

Strengthening Judicial Integrity Against Corruption



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Abstract

The paper summarises the outcomes of the Workshop of the Judicial Group on Strengthening Judicial Integrity, convened by the Centre for International Crime Prevention at its Headquarters in Vienna, in April 2000. It examines the causes and indicators of judicial corruption and presents the recommendations made by the group for a sustainable reform process of building judicial integrity to curb corruption.

CONTENTS

I. INTRODUCTION	2
II. JUDICIAL CORRUPTION - A DEVELOPMENT ISSUE	3
III. JUDICIAL CORRUPTION - A GLOBAL PROBLEM.....	4
IV. CAUSES AND INDICATORS OF JUDICIAL CORRUPTION.....	6
V. UNITED NATIONS INITIATIVE TO COMBAT JUDICIAL CORRUPTION.....	7
VI. CONCLUSION.....	13
VII. BIBLIOGRAPHY	14

I. INTRODUCTION

This article is based on the successful outcomes of the Workshop of the Judicial Group on Strengthening Judicial Integrity, convened by the Centre for International Crime Prevention (Global Programme against Corruption), at its Headquarters in Vienna, in April 2000, in cooperation with Transparency International. It was hosted by the Centre in conjunction with the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. The Workshop, in which eight Chief Justices and senior judges from countries of Africa and Asia participated, was conducted under the chairmanship of former World Court Judge Christie Weeramantry, with Justice Michael Kirby of Australia acting as Rapporteur.

The Judicial Group considered means by which to strengthen the judiciary through strengthening judicial integrity. In the view of the authors, the unique approach to the subject matter taken on that occasion is one most likely to yield the best results in terms of combating judicial corruption.

Some important lessons, which might help overcome the impasse in the fight against corruption, were learned during this meeting. The unusual partnership based on mutual trust, exemplified by the Group, and the self-evaluative and remedial, or, “indigenous” nature of the recommendations of the justices themselves demarcate the road to progress and future effectiveness in combating judicial corruption. This is a promising approach to assessment and remedy as a forerunner to the transfer of such judicial know-how among senior judges of different parts of the world.¹ In fact, the insightful and practical recommendations made by the participating justices highlighted the importance of involving senior practitioners of the sector, which is a target of reformative action.

In focussing on ways and means by which to strengthen judicial integrity against corruption, the authors point to the many challenges that should be met. One such challenge has to do with a *process* which must necessarily involve all stakeholders in order to have ultimate success. Designing and launching such a process would change (mis)perceptions about corruption that may be deeply entrenched in the public consciousness and the political life of a State, yet is contrary to the public interest and a great burden to the State. *One such misperception is that public figures have license to dispense favours and feel they are above others before the law.*

Key issues, which the authors will address in this article, are the following:

- Rule of law (as part of good governance): The rule of law has become one of four critical variables for sustainable development and poverty alleviation.
- Evidence- based change: It is not possible to strengthen the integrity and capacity of the criminal justice system without an independent assessment of corruption levels and performance of the judiciary.

Involvement: Successful changes of the integrity and capacity of the judiciary requires involvement of: (a) the judiciary itself; and (b) the court users both in developing a change programme and in the monitoring of the implementation of that programme.

¹ The findings and recommendations of the first meeting of justices, documented by Michael Kirby, can be accessed on the web page of the Centre (http://www.ODCCP.org/corruption_judiciary.html).

II. JUDICIAL CORRUPTION - A DEVELOPMENT ISSUE

It has now become clear that corruption is one of the main obstacles to peace, stability, sustainable development, democracy, and human rights around the globe.²

The "quality counts" ³ discussion amongst economists has recently concluded that the key to reducing poverty is to undertake an integrated approach to development - one that addresses quality growth, including environment, education, health, and governance. Good governance, in its crosscutting nature, is the key determinant among these elements. It requires, among other things, trust between the State and the people, integrity, transparency, rule of law, checks and balances, co-ordination among agencies, and increased involvement of *all* other key stakeholders.

International and regional human rights instruments recognise as fundamental the right of everyone to due process of law, including to a fair and public hearing by a competent, independent and impartial tribunal established by law. The importance of this right in the protection of human rights is underscored by the fact that the implementation of all other rights depends upon proper administration of justice. An essential element of the right to a fair trial is an independent and impartial tribunal. Another inherent element of a fair trial is the procedural equality of parties, the so-called "equality of arms". If the judicial system is corrupt, no such elements will exist. Judicial corruption influences unduly access to and outcome of judicial decisions. The decisions will remain unfair and unpredictable and consequently the rule of law will not prevail.

If one of the parties has bribed the judge or other court official and obtained access to documents to which the other party has no access, or caused documents to disappear, there can be no equality of arms. A judge who has taken a bribe cannot be independent, impartial or fair. When a party to judicial proceedings offers a bribe to a judge or other officials, and the bribe is accepted, that party immediately acquires a privileged status in relation to other parties who have not offered, or are not in a position to offer, a bribe or inducement. The preferential treatment secured and the resulting discrimination, then, obliterates objectivity and neutrality from the judicial process. A legitimate aim is not being pursued. The fundamental precepts of human rights are violated rather than upheld.⁴

Judicial integrity and capacity must therefore be dealt with squarely in any reformative action. There is increasing evidence of the infiltration of corruption into all branches of Government charged with the safeguarding of the rule of law. Particularly insidious in this regard is judicial corruption. A corrupt judiciary means also that the legal and institutional mechanism designed to curb corruption generally will be handicapped. The judiciary is the public institution that is mandated to provide essential checks on other public institutions. A fair and efficient judiciary is the key to anti-corruption initiatives.

But there are also more practical considerations suggesting that initiatives to strengthen the integrity of the institutional framework should initially focus on the judiciary. Because of its

² *The Lima Declaration against Corruption*, 8th International Conference against Corruption, September 1997, Lima, Peru.

³ Nihal Jayawickrama, *Strengthening Judicial Integrity*, unpublished paper presented at the Workshop, April 15/16 Vienna.

⁴ Buscaglia/ Dakolias, Legal and Judicial Reform Unit, Legal Department, The World Bank, *An Analysis of the Causes of Corruption in the Judiciary* (1999) at 2.

independence, the judiciary typically holds a comparatively strong position inside the institutional framework. While police and prosecution are often susceptible to political interference, the judiciary has only to face the issues of insufficient capacity and integrity inside its own institution. The judiciary tends to be the smallest of the justice system institutions. Technical assistance, addressing both integrity and capacity-building, can easily reach a critical mass of judges and magistrates and is therefore more likely to have an impact. If efforts are initially concentrated on law enforcement institutions, there is an additional danger that cases will be brought to trial, and expectations will be raised and ultimately destroyed, once the courts do not rule according to the law. Such a scenario easily leads to frustration within police and prosecution agencies and by the general public. It ultimately confirms, and upholds, the notion that corruption pays off.

III. JUDICIAL CORRUPTION - A GLOBAL PROBLEM

Judicial corruption appears to be a global problem. It is not restricted to a specific country or region. Yet manifestations of corruption seem to be at their worst in developing countries and countries in transition. According to the Geneva-based Centre for the Independence of Judges and Lawyers, of the 48 countries covered in its annual report for 1999, judicial corruption was “pervasive” in 30 countries.⁵

In a service delivery- survey conducted in Mauritius, between 15 and 22 per cent of the interviewees stated that “all” or “most” of the magistrates were “corrupt.”⁶ According to a similar survey conducted in Tanzania in 1996,⁷ 32 per cent of the respondents who were in contact with the judiciary had actually paid “extra” to receive the service.⁸ In Uganda, a similar survey yielded even higher values. Over 50 per cent of those who came into contact with the courts reported to have paid bribes to officials.⁹ Even more telling, perhaps, are the statements recorded in the focus groups on judicial corruption in Uganda. These are the following:

5 Centre for the Independence of Judges and Lawyers, *Ninth annual report on Attacks on Justice*, March 1997 February 1999.

6 *Building an Island of Integrity, Proceedings of a Workshop on National Integrity Systems in Mauritius*, Presented by the Office of the Attorney General in collaboration with TI (Mauritius), Transparency International, and the Economic Development Institute of the World Bank with financial support of the Government of Norway and Mauritius (February 1998).

7 Presidential Commission of Inquiry against Corruption, *Service Delivery Survey, Corruption in the Police, Judiciary, Revenue and Land Services*, CIETinternational & Worldbank, Tanzania (1996).

8 Service Delivery Survey, *Corruption in the Police, Judiciary, Revenue and Land Services*, Presidential Commission of Inquiry against Corruption, CIETinternational, Tanzania (1996).

9 The Inspectorate of Government, Uganda, *Building Integrity to Fight Corruption to Improve Service Delivery* (1999).

Issues raised about the courts in Uganda in Focus Groups held at the village level

If you do not cough (pay a bribe) something, the case will always be turned against you and you end up losing it.

Mbale, Site 4, Men

The clerks won't allow you see the magistrate unless you have given in some money.

Lira, Site 4, Men

The magistrates keep on adjourning cases until they are bribed.

Kamuli, Site 1, Men

Source: CIET international, National Integrity Survey in Uganda, 1998

In Asia, the situation might be seen as equally discouraging. In a survey carried out for the World Bank in Cambodia, 64 per cent of the interviewees agreed with the statement “the Judicial system is very corrupt”, and 40 per cent of those who had been in contact with the judiciary had actually paid bribes. Corruption in the judicial system was ranked among all factors as the most significant obstacle to using the court system.¹⁰ A recent national household survey on corruption in Bangladesh revealed that 63 per cent of those involved in litigation had paid bribes either to court officials or to the opponent’s lawyer and 89 per cent of those surveyed were convinced that judges were corrupt.¹¹ In the Philippines, 62 per cent of the respondents believed that there were significant levels of corruption within the judiciary and 57 per cent that many or most of the judges could be bribed.¹²

In a similar study conducted by the World Bank in Latvia, 40 per cent of the respondents who had dealings with the court system reported that bribes to judges and prosecutors were frequent. Moreover, 10 per cent of the businesses and 14 per cent of the households having had contacts with the court system received indications of the necessity of paying a bribe.¹³ In Nicaragua, 46 per cent of those surveyed who had dealings with the court system stated that there was corruption in the judiciary; 15 per cent had actually received indication that the payment of a bribe was expected.¹⁴ In Bolivia, 30 per cent of the respondents to a service-delivery survey were asked for a bribe upon contact with the judiciary, and 18 per cent actually paid a bribe.¹⁵

9 World Bank, *Cambodia, Governance and Corruption Diagnostic: Evidence from Citizen, Enterprise, and Public Official Surveys*, (Prepared at the Request of the Royal Government of Cambodia) (May 2000), <http://www.worldbank.org/wbi/governance>.

11 Transparency International, Bangladesh Chapter, *Corruption in Bangladesh Survey*, <http://www.transparency.ca/Readings/TI-F01.htm>

12 Philippine Country Management Unit East Asia and Pacific Region, *Philippines, Combating Corruption in the Philippines*, World Bank, Report No. 20369-PH (May 2000).

13 World Bank, *Corruption in Latvia*, Survey Evidence, (December 1998).

14 Comit Nacional de Integridad-Banco Mundial-CIETinternational *Encuestat Nacional Sobre Integridad y Corrupcion en la Administracion publica*, Nicaragua (August 1998).

15 CIET international, *Popular Perception of Corruption in the Public Service, Key Findings of the first National Integrity Survey in Bolivia*, (April 1998).

The above-mentioned surveys suggest that corruption is far from being the only reason that individuals are dissatisfied with the judiciary. These and other surveys indicate that, in many countries, individuals are also dissatisfied with the cost, accessibility and fairness of justice. They are dissatisfied with the delays. They are dissatisfied with the cumbersome and daunting procedures involved in going to court. In Colombia, the backlog of cases has exceeded four million and about 70 per cent of a judge's time typically was consumed by paperwork. In a number of countries, governments do not hesitate to ask judges to undertake non-judicial work, such as sitting on commissions of inquiry, sometimes with a political favour, and the judges concerned rarely decline to do so. These might be seen as indicators of judicial systems in a perpetual state of crisis.

IV. CAUSES AND INDICATORS OF JUDICIAL CORRUPTION

The few studies conducted suggest that the causes of judicial corruption vary significantly from State to State. Some of the possible causes include low remuneration and the administrative nature of the roles of judges, far reaching discretionary powers and weak monitoring of the execution of those powers. Factors which engender judicial abuse of power also create an environment where whistle blowing is unlikely, given the extensive power and authority of the individuals involved. The lack of transparency and the absence of comprehensive and regularly updated databases further worsen the effects of corruption in the judiciary. Such situations easily lend themselves to inconsistencies in the application of the law and make it much more difficult to identify patterns, trends or individual cases in which incorrect or anomalous results suggest the possibility of corruption. Inconsistencies might arise not only with regard to the substance of court decisions, but also with respect to court delays, fostered by the absence of time standards and their close monitoring. The lack of computer systems is one of the main causes for inconsistencies, according to Latin American lawyers and judges.¹⁶

Indicators of corruption, as perceived by the public, include: delay in the execution of court orders; unjustifiable issuance of summons and granting of bails; prisoners not being brought to court; lack of public access to records of court proceedings; disappearance of files; unusual variations in sentencing; delays in delivery of judgements; high acquittal rates; conflict of interest; prejudices for or against a party witness, or lawyer (individually or as member of a particular group); prolonged service in a particular judicial station; high rates of decisions in favour of the executive; appointments perceived as resulting from political patronage; preferential or hostile treatment by the executive or legislature; frequent socialising with particular members of the legal profession, executive or legislature (with litigants or potential litigants); and post-retirement placements.

¹⁶ Buscaglia/ Dakolias, Legal and Judicial Reform Unit, Legal Department - The World Bank, *An Analysis of the Causes of Corruption in the Judiciary* (1999) at 7.

V. UNITED NATIONS INITIATIVE TO COMBAT JUDICIAL CORRUPTION

Legal provisions, at the national and international levels, continue to emphasise the independence of the judiciary. Technical assistance projects mainly deal with the building of professionalism and capacities within the judiciary. The challenges of *strengthening integrity through increased accountability of judges and the development of methodologies to clean up a corrupt judicial service remain neglected*. This is where the Centre for International Crime Prevention and Transparency International intend to make a difference. Even though judicial integrity is critical, only a few international institutions are currently focussing on this issue. Where this issue is dealt with, the typical approach has to do with reforming the judiciary from the outside, through the executive and/or focus on capacity, rather than the integrity of the judiciary. Uniquely, the approach presented in this article has managed to attract the support of some key chief justices and high court judges from developed and developing countries. Trusting each other, the justices have joined in partnership for an international cause. With vast experience and expertise on the matter, they also have demonstrated their willingness to be self-critical and openly address highly sensitive issues. In this regard, they have focused upon the question of integrity of their own institution, the judiciary, for the benefit of strengthening the judiciary across legal systems against corruption.

Corruption in the judiciary is a complex problem and needs to be addressed using a variety of approaches. In Venezuela, where 75 per cent of the population reportedly distrusts the judicial system, a US \$120 million reform programme aims at, *inter alia*, eliminating corruption by opening up the system, with public trials, oral arguments, public prosecutors and citizen juries. However, in many countries where these are standard features of the system, the judiciary is nonetheless perceived to be corrupt. Elsewhere, consequent to donor-driven reform initiatives, more and better equipped courts have been established and judges' salaries have been increased, but the public continues to consider the judges corrupt. The phenomenon of corruption in the judiciary needs to be revisited. A right balance needs to be achieved between autonomy in decision-making and independence from external forces on the one hand, and accountability to the community on the other.

Any approach to judicial integrity must also contain measures to restore public trust and the credibility of the judiciary. Eliminating judicial corruption alone is not enough if courts and judges are still seen as corrupt or incorrect by litigants and the general population. Public credibility is essential to eradicate corruption, because people will not come forward or speak out until they trust the system to protect their interests.

The Workshop of Chief Justices and other senior/high-level judges that was convened by the Centre considered the formulation of a programme to strengthen judicial integrity. Having regard to recent attempts by some development organisations to reform judiciaries in Latin America and Eastern Europe which were not particularly successful, principally due to their failure to recognise the existence of different legal traditions in the world, the Workshop decided to focus, at this pilot stage, on the common law system. The Group was formed exclusively by common law Chief Justices or senior judges of seven Asian and African countries.¹⁷

The objective of the programme was to launch an open and client-driven action learning process

¹⁷ The preparatory meeting was held in Vienna on April 15 and 16, 2000, under the framework of the Global Programme Against Corruption and in conjunction with the 10th United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

at the international level, in which the Chief Justices involved would identify possible anti-corruption policies and measures suitable for application in their own jurisdictions. They would test them at the national level, share their experiences in subsequent meetings at the international level, refine the approach and trigger the adoption of those measures by their colleagues that had showed the most promising results. Consistent with the global "action learning" approach, which they generally adopt, neither the Centre nor Transparency International pretend to know all the answers and do not come to countries seeking to impose off-the-shelf, ready-made solutions. They try not to approach the programme with any pre-conceived notions. Instead, they work with relevant institutions and stakeholders within each country, to develop and implement appropriate methodologies and submit, on a continuing basis, any conclusions to scrutiny by specialist groups. The entire project is based on partnership and shared learning.

The objectives of the first meeting were to *raise* awareness regarding: the negative impact of corruption; the levels of corruption in the judiciary; the effectiveness and sustainability of an anti-corruption strategy consistent with the principles of the rule of law; and the role of the judiciary in combating corruption. Furthermore, to *formulate* the concept of judicial accountability and devise the methodology for introducing that concept without compromising the principle of judicial independence. Finally to *design* approaches which will be of practical effect and have the potential to impact positively on the standard of judicial conduct and raise the level of public confidence in the rule of law.

The following issues were discussed, recorded and adopted by the Group ¹⁸:

Public perception of the judicial system.

Indicators of corruption in the judicial system.

Causes of corruption in the judicial system.

Developing a concept of judicial accountability.

Remedial action.

Designing a process to develop plans of action at the national level.

The participating Chief Justices concluded that the causes of judicial corruption or the perception of judicial corruption involve not only first hand experiences of actual corruption, but also by a series of circumstances which are all too easily interpreted as being caused by corrupt behaviour, rather than the mere lack of professional skills and a coherent organisation and administration of justice.

The Chief Justices agreed, however, that the current knowledge of judicial corruption was inadequate to provide a basis to establish remedies. Even in those countries where surveys had been conducted, the results were not sufficiently specific. Generic questions about the levels of corruption in the courts do not reveal the precise location and causes of the corruption and will therefore be easily rejected by the judiciary as grounds for the formulation of counter measures and policies. They agreed that there was a strong need for the elaboration of a detailed survey instrument that would allow the identification not only of the levels of corruption, but also the types, causes and locations of corruption. They were convinced that the perception of judicial corruption was caused to a large extent by the malpractice within the other legal professions. Experiences from some countries show that the court staff or the lawyers pretend to have been asked for the payment of a bribe by a judge in order to enrich themselves. Surveys in the past did not sufficiently differentiate between the various branches and levels of the court system. Such an approach inevitably had to lead to a highly distorted picture of judicial corruption, since the

¹⁸ GPAC Working Paper No 3, *Integrity in Judiciary*, Vienna (May 2000)

absolute majority of contacts with the judiciary were restricted to the lower courts. Survey instruments used so far seem not to take into account that the perception of corruption might be strongly influenced by the outcome of the court case. In particular, where lawyers try to cover up their own shortcomings, the losing parties often presume that the opponent paid a bribe to the judge, which caused their defeat.

Service-delivery surveys usually rely exclusively on the perceptions or experiences of court users and do not try at all to use insider information, which easily could be obtained by interviewing prosecutors, investigative judges and police officers. Existing instruments also seldom try to further refine the information obtained in the survey by having the data discussed in focus groups and/ or by conducting case studies.

The Judicial Group agreed that a set of preconditions, mostly connected to the attraction of the judicial profession, must be put into place before the concrete measures to fight judicial corruption can be applied successfully. In particular, low salaries paid in many countries to judicial officers and court staff must be improved. Without fair *remuneration*, there is not much hope that the traditional system of paying “tips” to court staff on the filing of documents can be abolished. However, adequate salaries will not guarantee a judiciary free from corruption. Countless examples of public services all over the world prove that regardless of adequate remuneration, corruption remains a problem. An adequate salary is a necessary, but not sufficient condition for official probity.¹⁹ Moreover, an excessive workload will hinder the judge in ensuring the quality of his work, which eventually will make him lose the interest in his job and thereby more susceptible to corruption. In addition to the remuneration, improving service conditions might increase the attractiveness of the judicial career.

But “extras” and salaries must be well balanced. Examples from some developing countries show that States tend often to provide a great part of the remuneration in the form of housing, car, personnel, etc., while the salaries paid hardly cover the costs of these “extras”. Such a situation can have an extremely negative effect, since the state suggests the adequacy of a living standard far beyond what the judge would be able to afford if he would be only paid his salary. Consequently, the judge gets used to a living standard which he will not be able to maintain once he retires. Such a situation may, as a matter of fact, contribute to the temptation to adopt corrupt practices, since the judge might desire to accumulate sufficient resources to preserve his social status also during retirement.

In order to come up with a realistic, focussed, and effective plan of action to prevent and contain judicial corruption, the judicial group recommended, first of all, to develop a coherent survey instrument allowing for an adequate assessment of the types, levels, locations and remedies of judicial corruption. The Group also saw a need to establish a mechanism to assemble and record such data and, in appropriate format, to make it widely available for research, analysis and response. It was felt that more transparent procedures for *judicial appointments* were necessary to combat the actuality or perception of corruption in judicial appointments (including nepotism or politicisation) and in order to expose candidates for appointment, in an appropriate way, to examination concerning allegations or suspicion of past involvement in corruption.

The Judicial Group concluded furthermore that there is a need for the adoption of a transparent and publicly known (and possibly random) procedure for the *assignment* of cases to particular

¹⁹ Moskos, *Upholding Integrity among Justice and Security Forces*, in A Global Forum against Corruption, Final Conference Report at 63.

judicial officers. The purpose of such a change would be to combat the actuality or perception of litigant control over the decision-maker. Internal procedures should be adopted within court systems, as appropriate, to ensure regular change of the assignment of judges to different districts.

This rotation would be effectuated with due regard to appropriate factors, including the gender, race, tribe, religion, minority involvement and other features of the judicial office-holder. Such rotation should be adopted to avoid the appearance of partiality.

In order to ensure the correct behaviour of judicial officers, the Judicial Group urged the adoption of *judicial codes of conduct*. Judges must be instructed in the provisions established by such a code and the public must be informed about the existence, the content and the possibilities to complain in case of the violation of such a code. Newly appointed judicial officers must formally subscribe to such a judicial code of conduct and agree, in the case of proven breach of the code, to resign from judicial or related office. Representatives from the Judicial Association, the Bar Association, the Prosecutor's office, the Ministry of Justice, the Parliament and the Civil Society should be involved in the setting of standards for the integrity of the judiciary and in helping to rule on best practices and to report upon the handling of complaints against errant judicial officers and court staff. Moreover, rigorous obligations should be adopted to require all judicial officers publicly to *declare their assets* and the assets of their parents, spouse, children and other close family members. Such publicly available declarations should be regularly updated. They should be inspected after appointment and monitored from time to time by an independent and respected official.

As another pressing field of intervention, the Group identified widespread *delays* causing both opportunities for corrupt practices and the perception of corruption. Therefore, practically tenable standards for timely delivery must be developed and made publicly known. In this context it should be noted, however, that reducing court delays has proven extremely difficult even in countries where the mobilisation of human and financial resources is far less problematic than in countries in the developing world. For example, the United States delay reduction programme, even though generally referred to as a success, did not manage to reduce court delays significantly. What the programme did achieve was to increase the amount of cases concluded by a court decision, since more litigants were willing to sit through lengthy court proceedings, seeing the light at the end of the tunnel.²⁰

Practical measures should be adopted, such as *computerisation of court files*. Experiences from Karnataka State in India suggest that the computerisation of case files helps not only to reduce immensely the work load of the single judge and to speed up the administration of justice, but also helps to avoid the reality or appearance that court files are "lost" to require "fees" for their retrieval or substitution. The Group also supported the notion that *sentencing guidelines* could significantly help in identifying clearly criminal sentences and other decisions which are so exceptional as to give rise to reasonable suspicions of partiality.

Furthermore, it was felt that making available systems for *alternative dispute resolution* would give the litigants the possibility to avoid actual or suspected corruption in the judicial branch. A study carried out for the World Bank on the development of corruption in the Chilean and the Ecuadorian judiciaries seems to confirm this assumption.²¹

²⁰ Messick, *Reducing Court Delays: Five lessons from the United States*, The World Bank PREMnotes, No. 34 (Dec. 1999).

²¹ Buscaglia/ Dakolias, Legal and Judicial Reform Unit, Legal Department, The World Bank, *An Analysis of the Causes of Corruption in the Judiciary* (1999) at10.

The Group also noted the importance of proper *peer pressure* to be brought to bear on judicial officers, and that this practice should be enhanced in order to help maintain high standards of probity within the judicature. Establishment of an independent, credible and responsive *complaint mechanism* was seen as an essential step in the fight against judicial corruption. The responsible entity should be staffed with serving and past judges and be given the mandate to receive, investigate and determine complaints of corruption allegedly involving judicial officers and court staff. The entity, where appropriate, should be included in a body having a more general responsibility for judicial appointments, education and action or recommendation for removal from office.

In the event of proof of the involvement of a jurist in corruption in relation to activities as a member of the legal profession, appropriate means should be in place for investigation and, where such misconduct is proved, *disbarment* of the persons concerned.

Procedures that are put in place for the investigation of allegations of judicial corruption should be designed after due consideration of the viewpoint of judicial officers, court staff, the legal profession, users of the legal system and the public. Disappointed litigants and others should establish appropriate provisions for due process in the case of a judicial officer under investigation, bearing in mind the vulnerability of judicial officers to false and malicious allegations of corruption.

It should be acknowledged that judges, like other citizens, are subject to the criminal law. They have, and should have, *no immunity from obedience to the general law*. Where reasonable cause exists to warrant investigation by police and other public bodies of suspected criminal offences on the part of judicial officers and court staff, such investigations should take their ordinary course, according to law. An *inspectorate* or equivalent independent guardian should be established to visit all judicial districts regularly in order to inspect and report upon any systems or procedures that are observed which may endanger the actuality or appearance of probity. The inspectorate should also report upon complaints of corruption or the perception of corruption in the judiciary.

The role and functions of *Bar Associations* and *Law Societies* in combating corruption in the judiciary should be acknowledged. Such bodies have an obligation to report to the appropriate authorities instances of corruption which are reasonably suspected. They also have the obligation to explain to clients and the public the principles and procedures for handling complaints against judicial officers. Such bodies further have a duty to institute effective means to discipline members of the legal profession who are alleged to have been engaged in corruption of the judicial branch.

In order to assure the transparency of court proceedings and judicial decisions, systems of *direct access* should be implemented to permit litigants to receive advice directly from court officials concerning the status of their cases awaiting hearing. *Workshops* and *seminars* for the judiciary should be conducted to consider ethical issues and to combat corruption in the ranks of the judiciary and to heighten vigilance by the judiciary against all forms of corruption. A judge's journal should, if it does not already exist, be instituted and it should contain practical information on all of the foregoing topics relevant to enhancing the integrity of the judiciary.

Judicial officers, in their initial education and thereafter, should be regularly assisted with instruction in binding decisions concerning the *law of judicial bias* (actual and apparent) and

judicial obligations to disqualify oneself for actual or perceived partiality. In order to achieve accountability, there is a need that both *civil society and the judiciary* recognise that the judiciary operates within the civil society it serves. It is essential to adopt every available means of strengthening the civil society to reinforce the integrity of the judiciary and the vigilance of the society that such integrity is maintained. In order to assure the monitoring of judicial performance, the explanation to the public of the work of the judiciary and its importance, including the importance of maintaining high standards of integrity, needs to be explained. The adoption of initiatives such as a *National Law Day* or *Law Week* should be considered.

It was agreed that the role of the *independent media* as a vigilant and informed guardian against corruption in the judiciary should be recognised, enhanced and strengthened by the support of the judiciary itself. Courts should be afforded the means to appoint, and should appoint, *media liaison officers* to explain to the public the importance of integrity in the judicial institution, the procedures available for complaint and investigation of corruption and the outcome of any such investigations. Such officers should help to remove the causes of misunderstanding of the judicial role and function.

VI. CONCLUSION

Like other entities involved in the “business” of development, the United Nations Global Programme against Corruption has experienced a steep learning curve with regards to understanding the negative impacts of corruption and devising means of curbing it. After almost seven years of governance work, Member States, development agencies and international organisations have realised that the problem of corruption is one of the big challenges to quality growth. Corruption within justice administration has been underestimated. A clear-cut global strategy or approach to the situation is only now emerging.

The approach described in this paper is based on the following premises:

At national and international levels, a coherent and independent assessment of the levels, causes, locations, effects and costs of corruption is a necessary precondition for the formulation of effective remedies;

Evidence-based planning is only possible where the data has a high level of credibility with regards to the sample size, the methodologies used to allow cross checking (focus groups, case studies), the specificity of the information obtained and the independence and professionalism of the entity responsible for the data collection and analyses;

Assessment must be repeated regularly to allow independent impact-monitoring of anti-corruption work;

The findings of the assessment should be disseminated widely in the relevant local languages; Although important, conducting the assessment is only a part of a far more comprehensive process. The bigger challenge is to improve the quality of decision making and the accountability of the decision-makers by utilising the assessment as a basis for the development, the implementation, the monitoring, the reviewing and impact evaluation of a broad based action plan;

Eradication of corruption from the justice system is a joint task involving not only judges and members of the legal profession, but literally all stakeholders, including all branches of Government, the media and the civil society;

The entire process should be monitored by an independent and credible body with members selected on the basis of professional integrity and competence.

The authors are convinced that past reform initiatives often could not achieve the expected impact because efforts were made primarily in the formulation of the objectives and little or no importance was given to the *processes* of developing and implementing these objectives, such as a broad-based ownership, transparency, accountability. Goals were not accomplished because: (i) the implementation strategy remained unclear; (ii) the objective itself was not capturing the problem to be addressed or remained unrealistic; (iii) there were few incentives for the involved parties to implement the plan; (iv) there were no accountability or disincentives for not implementing the plan; and (v) there was no public expectation or pressure from key stakeholder groups to implement the plan.

The challenge is to come up with an integrated, evidence-based approach that balances process and substance to ensure a more coherent and realistic formulation of objectives, but also create the necessary ownership among stakeholders. This is crucial to establishing transparent accountability and monitoring and keeping implementation progressing as planned.

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