rights and on their own dealings with inmates. Outputs - Advisory services on the legal and actual basis of the penal system. - Training for prison officers.	Indicators - Corruption in field x of prisons has declined (perception indicator – survey on relatives of inmates in a particularly notorious prison or study of the changes made to guidelines and administrative regulations on corruption prevention – study by human rights NGO, report cards completed by released prisoners, legal scientists, etc.).	

Topic Results chain	Possible indicators	Further hints
Distraint Procedures Outcomes - Investment certainty and loan certainty are strengthened due to greater security in the enforcement of claims in the field of civil law. - Creditors and debtors can increasingly defend themselves effectively against irregular auction results to their detriment. Output - Advisory services on the legal and actual basis of distraint procedures. - Training for enforcement staff.	Indicators - The results of distraint measures are increasingly in line with the estimated values of the goods to be auctioned (estimates of experts, comparisons between base year and target year). - Citizens' complaints have led to improvements in proceedings or the supervision of distraint procedures (survey of the correlation between lodging complaints and changes/concretisations/production of guidelines and official directives; x % of complaints relating to concrete facts have led to changes/declarations that the action is null and void). - Rise in the percentage of systematic investigations conducted by the internal supervisory body from ... % to a minimum of ... % per annum. - The quota of creditors whose claims are met from forced sale has risen by x % (comparison between base year and target year). - Moves to contest auctions that were not conducted in compliance with regulations are increasingly successful (rise in the numbers of results of auctions that are annulled by x % on the basis of justified complaints).	

Topic Results chain	Possible indicators	Further hints
Access to the law Outcomes - Constitutionality, integrity and transparency of traditional and religious legal decisions and arbitration increasingly facilitates access to the law for all members of the group. - A system of state or civil society assistance (covering at least existentially important situations) is operating increasingly effectively. Use of outputs - Court users are familiar with their rights and obligations in terms of official costs of proceedings, complaints options and the right to have decisions and judgements reviewed. Outputs - Advisory services on the reform of traditional and religious arbitration (non-state courts) and the feasibility of affiliating them to the state system. - Advisory services on legal assistance and fees structures for state courts. - Advisory services on providing information to court users.	Indicators - Court users increasingly fight unjustified demands for payment made by officials, lawyers and judges within the scope of court proceedings (data gathered from social organisations and court users). - Poor and marginalised groups increasingly make use of the opportunity of having recourse to the law in the form of state and/or non-state courts (data gathered from social organisations and court users).	

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Selected Reference Papers and Websites

Utstein 4 Virtual Resource Centre: Project information provided by the founding members of Utstein 4: Germany, the United Kingdom, the Netherlands, Norway, etc. including:

- ◆ Help desk (along with Transparency International)
- ◆ Training courses
- ◆ Research reports

<http://www.u4.no>

<http://www.u4.no/helpdesk/helpdesk/queries/.cfm>

Global Forum on Fighting Corruption and Safeguarding Integrity:

Global Forum I, Washington 1999, in particular *Guiding Principles for Fighting Corruption and Safeguarding Integrity among Justice and Security Officials* with specific recommendations and references to a list of all binding legal sources (conference hosted by the US Government).

Global Forum II, The Hague 2001, in particular Workshop II, *Law Enforcement* and Workshop IV, *Corruption, Transition and Development* (conference hosted by the Government of the Netherlands).

Global Forum III, Seoul 2003: <http://usinfo.state.gov/topical/econ/bribes/gf2workshops.htm> (conference hosted by the Government of the Republic of Korea).

TI/IACC International Anti-Corruption Conferences 1- 12: www.transparency.org/iacc/

Transparency International (2000): Confronting Corruption: The Elements of a National Integrity System, TI Source Book: www.transparency.org/sourcebook:

Chapter 6: An Elected Legislative

Chapter 8: An Independent Judiciary

Chapter 11: Independent Anti-Corruption Agencies

Chapter 19: Administrative Law – Judicial Review of Official Action

Chapter 25 Giving Citizens a Voice

Chapter 27 Laws to Fight Corruption

UNICRI (United Nations Interregional Crime and Justice Research Institute) – Central and Eastern Europe: http://www.unicri.it/anti-corruption_strategies.htm

UNODC (United Nations Office on Drugs and Crime)/ CICIP (Centre for International Crime Prevention)/ GPAC (Global Programme Against Corruption):

The following are recommended in particular:

CICIP–10 (2001): Strengthening Judicial Integrity Against Corruption, Vienna.

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www.info.usaid.gov/democracy/

Handbook on Legislative Strengthening (2000)

World Bank on legal and judicial reform:

http://www4.worldbank.org/legal/legalr/index_english.html

World Bank Institute on corruption in the legal and judicial sphere:

Legal and judicial reform: <http://www.worldbank.org/wbi/governance/judicial-lac.htm> or
<http://www.worldbank.org/ljr>

Special training options in the field of law and justice (classroom and distance learning courses): <http://www.worldbank.org/wbi/governance/judicial/courses>, including:

Legal and Judicial Reform and Control of Corruption in Latin America (2002)

Capacity for Development – Building Anti-Corruption Networks, Conference on legal and judicial reform and control of corruption, Madrid, Spain (2002):
<http://www.worldbank.org/wbi/governance/madrid2002>

Judicial Reform: Improving Performance and Accountability in Asia (2001)

The Judiciary and Its Role in Fighting Corruption. Participatory Action-oriented Pilot Training and Learning Program (2000)

American Judicature Society: <http://www.ajs.org>:

Topics: *Judicial Ethics, Judicial Independence, Judicial Selection.*



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