Foreign Sponsored Development Projects in Africa: The Dialogue between International and African Judicial Integrity Projects

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Abstract

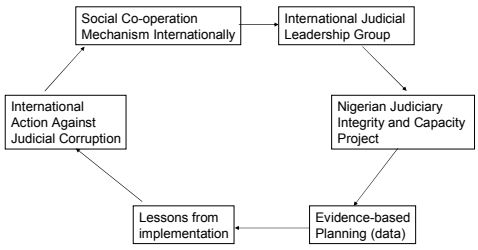
Anti-corruption activity focused on the judiciary in Africa represents one interesting example of the dialogue between international and national activity in foreign sponsored development projects in Africa. In this paper, we look at the multiple interactions between international legal and empirical work in fighting judicial corruption, the institutional innovation of "social co-operation mechanisms", international co-ordination of co-operation through judicial leadership groups, and on-the-ground implementation in Nigeria. Lessons and implications of these linkages are generalised to other types of development projects.

Introduction

Corruption has been shown to inversely vary with the rule of law (World Bank, 2002). Put more concretely, corruption within criminal justice institutions -- which are mandated to enforce and safeguard the rule of law -- is particularly alarming and destructive to society. In many countries in Africa, it is precisely institutions such as the judiciary and the police that are perceived as corrupt (World Bank, 2002). Examples include instances and allegations of corrupt police who sell "protection" to organised crime, judges who are "in the pocket" of powerful criminals, and court systems that are so archaic that citizens are denied access to justice.[1] These perceptions can lead toward public cynicism about government, lack of respect for the law, and societal polarisation. Such an environment inevitably leads to unwillingness on the part of the public to participate in *bona fide* anti-corruption initiatives. Yet, scepticism and public unwillingness to co-operate with "development efforts" which are ineffective extend well beyond judicial anti-corruption programmes.[2] Judicial anti-corruption projects in Africa face the same problems and prospects as many other foreign sponsored development projects.[3]

This paper shall look at foreign sponsored development projects in Africa from the perspective of the United Nations Center for Crime Prevention's Judiciary Integrity and Capacity Project in Nigeria. The project is

Figure 1: A Foreign Sponsored Development Project in Africa – Judicial Integrity in Nigeria



[1] For example, a simple search on Lexis-Nexis on July 8 2002 on the stories for the previous 90 days including headlines such as "We Kn 3) and "Zambian Chief Justice Steps Down Following Graft Scandal

[2] For examples of development programmes which have failed due t

[3] For a reference on development projects in Africa, see Development Gateway (2002).

interesting because many of the project design principles either reflect current or vanguard project design principles from the development and management literature which not only reflect "best practice" but often come mostly from African workshop participants themselves – thus are applicable more broadly to a wide range of foreign sponsored development projects in Africa. Figure 1 presents in diagrammatic form the project cycle which the Integrity and Capacity Project has followed. Each part of Figure 1 is discussed in a separate section of the paper. Section I will provide an overview of the international community's legal and academic definitions of corruption. and sketches the outlines of "social learning" which influences judicial reform internationally. Second II will discuss one particular type of institutional innovation -- "social co-operation mechanisms" -- which are analogous to much project reform thinking, including the design of the Nigerian Integrity and Capacity Project. They are analogies because the same principles which were being applied and tested outside of Africa were similar to those being tested within Africa – thus representing a *zeitgeist* or social force (Cox, 1981). Section III will describe the results of the International Judicial Leadership Group meeting where key qualitative principles – developed by African judicial officials for strengthening the judiciary -- might well be applicable to a wider range of foreign sponsored development projects in Africa. Section IV presents results on the implementation of the Leadership Group's work in Nigeria under the Nigerian Judiciary Integrity and Capacity Project. It also discusses a methodology which might be useful for institutional diagnosis in other foreign sponsored project areas – representing a type of "evidence-based planning". Finally, Section V presents some key lessons for other foreign sponsored development projects.

There are a number of caveats to keep in mind while reading this paper. First, the issues identified in this paper have been specific to the anti-corruption, judicial reform, and the Nigeria project we describe. Our intuition tell us that these issues remain relevant to other types of foreign sponsored development projects in Africa. However, the reader must use his or her own judgment to assess the degree of closeness with their own project. Second, we are aware of the vast development studies literature which critiques many of the issues we present as being empiricist and positivistic (Layder, 1988). While Figure 1 gives the impression of a modernistic type of project design, the main design principle was to have local actors (Africans themselves) design the programme and provide spaces for questioning and challenging the programme. We are also aware that terms such as "foreign sponsored" and "development projects" themselves are highly ambiguous and usefully deconstructed (Munck and O'Hearny, 2001; Sachs, 1992). We hold a healthy scepticism toward "development" – especially "top-down" and "expert driven" development – a scepticism which prompted this paper. Third, we understand that "participatory" methods such as those described here are fraught with difficulties (Mosse, 1994; Cooke and Kothari, 2000). Issues such as power, knowledge, and history vitally affect the results of any development project. Yet, while recognizing these issues, we hope that one advantage of participatory methods is to allow Africans to address these issues in their own way without external interference. Lastly, we do

not argue that the programme we describe is a panacea for African judicial corruption. While we are optimistic about the prospects of judicial reform, other commentators such as Mbaku note the "futility" of reform while Hanlon discusses the role of donors in promoting corruption rather than integrity.

International Action against Judicial Corruption

Within the literature, there are several binary ideal type dichotomies of corruption. Some of these dichotomies include the distinction between "grand" versus "petty" corruption (Rose-Ackermann, 1996) and "active" and "passive" corruption (Council of Europe, 1998, articles 2 and 3). Outside of binary dichotomies come a range of definitions such as the definition of bribery (United Nations, 2000, article 8; United Nations, 1996, annex; OECD, 1997, article 1; European Union, 1997, article 2 and 3). Specific types of bribery treated by the literature include influence-peddling, offering or receiving improper gifts**,** bribery to avoid tax liability, bribery in support of fraud, bribery to avoid criminal liability**,** bribery in support of unfair competition for benefits or resources, private-sector bribery, and bribery to obtain confidential or "inside" information (see United Nations 2001 for definitions of these types of corruption). Other types of corruption involve embezzlement, theft and fraud (European Union, 1997, article 1), extortion, abuse of discretion, favoritism, nepotism and clientelism, conflicting interests, and improper political contributions. Specifically related to court-related corruption, such behaviour can be classified into two types: administrative corruption (when court administrative employees violate formal administrative procedures for their private benefit) and operational corruption (usually linked to grand corruption schemes where political and/or considerable economic interests are at stake).

Regardless of the precise definition of "corruption", the data suggest that judicial corruption appears to be a problem in Africa. In a service delivery survey conducted in Mauritius, between 15% and 22 % of the interviewees stated that "all" or "most" of the magistrates are corrupt (Office of the Attorney General of Mauritius, 1998). According to a similar survey conducted in Tanzania in 1996, 32% of the respondents who were in contact with the judiciary had actually paid "extra" to receive the service (CIETInternational, 1996). In Uganda, the amount of people who had paid bribes when using the court system was even higher: 50% of the interviewed people reported having had to pay bribes (Inspector General of Government, 1999). Finally, related to the Nigerian judiciary, corruption was cited as a key problem by 30% of judges, 54% of litigants and 50% lawyers (Nigerian Institute for Advanced Legal Studies, 1997).

Applied policy studies show that corrupt practices are encouraged by a number of factors including the lack of free citizen access to government-related public information, the lack of systems to ensure relative transparency, monitoring and accountability in the planning and execution of public sector budgets, lack of public sector mechanisms able to channel the social preferences and specific complaints to the agencies involved in those complaints, the lack of social and internal mechanisms ensuring service delivery quality control, and the lack

of “social co-operation mechanisms” aimed at preventing grand corruption schemes -- usually seen when the state’s policies are “captured” by vested interests (Langseth, 2000; Chong and Calderon, 1998; Buscaglia, 1998; Ades and di Tella, 1996).[4]

Yet, international experience in successful anti-corruption reforms -- in countries such as Chile, Costa Rica and Singapore -- indicates that a consensus among the country’s main political forces is a fundamental prerequisite for implementing “technical” administrative, organisational and/or procedural reforms aimed at enhancing judicial transparency and accountability. Once “political will” is established, “evidence-based” planning may be undertaken (Kpundeh, 1997). Buscaglia (2001b) notes a jurimetric study applied to Latin America which asked three groups of interviewees to describe judicial irregularities. If significant correlations among the perceptional patterns of the three groups could be detected, then this would represent a significant step in assuring reliable measures of corrupt practices. Buscaglia (2000) discusses “hard data” objective indicators measuring -- through the review of court files -- how frequently courts abuse their substantive, procedural, and administrative discretion. Such data can related to the frequencies of corrupt practices. Policies countering corruption within the judiciaries should be able to detect those sources of corrupt incentives. [5]

Social Co-operation Mechanisms internationally

It is often that case that African projects are influenced by projects elsewhere. One influence has been the idea of the “social co-operation mechanism.” Social co-operation “panels” or boards are usually composed of civil society representatives -- elected by specific neighborhood councils – who may share the board with state representatives. Civil society representatives usually show a track record for integrity, social activism and experience in dealing with the areas to be monitored by the social co-operation boards (such as utilities) and their responsibilities are frequently formally legalized through either local laws (such as in Venezuela) or national laws (in Bolivia). Such boards are designed to complement the state’s auditing capacities and to monitor specific state institutions on a regular basis. These “social co-operation mechanisms” have traditionally been focused on budgetary planning and on areas related to the public service. But such social mechanisms can operate as bodies that interact with specific public sector agencies and are entrusted with the monitoring of public agencies’ performance and channelling service delivery suggestions and complaints. [6]

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[4] There are more technical reasons for the emergence of judicial corruption. Stevens (1993) identifies four main ‘domains’ identified by judges and scholars over the years as being key to preserving judicial independence -- the structural domain of the court system, personnel-related domain, court administration domain, and judges’ adjudicational domain. Buscaglia (2000) notes that lack of consistent criteria applied to court rulings is key in explaining the high occurrence of corruption. Buscaglia (2001a) notes the role of inadequate case recording, lack of dissemination of rulings, and jurisprudence coupled with the perceived incapacity to generate consistent legal interpretations. Moskos (1999) notes that adequate salary is a necessary, but not sufficient condition for official probity. Merrick (1999) notes the importance of delay reduction programmes in United States. Buscaglia and Dalcalios (2000) stress the importance of alternative dispute resolution mechanisms using examples from Chile and Ecuador.

[5] Such “evidence-based evaluation” represents an important use of performance indicators -- see Fisher et. al. (2000).

[6] An analogy may be made with “multi-stakeholder boards” currently becoming popular in the corporate responsibility literature and increaseing applied in public sector context.

Reform-related experiences internationally provide examples about how civil society mechanisms have an impact on judicial projects and law enforcement. Table 1 shows two-year average changes during the period 1990-2000 in indicators of perceived corruption, access to institutions, effectiveness in service delivery and transparency. These figures are shown for the police force in San Jose (USA), the municipal governments of Merida (Venezuela) and Santiago (Chile), and judicial sectors in Costa Rica and Chile. These indicators measure the impact of internal institutional reforms introduced to address the following four areas: simplification of the most common administrative procedures, reduction of administrative discretion in service delivery, implementation of the citizens' legal right to access public information, and the monitoring of public service delivery quality standards. Reforms in these areas were monitored by social co-operation boards on a weekly to monthly basis. These boards possess a number of traits. First, at least half of the membership was composed of civil society representatives who were already trained in technical aspects dealing with the institutions involved. In no case were civil society representatives selected by the state and, in all cases, these boards included representatives from the institutions to be monitored. Second, in all these cases, the institutional heads of the pilot projects selected were all known for their integrity, political will and capacity to execute previous reforms. They made a prior selection of the most appropriate area to implement such reforms, in an environment where civil society representatives were also willing and able to receive technical training. Third, in most cases, social control boards were in charge of monitoring the indicators given in Table 1, as well as were responsible for dealing with service delivery users' complaints. Fourth, in all cases, local or national laws established the institutional identity and formal legitimacy of these bodies. Fifth, the social co-operation boards constituted an implementation body for the objectives and policies validated by civil society through national or local integrity meetings, focus groups, and national and municipal "integrity steering committees". It is important to note that the Advisory Boards established by the Hong Kong Independent Commission Against Corruption (ICAC) – discussed below -- represent a more passive form of social co-operation in comparison with the case studies mentioned above.

Table 1: Changes In Corruption-Related Indicators Before And After Social Co-operation Mechanisms (1990-2000)

Pilots	Frequency of access (%)	Access to institutions (%)	Effectiveness (%)	Transparency (%)	Administrative complexity (%)
Chile (Santiago Municipal)	-11	31	29	14	-5
Costa Rica (Prosecutor Office)	-26	9	13	6	-22
Chile (Special Crimes Unit)	-18	11	6	7	-2
United States Police Dept., San Jose	-7	27	9	8	-10
Venezuela	-9	16	7	8	-10

Source: Nigerian Institute for Advanced Legal Studies (1997). Figures have been rounded.

Looking specifically at the data in Table 1, the perceived frequencies were provided by direct users of the services at the exit point after interacting with the public sector institution involved. Significant two-year drops can be observed in the frequencies of access decrease ranging from 26% in Costa Rica's judicial sector to 7 % in San Jose's police force.[7] Regarding access, an additional 16% and 31% of those interviewed in Venezuela and Chile respectively perceived improvements in the access to municipal services. The two-year increases in users' perception of improvements in Chile of the effectiveness of special prosecutors and in Santiago's service delivery range from 6% to 29% respectively. Two-year increases in the proportion of those users perceiving improvements in public service transparency range from a 14% increase in Santiago to a 6% increase in Costa Rica's court service delivery. Regarding administrative complexity, changes can be seen ranging from -22.4% in Costa Rica's courts to a -1.8% decrease in administrative complexity in Santiago's Special Prosecutors Office.

The International Judicial Leadership Group

Based on international experiences with social co-operation mechanisms and other types of participatory anti-corruption programmes, in April 2000, the United Nations Centre for International Crime Prevention (CICP) -- in collaboration with Transparency International -- invited a Group of Chief Justices and High Level Judges to a preparatory meeting in Vienna, Austria to consider formulating a programme to strengthen judicial integrity. The Group was

[7] Frequency of access measures the number of times a service user must visit a particular public service office to obtain his desired service. This may either be a direct measure of inefficiency or an indirect measure of corruption to the extent that such administrative obstacles are established to farm bribes.

formed exclusively by common law Chief Justices or senior judges of seven regions and countries in Africa and Asia namely, Bangladesh, the State of Karnataka in India, Nepal, Nigeria, Uganda, Tanzania and South Africa. [8]. Given that recent attempts by some development organizations to reform judiciaries in Latin America and Eastern Europe have not been particularly successful due to their failure to recognize the existence of different legal traditions in the world, the programme focused on the common law system. The results of the meeting can be found in Table 2.

In general, the recommendations fall under the broad categories of (i) access to justice; (ii) the quality and timeliness of justice; (iii) the public's confidence in the judiciary; and (iv) the efficiency, effectiveness and transparency of the judiciary in dealing with public complaints. More specifically the Group issued the following recommendations as key reform areas to be addressed: generation of reliable court statistics, enhancement of case management, reduction of court delays, increased judicial control over delays, strengthened interaction with civil society, enhanced public confidence in the judiciary, improved terms and conditions of service, countering abuse of discretion, promoting merit based judicial appointments, enhanced judicial training, development of transparent case assignment system, introduction of sentencing guidelines, development of credible and responsive complaints system, and refining and enforcing codes of conduct.

As can be seen from both these recommendations and the items in Table 2, several of these points might be applicable to a broader range of development projects. The generation of reliable information, better management, greater interaction with civil society and professional bodies, and increased confidence (partly bolstered by codes of conduct) all represent aspects which other development projects may benefit from. Yet, as this project shows, it should be Africans themselves who decide upon the governance of their own projects.[9]

Table 2: Areas Identified by the International Judicial Leadership Group

Need to introduce an evidence-based approach

* Need for more evidence about types, causes, levels and impact of corruption.

* Develop a coherent survey instrument allowing for an adequate assessment of the types, levels, locations and remedies of judicial corruption.

[8] 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. It was attended by the Honorables M. L. Uwais (Chief Justice of Nigeria), Pius Langa (Vice-President of the Constitutional Court of South Africa), Hon. F. L. Nyalali (Former Chief Justice of Tanzania), B. J. Odoki (Chairman of the Judicial Service Commission), Bhaskar Rao (Chief Justice of Karnataka), Latifur Rahman, (Chief Justice of Bangladesh), and Govind Bahadur Shrestha (Chief Justice of Nepal). The Hon. Sarath Silva (Chief Justice of Sri Lanka) could not attend but conveyed his fullest support to the group. The meeting was chaired by the Hon. Christopher Weeramantry (Former Vice-President of the International Court of Justice) and facilitated by the Hon. Dr. Giuseppe di Gennaro (Former Judge of the Italian High Court), and Dato Param Cumaraswamy (the United Nations Special Rapporteur on the Independence of Judges and Lawyers). The rapporteur was the Hon. Michael Kirby (Judge of the High Court of Australia).

[9] The determination of governance mechanisms by Africans themselves touches the core of the Post-Washington Consensus debate – which sees development organisations as implementing a type of neo-imperialism in the form of the "governance agenda" (see Roberts Center 2002 or Political Economy Research Centre 2002 conferences for more on this issue).

* Establish a mechanism to assemble and record such data and make it widely available for research, analysis and response.

* Try to use “insider information”, which easily could be obtained by interviewing prosecutors, investigative judges and police officers.

* Have data discussed in focus groups and/ or by conducting case studies on those institutions which seem to be particularly susceptible to corruption.

Fair remuneration

* Without fair remuneration there is not much hope of abolishing the traditional system of paying “tips” to court staff on the filing of documents.

* Excessive workloads impede judges from ensuring the quality of their work -- which eventually makes them lose interest in their job and more susceptible to corruption.

* State influence is exerted through the large degree of remuneration in form of “extras” such as housing, car and personnel which can be removed by state discretion.

Transparent procedures for judicial appointments

* More transparent procedures for judicial appointments are necessary to combat corruption in judicial appointments (including nepotism or politicisation).

* Adopt a transparent and publicly known (and possibly random) procedure for the assignment of cases to particular judicial officers to combat litigant control over the decision-maker.

* Internal procedures should be adopted within court systems to ensure the regular change of judges to different districts.

Declaration of assets

* All judicial officers should be required to publicly 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.

Adoption and monitoring of judicial codes of conduct

* Judicial codes of conduct should be adopted and widely disseminated.

* Newly appointed judicial officers must formally subscribe to such a judicial code of conduct and agree (in the case of a proven breach of the code of conduct) 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 setting standards for the integrity of the judiciary, help rule on best practices, and report upon the handling of complaints against errant judicial officers and court staff.

Establishment and monitoring of sentencing guidelines

* These guidelines help in identifying decisions which are so exceptional as to give rise to reasonable suspicions of partiality.

Computerization of court files

* The experience of Karnataka State in India suggests that the computerization of case files helps not only to reduce significantly the work-load of the single judge and speed up the administration of justice, but it also helps to avoid the appearance that court files are “lost” to require “fees” for their retrieval or substitution.

Use alternative dispute resolution mechanisms

Importance of peer pressure and public complaints mechanisms

* establish an independent, credible and responsive complaint mechanisms.

* 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 member of the legal profession in corruption, appropriate means should be in place for investigation and 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.

* Appropriate provisions for due process in the case of a judicial officer under investigation should be established bearing in mind the vulnerability of judicial officers to false and malicious allegations of corruption by disappointed litigants and others.

No immunity from obedience to general law

Need for an independent inspectorate

Important role to be played by the Bar Association and law society

* 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 have the obligation to explain to clients and the public the principles and procedures for handling complaints against judicial officers.

* Such bodies 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.

An important role to be played by the media

* 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.

Need to conduct workshops addressing integrity and ethics

* A judge’s journal should (if it does not already exist) be instituted and it should contain practical information on 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 and judicial obligations to disqualify oneself for partiality.

* Civil society should be strengthened as a means of reinforcing judicial integrity.

* 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 undertaken.

* Initiatives such as a National Law Day or Law Week should be considered.

* 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.

Nigerian Judiciary Integrity and Capacity Project

After the establishment of the International Judicial Leadership Group, the next challenge was to translate the theoretical exchange of ideas at the international level into country-specific action in Africa at the national and sub national level -- thereby launching an action learning cycle. In April 2000, CICP -- in close consultation with the Supreme Court of Nigeria – started to design a project to assist the Nigerian Judiciary at the national and sub-national level. The scope of the Judiciary Integrity and Capacity project in Nigeria was to conduct an independent assessment of the types, levels, causes, locations and remedies of judicial corruption in three representative pilot states and thereby provide the basis for and assist in the development of evidence-based action plans for the judiciary at the federal level and in three pilot states. At the First Federal Judicial Integrity Meeting in Abuja on 25 October 2001, the Hon. Chief Justice Uwaise stated:

In Bangalore we worked over a period of three days to produce a draft Global Code of Conduct for the Judiciary. This is a document which has been extremely well received as it continues to be circulated around the Commonwealth and the wider world, and it is one from which, I believe, we ourselves in Nigeria can benefit by reviewing our own Code of Conduct against its provisions.... In carrying out our project in Nigeria, I envisaged this gathering as marking the start of a process that will develop survey instruments that will be applied to three courts in each of three pilot states (Lagos, Delta and Borno). Comprehensive Assessment and Integrity and Action Planning Workshops will take place in each of these courts during the first quarter of year 2002, involving a full range of stakeholders (i.e. those who are involved with the courts in one way or another, including police, prisons, the Bar, human rights NGOs, etc.). These Integrity and Action Planning Workshops will consider and interpret the results of the comprehensive assessments for their court and develop action programmes informed by the findings. These programmes will be implemented over the succeeding twelve months or so, after which further surveys will be conducted to measure the impact of the reforms. Further national workshops will be held to assess the progress being made and to ensure that all states are in a position to share in the lessons being learned. I also expect the Chief

judges, both in the designated pilot states and of other states not to await the results of the full programme, but to press ahead with their own reform programmes as lessons are learned as we progress through the project's cycle. Indeed, there were clear messages identifying needed actions that came out of our first gathering (Uwaise, 2001).

The First Federal Integrity Meeting for Chief Judges provided an opportunity to assess the extent to which the recommendations made by the International Judicial Leadership Group for Strengthening Judicial Integrity are relevant to contexts specific to Nigeria. Chief Judges defined and agreed upon objectives which initially will be implemented over a 24-month period. In order to facilitate the planning process, the meeting was asked to identify impact indicators to establish the baseline against which progress will be monitored. [10] Evidence-based planning will be facilitated through the conduct of capacity and integrity assessments of the criminal justice system in above mentioned three pilot states.

In terms of the operational management of the project, a National Project Coordinator has been hired for two years starting 1 December 2001 and the services of a local research institute have been engaged to conduct the assessment. After the completion of the assessment, state-level integrity workshops for the judiciary will be conducted in the three pilot states (March/April 2002) to review the findings of the assessments. Based on the assessments, an action plan for strengthening judicial integrity will be developed. These state-level integrity and action planning workshops will also facilitate the development of strategic partnerships across the various stakeholder groups including civil society at large and court user interest groups. After 18 months, depending on the availability of additional funding, second assessment within the three pilot states is planned to measure the results of the single measures implemented within the framework of the action plans in each of the 9 pilot courts. Based on the findings of this second assessment, any necessary adjustments of the already implemented measures will be made. The second assessment will also provide the basis to gradually broaden its geographical and substantial scope by involving more courts within and outside the pilot states and increasing the extent of assistance to other criminal justice institutions).

In this programme, CICP's "foreign sponsorship" consists of facilitation. Based on the outcomes of this assessment, CICP will assist the judiciary -- at the federal level, in the three pilot states and the nine pilot courts -- to conduct integrity meetings to develop action plans focusing on the strengthening of judicial integrity and capacity. CICP will also support the judiciaries, in close collaboration with the Attorney General's offices, to launch the implementation of the state-level actions plans. However, different from past initiatives by donor agencies trying to assist in the reform of judiciaries, the judiciary itself (headed by the Chief Justice of the Federation) owns and controls the entire planning, implementation and monitoring process. At all stages of this process, particular attention will be given to the empowerment of the general public and the court users through social co-operation boards

[10] The use of data to inform policy in this case represents a type of "evidence-based planning" (Pawson, 2001) or "social marketing" (Kotler and Roberto, 1989; Manoff, 1985).

and other forms of participatory channels. The programme, furthermore, focuses on building of strategic partnerships reaching across institutions and branches of Government, the legislative and including representatives of the civil society. At the international level, the lessons learned will be analyzed by the international Chief Justices' Leadership group.

In order to provide an initial empirical evaluation of the levels of corruption, anti-corruption priorities, successful measures, and needed changes, a survey was handed out to the judges at the workshop. Out of 55 workshop participants, 35 filled out and submitted the questionnaire. Out of the 38 Chief Judges, Grand Kalis and other senior judges, 33 participated in the survey.[11] Such a survey should not been seen as a rigorous instrument for assessing parameter estimates in the tradition of quantitative analyses described by Weissberg (1989). Instead, such data may be seen as a type of "voting method" aggregating social preferences and perceptions.[12]

Table 3: Corruption Perceptions

Professional categories	Corruption perception	
	Very low and low	High and very high
Judges	29	5
Court administrators	24	11
Prosecutors	15	19
Police	10	25
Prison personnel	26	16

With regard to the question "rank the levels of, in your opinion, corrupt practices within the criminal justice system outside your own court among the following professional categories", table 4 shows the results. Surprising was the relatively high perception of corruption among prosecutors, second only to the perceived levels of corruption about the police. However, the plenary discussion revealed that most respondents were referring to police prosecutors rather than to those working for the Office of the Attorney General.

Looking at problems areas, table 4 shows the results of the question: "out of the key problem areas identified by the international Chief Justices' Leadership Group, how does each rate as a priority for your State?" Out of 17 areas, the participants rated five as top-priorities: court records management, judicial training, public confidence in the judiciary, judicial control over delays caused by litigant lawyers, and a merit based system of judicial appointment. Medium priority was given to the establishment of a credible and effective complaints system, the reduction of court delays in general, the enforcement of the code of conduct, the reduction of abuse of procedural discretion, and an improved case assignment system. Adequate and fair remuneration, one of the generally preferred reform recommendations of most judiciaries in developing countries and countries with economies in transition was only given medium priority. Relatively low priority was given to improved case-load management and the creation of reliable court statistics. In addition, the abuse of substantive discretion and consequentially

[11] This is a partial reporting of the survey results. For a complete report, please contact the authors.

[12] We do not deny the difficulties inherent in the collection of group preferences. The difference between this type of data collection and social preference maximisation under social planning is that is data is then used by workshop participants themselves to determine their collective interests. See Heap (1992) for a discussion of the difficulties in the collecting and using social preferences.

the necessity of sentencing guidelines was not seen as a matter of urgency. By far the lowest priority was given to improved communication with court users. There are some doubts whether the question was correctly understood by most of the respondents since at the same time, increasing public confidence within the courts was seen as one of the top priorities.

Table 4: Judicial Anti-Corruption Priorities

Key problem areas	**Priority rating**	**Very high**
Judicial training	**1**	**77**
Merit based judicial appointments	**2**	**69**
Public confidence in the judiciary	**3**	**62**
Court records management	**3**	**46**
Credible and effective complaints system	**5**	**54**
Adequate and fair remuneration	**6**	**60**
Enforcement of code of conduct	**7**	**51**
Increased judicial control over delays created by litigant lawyers	**8**	**35**
Court delays	**9**	**50**

Key problem areas	**Priority rating**	**Very high**
Case assignment system	**10**	**48**
Case management	**10**	**35**
Abuses of procedural discretion	**12**	**32**
Generation of reliable court statistics	**13**	**35**
Case load management	**14**	**31**
Abuses of substantive discretion	**15**	**34**
Sentencing guidelines	**16**	**19**
Communication with court users (e.g. court user committees	**17**	**9**

Turning to past successful efforts, the range of answers to the question “please state the three most successful measures in the last five years that have been implemented in your state to increase the quality and timeliness of the delivery of justice” was comprehensive. The most effective measures implemented in the course of the past five years was providing the criminal justice system with basic funds, equipment, facilities and adequate remuneration. Efforts made to increase the integration of the criminal justice system were also rated as highly effective. Such initiatives seem to have succeeded to some degree in bringing judges out of their traditional isolation and contributed to a more effective use of resources and time within the criminal justice process. Efforts to minimize the congestion of courts were also quite effective. Particular emphasis was given to those initiatives trying to remedy the overpopulation of prisons. If all measures concerning “how business is done” were considered

together in particular the organizational and management reforms, they constitute by far the most-mentioned reform. Other answers which did not correspond to the given categories included measures such as the encouragement of legal practitioners to work harder and the increased emphasis on substantive law rather than technicalities.

Table 5: Most Successful Measures in the Last 5 Years

Categories chosen	Responses	Answers given
Improved facilities and equipment and funding	14	Improved facilities and welfare, furnishing of high court complex, new cars for judicial officers, improved mobility of judicial officers and more court space and equipment.
Recruitment of more judges and prosecutors	10	Appointment of more judicial officers, full complement of judges, recruitment of more lawyers into Ministry of Justice.
Improved coordination and dialogue within the judiciary and with the other criminal justice institutions	9	Establish criminal justice committee, regular meetings of committee for the speedier administration of justice.
Regular and adequate salaries for judicial officers	9	Salary increases to judicial personnel and regular payment of salaries.
Fast justice delivery exercises in prisons	6	Gaol delivery exercise for prisons, prison visits (to review warrants), prison visits by judges, prison visits by criminal justice committees, alternative dispute resolution.
Reducing delays (de-congestion exercises)	7	Regular de-congestion exercises, creation of a division for quick dispensation of justice.
Law reform (e.g. amendment of civil and criminal procedure law)	5	Civil procedure reform, enactment of new civil procedure rules, legal reforms of substantive provisions.
Reorganization of existing and creation of new court divisions (delivery of justice close to the people)	4	Decentralization of courts, creation of more courts, new magisterial district courts, establishment of courts of all types closer to the people.
Improved training and training institutions	7	Workshops by the National Judicial Institute (NJI), NJI training and retraining of judicial officers, training programmes for court officials.
Improved working conditions, human resources management	4	Security of office, merit based appointments and transfers

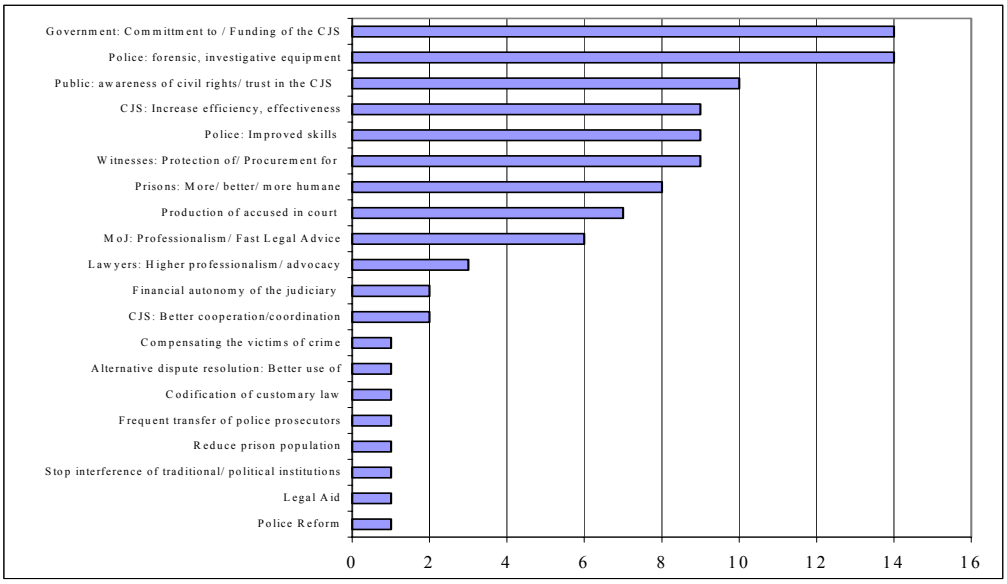
including appointment process and security		
Improved punctuality and time limits on case hearing	2	Courts sit on time, time limits for hearing cases, delivery of judgements within 3 months.
Establishment of the National Judicial Council	2	National Judicial Council created.
Improved Monitoring of Judges and Case flow	2	Monitoring by Chief Judge of cases assigned, preferential treatment of criminal cases on appeal, cases dealt with on first come first served basis.
Improved case-assignement system	2	Cases dealt with on first come, first served basis.
Use of preparatory panels	1	Supreme Court – use of panels to make more time for preliminary preparation.
Improved (sense of) independence	1	Sense of improved independence.
Litigants access to files	1	Litigants have access to court records
Alternative Dispute Resolution Mechanisms	1	Alternative dispute resolution.
Establishment of Complaints Officer under the CJN	1	Direct complaints to complaints officer under the Chief Justice.
Prompt Payment of Witnesses	1	Prompt payment of witnesses.

Regarding the most important improvements needed outside the court system, Figure 2 shows that the police emerged as the single institution most mentioned. Improvements needed included better training, improvement of investigative/forensic skills and equipment, and the establishment of a central data bank on crime. Another institution repeatedly mentioned was the prison system. Many participants recommended not only the creation of new prisons and the upgrading of existing ones, but insisted that detention should be rendered more humane. Furthermore, it was requested that prison services focus more on its rehabilitating function. Another area identified was the handling of witnesses. Most of the recommendations given in this regard dealt either with the prompt and adequate refunding of witnesses or with their protection. Those and other statements again confirmed that many of the most urgent improvements recommended included the timeliness of the delivery of justice currently outside the courts and closely linked to the efficiency, effectiveness and integrity of the other stakeholders involved in the justice system (such as the police, the prisons, the Attorney General's Office and the lawyers). Any reform effort therefore should be comprehensive and address the areas identified in parallel.

As can be seen from the graphs and tables presented in this section, such "evidence-based planning" offers both risks and rewards for foreign sponsored development projects in Africa. Used alone, these data may be used in an overly simplistic or even politically motivated way.

However, when combined with deeper knowledge and experience, these data provide a transparent and easy to understand method of aggregating social preferences and representing complex social and historical phenomenon. Given these risks and rewards, only Africans themselves – with or without social co-operation mechanisms and the benefit of international experience – can take decisions and act on their own governance structures.

Figure 2: Most Important Improvements Needed Outside of the Court System



Some Implications for Foreign Sponsored Development Projects in Africa

The following are 8 lessons learned which may be applicable to other foreign sponsored development projects.

1. **Curbing corruption takes time and effort**. Curbing systemic corruption is a challenge that requires strong measures, greater resources and more time than most politicians and "corruption fighters" will admit or can afford. In other words, it requires "political will" (Kpundeh, 1998). Very few anti-corruption policies, measures and/or tools launched today are given the same powerful mandate and/or financial support as the often-quoted Independent Commission Against Corruption (ICAC) in Hong Kong (Langseth, 2001). For example, the ICAC interfaces directly (face to face in awareness raising workshops) with almost 1% of the population every year. In the same manner, other development projects should make allowance for time lags and "budget" the necessary effort in the project design stage.
2. **Need to balance awareness raising and enforcement to avoid cynicism.** Raising awareness without adequate enforcement may lead to cynicism among the general population and actually increase the incidents of corruption. Citizens who are well informed through the media about types, levels and the location of corruption but who have few examples of reported cases where perpetrators are sent to jail, might be

tempted to engage in corrupt acts where "high profit and no risk" appears to be the norm. In the same way, other foregin-sponsored development projects which raise awareness or expectations without leading to improved service delivery can also lead to cynicism.[13] In the words of Rowlands (1997), all stakeholders must be given "power to" rather than simply be the subject of "power over" them by the state.

3. **Managing public trust is central.** Public trust in anti-corruption agencies and in their policies is essential if the public is to take an active role in monitoring the performance of their government.[14] In a survey conducted by the ICAC, in 1997, 86 percent of the public stated that they would be willing to report corruption to ICAC and 66 percent were willing to give their names when reporting corruption -- more than 1,400 complaints were filed in 1998, up 20 percent from 1997 (LaMagna, 1999). It is even more impressive that this trust relationship built up systematically over 25 years, has not changed much since Hong Kong was returned to China in 1997. While Hong Kong has monitored the public's confidence in national anti-corruption agencies annually since 1974, few development agencies and/or member states have access to similar data. The larger question is whether the development agencies, even with access to such data, would know how to improve the trust level between themselves and the people they are supposed to serve. Another question is whether they would be willing to take the necessary and probably painful action to improve the situation.
4. **Need for stronger social co-operation mechanisms**. Social co-operation mechanisms are needed in the fight against corruption (Buscaglia, 2001). Such mechanisms must not only include strategic anti-corruption steering committees but also operational watchdogs working within government institutions composed of civil society and government officials working together (Transparency International, 2002). These watchdog bodies must cover monitoring and evaluation of local and central government affairs such as budget-related policies, personnel-related matters, public investment planning, complaint matters, and public information channels.[15] Programmes including as broad a range of participants or stakeholders as possible raises the expectations of all those involved and increases the likelihood of successful reform. Bringing otherwise marginalized groups into the strategy empowers them by providing them with a voice and reinforcing the value of their opinions (Hirschman, 1970). It also demonstrates that they will have an effect on policy making, and give a greater sense of ownership for the policies that are developed.[16] The establishment of strategic partnerships has also

[13] For examples of such development projects in an African context, see Ferguson (1990) and Moore (2000) or Morris (1991) for a cynical view from the Middle East.

[14] The role of trust (and social capital more broadly) in both project implementation and government performance has received a large amount of attention (see Rose 2002 and Grootart, 2002).

[15] For references on the advantages and disadvantages of such participatory methods, see Wright and Nelson (1995), Cooke and Kothari (2001) and Petty et. al (1997).

[16] Such a conception goes beyond traditional theories of modernisation, dependency, statism, and political interactionism (Chazan, 1999) of the development literature and principle-agent models of the economics literature (Shleifer and Vishny, 1993) into more participatory concepts of policymaking such as Poulton and Harris (1988) or Robinson, Hewitt and Harriss (2000).

proven to be valuable, both in bringing key stakeholders into the process and developing direct relationships where they will be the most effective against specific forms of corruption or in implementing specific strategy elements. Examples include strategic partnerships between NGOs and international aid institutions -- such as the partnership between the World Bank and Transparency International -- which has resulted in national and international anti-corruption awareness raising. CICP's approach also reflects such co-operation – involving a series of different actors at the national, international and sub national levels, including the judiciary at the Federal and the state level, the International Chief Justices' Leadership Group, the Independent Corrupt Practices and Other Related Offences Commission (ICPC), the victims of corruption, the media, the private sector, NGOs, and the international donor community.

5. **The fight against corruption should be non-partisan.** The fight against corruption will generally be a long-term effort and is likely to span successive political administrations in most African countries. This makes it critical that anti-corruption efforts remain politically neutral, both in their goals and in the way they are administered. Regardless of which political party or group is in power, reducing corruption and improving service delivery to the public should always be a priority. To the extent that anti-corruption efforts cannot be made politically neutral, it is important that transparency and information about the true nature and consequences of corruption are major factors in an anti-corruption strategy. In the same way, other projects may also wish to consider the effects of regime changes on their probable success.
6. **Programmes should be "evidence-based".** Strategies should be based on concrete, valid evidence at all stages. Such evidence includes preliminary assessments of the extent of corruption to establish a "baseline", the need for countermeasures, the setting and periodic reassessment of strategic objectives. In countries where corruption is seen as endemic, the external gathering or validation of this evidence is often seen as an important factor in the credibility of the evidence, and hence in the credibility of strategic plans based on that evidence as well as periodic assessment of progress against corruption. In this respect, the United Nations Global Programme against Corruption has established comprehensive country assessments to assist in this process, where such assistance is requested. Sources of information may vary, but will generally include opinion surveys, interviews with relevant individuals such as officials or members of companies that deal with the government, focus group discussions about the problem of corruption and aspects of the problem or measures against it, the preparation of case studies, and assessments of anti-corruption laws and public sector agencies.
7. **Evidence should be "action-oriented"**. At the policy making level, the evidence should form the basis of the development of anti-corruption strategies and policies. At management levels, the knowledge that evidence will be gathered and assessed objectively should encourage results-oriented management, and a clear understanding

of exactly what results are expected. [17] At operational levels, service providers should gain an understanding of what corruption is, how it affects them, and what is expected of them in terms of applying anti-corruption policies in their work. The users of the various services should have the same information, so that they come to expect corruption-free services and are prepared and equipped to speak out when this is not the case. The international element in country assessments should serve as a validation of the evidence, a source of objective and independent analysis and reporting, a basis for international comparison, a means of information dissemination about problems encountered and solutions developed from one country to another, and as an assistant in the the development of a coherent international or global strategy against corruption.

Once anti-corruption strategies are in place, further assessments should review both actual progress made and the criteria by which progress is defined and assessed. In practical terms, this gives participants at all levels an opportunity to comment -- providing valuable feedback about both results and policies -- and helps promote ownership and support for the programme. Popular participation makes credibility or legitimacy a critical factor in controlling corruption. For this reason, further assessments should not only consider evidence about whether the programme is actually achieving its goals, but about key figures' and general populations' perceptions. Moreover, the process of gathering and assessing evidence should be an ongoing process and not a one-off event. One term used to describe this is "action research", described as embracing, "principles of participation and reflection, and empowerment and emancipation of groups seeking to improve their social situation" (Seymour-Rolls and Hughes, 1995). Common among most definitions of action-research is the concept of using dialogue between different groups to promote change through a cycle of evaluation, action and further evaluation. The dialogue between international and African projects embodied in action research represents – in our opinion – should represent a key element of many foreign sponsored projects in Africa.

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[17] Such data should be used judiciously – thus avoiding the over-empiricisation of New Public Management (Barzelay, 2001) or "audit culture" (Strathern, 2000).

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