

# Supporting Zambian judicial capacity to handle corruption cases

## Query:

*Can you provide examples of initiatives that have supported the capacity of the judiciary in handling corruption cases and fast tracking corruption cases in the courts?*

## Purpose:

Donors are in dialogue with the Zambian Government to develop a programme that would strengthen the judiciary's capacity to handle corruption and complex crime cases.

## Content:

- Part 1: Strengthening Judicial Integrity Enhances Efficiency in Combating Corruption
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## Summary:

Effective prosecution of corruption cases cannot be achieved without an effective and competent judicial system that functions efficiently, independently and impartially. Most initiatives supporting judicial capacity to tackle corruption seek to strengthen judicial independence and accountability through transparent appointment, promotion and disciplinary procedures and the introduction of higher ethical and professional standards. In addition, as corruption cases are more likely to be effectively handled by a well-functioning judiciary with adequate resources and capacity, reforms programs also address inefficiencies through increased resources and capacity, well-trained judges and more efficient ways of handling cases and managing caseloads. Judicial reform must be grounded in a solid empirical basis, tailored to the specific circumstances of the country and locally owned. A holistic approach should be prioritised.

## Part 1: Strengthening Judicial Integrity Enhances Efficiency in Combating Corruption

Most judicial reform programmes conducted in developing countries over the past years strive to foster impartial, independent and accountable judiciaries. Strengthening judicial integrity and accountability is an integral element of any attempt to support the judiciary's capacity to handle corruption cases. When the judiciary is not independent, the executive or legislative branches of government exert various forms of pressure to influence the outcome of justice processes, using threats, intimations, bribery but also the manipulation of judicial appointments, salaries and conditions.

In such a system, judges are under pressure to rule in favour of powerful political and economic entities, providing legal protection for illegal practices including fraud and corruption. In a corrupt

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judiciary, high profile corruption cases involving senior officials are unlikely to be investigated and prosecuted and sanctions are unlikely to be enforced. For example, in Indonesia, judicial decisions in major corruption cases between 1998 and 2006 raised public concerns as many defendant found guilty were given derisory sentences. Although this may only have been partly due to judicial corruption, defendants were frequently acquitted by low courts in major corruption cases during this period. (Please see: [http://www.ide.go.jp/English/Publish/Asedp/pdf/074\\_02.pdf](http://www.ide.go.jp/English/Publish/Asedp/pdf/074_02.pdf)).

The **Global Corruption Report 2007 (GCR)** on Corruption in Judicial Systems provides an overview of various approaches that have been implemented worldwide to prevent judicial corruption and to promote judicial integrity. Most of the initiatives presented below are drawn from the GCR. (Please see: <http://www.transparency.org/publications/gcr>). TI has also developed a **Checklist for Maintaining Integrity and Preventing Corruption in Judicial Systems** that has been developed with input from a number of senior judges and experts from around the world<sup>1</sup>.

### ***Judicial Appointments, Discipline, Transfer and Promotion Procedures***

Transparent and rule-based appointment, evaluation, discipline and promotion procedures support the development of a competent and professional judiciary and ensure that decisions are free from undue influence and political interference. An objective and transparent process of appointment ensures that the most professional candidates are selected and reduces the risk of manipulating the appointment process to select pliant and corruptible judges. Promotion and disciplinary procedures should also be made transparent to prevent them from being manipulated by corrupt senior officials to tighten their grip on the judiciary. In some countries, reforms have included the creation of independent bodies such as judicial councils to oversee the appointment and discipline of judges. Such councils' members should also be appointed in a transparent manner, using objective criteria.

In **Argentina**, for example, the judicial council was created in 1994 as part of the Constitutional reform and has been operating since 1998. It is responsible for appointment (pre-selection for executive and legislative choice), transfers, training and discipline of judges. However, since President Kirchner took office in 2003, there have been attempts to modify the composition of the body to undermine the Judicial Council's independence.

The proposed draft of the **Nepalese** interim constitution in 2006 has for the first time adopted plans to appoint district court judges after examinations. Such measures are expected to limit favouritism in the appointment process.

In the **United Kingdom**, appointment procedures in all jurisdictions have been reformed, beginning with Scotland in 2002. A Judicial Appointment Commission has been established in 2006, composed of both lay and legal members, with an advisory role for selections based on merit. Disciplinary procedures have also been clarified and made public: the Guide to Judicial conduct is available online.

If judicial salaries, status and working conditions are too low, the judiciary will be unable to attract and retain qualified personnel. This is especially true when it comes to handling financial crimes, which are often very complex and require specific sets of skills, expertise and investigation techniques. The status and remuneration of specialised staff has to be adequate to attract and retain the right set of skills and expertise. Reforms in developing countries have focused on raising salaries and providing safeguards to avoid potential manipulation of salaries, promotions and working conditions by members of the executive.

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<sup>1</sup> This checklist can be obtained from the TI international secretariat.

In **Algeria**, for example, judges' salaries were raised as a set of reforms introduced in 2004 to prevent them from indulging in corruption and security of tenure was introduced for judges after 10 years of service as well as new transfer rules and procedures.

### ***Accountability and Discipline***

An accountable judiciary complies with the highest ethical and professional standards, to render justice in an impartial, independent and accountable way. The introduction of codes of conduct setting clear ethical standards is one approach that is increasingly considered to strengthen judicial accountability.

The **Bangalore Principles of Judicial Conduct** provide a valuable resource in this regard. They have been originally developed by a group of Chief Justices and Superior Court judges from around the world known as the "Judicial Integrity Group". This group was formed under the auspices of the Global Programme Against Corruption of UNODC in 2000. The principles are intended to establish ethical standards for judges with the view to providing guidance to judges and affording the judiciary a framework for regulating judicial conduct. The principles tentatively worked out have received increasing acceptance from member states and international organisations. Some States have adopted the Bangalore Principles while others have modelled their own Principles of Judicial Conduct on them. The United Nations Social and Economic Council, by resolution 2006/ 23, has invited Member States consistent with their domestic legal systems to encourage their judiciaries to take into consideration the Bangalore Principles of Judicial Conduct when reviewing or developing rules with respect to the professional and ethical conduct of the members of the judiciary. (Please see: <http://www.coe.int/t/dg1/legalcooperation/judicialprofessions/ccje/textes/BangalorePrinciplesComments.PDF>).

In addition, some countries have introduced complaint mechanisms to promote judicial integrity and accountability. **Costa Rica**, for example, established the tribunal of judicial inspections that receives complaints against court staff and other judicial personnel. In **Ghana**, the Complaints and Court Inspectorate Division of the Judicial Service was inaugurated in 2003 and receives complaints of corruption and influence peddling. Only three complaints were lodged in the first year. In **Nigeria**, the most often cited impact of judicial reform efforts undertaken in recent years was the establishment of a complaints system, consisting of complaints boxes and complaints committees to ensure credible review and responses to the complaints.

### ***Transparency***

Transparency of the court process helps enhance judicial integrity, prevent corruption and promote fair and accountable judicial decisions. In developing countries, decisions are usually poorly published, resulting in inconsistent application of the law and difficulties to establish facts in the case of controversial rulings. The **publication and dissemination of judicial decisions** is necessary for the purpose of establishing precedents, ensuring transparency and fairness of judicial processes as well as deterring others from similar corruption acts by publishing penalties imposed. In **Turkey**, for example, efforts to increase transparency have resulted in establishing a system in which court decisions are posted on the internet.

## **Part 2: Supporting Judicial Capacity to Handle Corruption Cases**

In developing countries, weak judicial systems, lack of resources, capacity and independence are some of the most common reasons invoked for poor performance in handling corruption cases. Although there are no one-size-fits-all solutions to strengthening the judiciary's capacity to handle fraud and corruption, typical measures include addressing court inefficiency, case loads and capacity

challenges. This involves changes in rules and procedures, training, increased number of judges and resource allocation and the introduction of automated case management systems.

### ***Providing Adequate Resources***

The judiciary must be granted the financial and human resources to perform its functions adequately. In most developing countries, general budgetary constraints have a detrimental impact on the judiciary, affecting its capacity to operate effectively, attract and retain well trained and capable staff. Considerable resources are needed to improve judicial services, provide judicial staff with adequate training, wages and working conditions and provide incentives to reduce corruption. Due to shortages of resources, justice buildings and offices are not properly maintained and justice staff are poorly trained or paid. Judges and magistrates may also have insufficient access to libraries, computer, internet and legal materials. This situation hampers the efficiency of court personnel, creating considerable backlogs of cases.

### ***Strengthening the Legal Framework***

Some flaws in the legal framework against corruption may also prevent effective investigation and prosecution of corruption. Corrupt practices cover a wide range of behaviours, including nepotism, influence peddling, bribery and embezzlement. Some national legislation limits their scope to bribery, excluding many other forms of fraud and corruption.

A further difficulty relates to the difficulty of obtaining evidence to prove court cases in corruption-related affairs. Some criminal codes may not provide for reduced burden of proof for corruption cases and only allow for prosecution and conviction with direct evidence of bribery, which is especially challenging to gather, as corruption occurs behind close doors. Criminal codes must also allow for prosecution and conviction of corruption with circumstantial evidence, such as unexplained wealth.

Prosecutors and investigators may also not always be given the means by law to conduct effective investigations. Proving corruption-related cases may also involve using special techniques such as electronic surveillance or undercover operations that need to be legally grounded and carefully framed to avoid abuse while facilitating corruption investigations.

### ***Strengthening Technical Capacity to Handle Corruption Cases***

Judges and court personnel may generally lack substantial knowledge of the law to investigate and prosecute corruption cases as well as keep up-to-date with the latest legislation, jurisprudence or changes in judiciary policies. This is particularly true for financial criminality. In developing countries, the judiciary as a whole often lacks well trained and experienced staff to handle corruption cases. Cases are often very complex, involving well educated senior officials and complicated patterns of fraud and corruption. Corrupt people also use modern techniques, technology and equipment. The judiciary staff often lacks the technical capacity to investigate highly technical and sophisticated economic crimes and there is a need to train and upgrade staff in investigation, prosecution and adjudication of corruption cases.

### ***Specialised Courts for Corruption***

In many cases, there are no specialised courts or prosecutors for corruption cases. Corruption cases are prosecuted in regular courts, regardless of their scope and complexity. Magistrates must handle complex and highly specific financial crimes in addition to their regular caseload. Some countries such as **Kenya, Pakistan and the Philippines** have established specialised criminal courts for corruption, but their need and effectiveness have been debated over time. One of the risks associated with such special corruption courts include the risk of being misused for political purposes, as it has been suggested in the case of Pakistan's National Accountability Bureau. (Please see U4 Expert Answer on specialised courts: <http://www.u4.no/helpdesk/helpdesk/queries/query19.cfm>). An

alternative consists in assigning judges that have already acquired expertise in handling corruption cases to serious corruption affairs or to train them.

### **Training and Professionalisation of Court and Justice Personnel**

Judges must be prepared and trained to prosecute corruption cases. Adequate training and resources need to be allocated to ensure that corruption cases are handled effectively and professionally, including in-training services for judges, prosecutors and lawyers in corruption-related court procedures as well as training in methods of interpretation such as checking for inconsistent or illogical arguments. Judges must also keep up to speed with the latest legal developments in the field of anti-corruption and the ever-increasing influence of international norms resulting from various international treaties and conventions. A number of organisations provide training or capacity building services to judicial personnel in developing countries.

The World Bank provides **trainings in the area of judicial reform**, examining through case studies, judicial reform experience and their relationship with strategies to control corruption. Training targets judges and court personnel, executive authorities, Attorney General's Office personnel, bar associations' members, etc.

UNODC is also involved in capacity building initiatives, providing field support and technical assistance, particularly through its Global Programme against Money Laundering (GPLM). In addition to organising training workshops and seminars, it has implemented **mentorship programmes in anti-corruption as well as anti-money laundering**, with experienced professionals, prosecutors or law enforcement personnel providing long term sustainable expertise in-country. The organisation has also developed computer based training modules in anti-money laundering and basic financial investigations. UNODC is also developing a Manual on the Judicial Reform Process: a Guide to Strengthening Court Integrity and Capacity.

The International Development Law Organisation (IDLO) is also supporting the judicial sector in developing countries with capacity building related initiatives, providing **legal training to judges and magistrates** in various areas that are relevant to anti-corruption work. (Please see <http://www.idlo.int/publications/29.pdf>).

### ***Improving Court Administration through Court Management and other Procedural Reforms***

A key dimension of strengthening the capacity of the judiciary consists in investigating more efficient ways of handling the case load and speeding up the processing of cases, including corruption cases. Improving the overall court administration through improved caseload management, measures facilitating rapid court proceedings and introducing more efficient case management and tracking systems contribute to reduce backlogs and accelerate disposition of new disputes.

#### **Caseload Management and Speeding up the Judicial Proceedings**

Quality and speed of prosecution is greatly influenced by the overall caseload and volume of cases processed through the judicial system. In countries where corruption is endemic and the judiciary suffers from severe shortages of resources and capacity, the justice system can be easily challenged or overwhelmed by the volume of corruption cases to investigate and prosecute.

**The selection of cases and assigned judges** may have an impact on the nature, volume and outcomes of corruption-related trials. Making this decision involves exercising considerable discretion. This responsibility usually lies within the jurisdiction of a powerful authority that can relatively easily distort the process and influence court decisions. In countries where such processes are not transparent and based on objective criteria, the case selection process can be easily manipulated to select specific cases or drop more sensitive ones. Some enforcement agencies can

also be tempted to address primarily minor infractions while neglecting cases involving powerful senior officials. In some other cases, serious corruption cases involving influential senior officials can be assigned to judges that are likely to be more lenient or easily controllable. The **UN Handbook on Practical Anti-Corruption Measures for Investigators and Prosecutors** recommends considering the following criteria when selecting priority cases: (Please see: <http://www.unodc.org/pdf/crime/corruption/Handbook.pdf>)

- A. Seriousness and prevalence of the type of corruption;
- B. Legal nature of the alleged type of corruption;
- C. Cases that are needed to set precedents;
- D. Viability or probability of satisfactory outcome;
- E. Availability of financial, human or technical resources;
- F. Criminal intelligence criteria.

Some countries promote **Alternative Dispute Resolution (ADR)** as a strategy to better manage case load and reduce judicial corruption. ADR is understood as a process by which both parties reach a settlement outside the courtroom through arbitration, mediation or civil settlement. Furthermore, systems providing for alternative dispute resolution may help contain judicial corruption, through decongestion of the court system. Chile, Ecuador and Uganda have implemented ADR mechanisms which have resulted in a reduction in the reporting of court-related corruption. (<http://www.unodc.org/pdf/crime/gpacpublications/cicp14.pdf>). In Cambodia, alternative dispute resolution is especially popular at the local or village level. Several programmes are in development to regulate this system and provide legal training to the local leaders acting as mediators. This approach relies on traditional figures that are seen as less corrupt, and less expensive than members of the formal justice system.

Several American countries have also passed “**speedy trial acts**” requiring the court to process cases within a certain period of time. But experience shows that such approaches have had little impact on case processing time

(Please see: <http://www.pogar.org/publications/judiciary/messick/reform.pdf>).

An alternative that is currently being considered by the UNODC Judicial Integrity Group in its draft UNODC Manual on the Judicial Reform Process consists in providing **incentive payments** for judges who go through more trials. (Please see: [http://www.unodc.org/pdf/corruption/publication\\_jig4.pdf](http://www.unodc.org/pdf/corruption/publication_jig4.pdf)).

A **revision of procedural rules** can also facilitate more expeditious resolution of disputes. The judge for example should be able to set and enforce strict deadlines for pre-trial motions, appearances of witnesses, submissions, etc., ensure compliance and prescribe punitive measures for delays. Experience has shown that this may result in an expedited trial. Other examples of procedural reforms that can speed up judicial proceedings and improve overall case management are outlined in a paper by a Judge of the High Court of Uganda at a seminar for legal and judicial reform for improving governance.

(Please see: [http://info.worldbank.org/etools/docs/library/108523/sebutinde\\_paper.pdf](http://info.worldbank.org/etools/docs/library/108523/sebutinde_paper.pdf))

### Case Management and Tracking System

Effective **case management** is vital for successful investigation and prosecution of corruption. Serious corruption cases are often highly sophisticated and involve time-consuming, complex, specialised and expensive investigations. Highly technical and legal expertise in financial audits and the use of specific investigative techniques may be required for complex corruption cases, with different people/teams working on specific aspects of the cases. A good case management system requires that the Court be organised into specialised divisions, with staff and judges assigned to financial crimes having gained experience in investigating and prosecuting such cases. Resources assigned to such cases must also be managed effectively to ensure successful outcomes, including the coordination of the various people involved in a specific case. Adequate measures to ensure the security of the investigators and prosecutors must also be taken. The **UN Handbook on Practical**

**Anti-Corruption Measures for Prosecutors and Investigators** provides guidance in this regard. (Please see: <http://www.unodc.org/pdf/crime/corruption/Handbook.pdf>)

**Case management and tracking systems (CMT)** provide judges and magistrates with a complete record of a case, compiling both data on individuals and various steps in case progress to support decision making and case control. In the absence of an efficient CMT, the judicial process can be subverted by the destruction, loss or hiding of records. In developing countries where CMT are not automated, paper based case files are difficult to manage and files can be easily lost or tampered with. In countries where corruption is endemic, bribes can also be paid to move a case from step to step in the judicial process as well as to misplace or destroy files and incriminating evidence.

An efficient case management and tracking system allows transparent tracking of case files and enhances the effectiveness and accountability of court proceedings by providing accurate and open information on court operations and decisions. Court users and observers are better equipped to monitor inconsistent application of the law. In corruption cases, it also contributes to prevent subversion of the judicial process by hiding or destroying records. The ADB for example is assisting the **Supreme Court of Indonesia** in improving its administration of justice with the view to developing a case tracking and classification system, improving public dissemination of judgements and building the capacity of administrative staff in the court system.<sup>2</sup>

Characteristics of a good case management system include an organised automated registry and automated recording of court proceedings and cover a number of critical areas such as controlling forms, establishing record control, allowing case processing and record updating, scheduling case events and controlling and filing final records. USAID's Center for Democracy and Governance has published a comprehensive **Case Tracking and Management Guide** that provides practical guidance on successful case tracking and management.

(Please see: [http://www.usaid.gov/our\\_work/democracy\\_and\\_governance/publications/pdfs/pnacm001.pdf](http://www.usaid.gov/our_work/democracy_and_governance/publications/pdfs/pnacm001.pdf)).

In **Ghana**, the "fast track court" initiative was introduced with the aim of resolving cases within three months of initiating proceedings, providing access to documents and transcripts within 24 hours of the court hearings and introducing electronic processes in some courts.

Computerising case management systems allows fast tracking of files and cases, monitoring of time requirements, etc. In several courts in **Bulgaria**, including the Supreme Administrative Court, the court record system has been computerised to allow court users access to public court records and track each case through its resolution.<sup>3</sup>

In the **Kingdom of Tonga**, the introduction of electronic case management and mediation has proved to be instrumental in improving the efficiency of the legal process. In just one year, Tonga's Supreme Court cut the average time to enforce contracts from 510 to 350 days. Computerisation of case management was introduced along with computer training to court staff.<sup>4</sup>

In **Kenya**, a computerised case management system is being designed and implemented by the National Council for Law Reporting to improve efficiency in the judiciary and reduce the backlog of cases. The development of the system involves "*computerized data capture of pending cases and storing it in a central, secure and robust database system which is capable of processing the data and giving reports relevant to various classes of users*". The Council is also pioneering a project for the digital recording and transcription of court proceedings.<sup>5</sup>

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<sup>2</sup> Please see : <http://www.adb.org/media/Articles/2006/10829-speech-Eveline-Fischer/>

<sup>3</sup> Please see: [http://www.usaid.gov/our\\_work/democracy\\_and\\_governance/publications/ac/sector/justice.doc](http://www.usaid.gov/our_work/democracy_and_governance/publications/ac/sector/justice.doc)

<sup>4</sup> Please see: [http://www.doingbusiness.org/Documents/DB\\_Tonga\\_Courts.pdf](http://www.doingbusiness.org/Documents/DB_Tonga_Courts.pdf)

<sup>5</sup> Please see: <http://www.kenyalaw.org/about/index.php?content=7>

UNODC is also providing support to countries in this regard within the framework of the implementation of the UN Convention against Corruption (UNCAC). In particular, UNODC has developed an investigative case tracking software called goCASE as well as an asset tracking and recovery software called goATR.

(Please see: [http://gocase.unodc.org/pdf/goCASE\\_folder\\_WEB.pdf](http://gocase.unodc.org/pdf/goCASE_folder_WEB.pdf)).

## **Part 3: Lessons Learnt from Capacity Building Initiatives**

### ***Reform Design Process***

Although experts generally agree on the major factors affecting judicial capacity, experience indicates that judicial performance can vary considerably between courts with similar structures, caseloads and personnel levels and cannot be entirely explained by factors related to resources and capacity. (Please see: <http://www.pogar.org/publications/judiciary/messick/reform.pdf>).

Effective judicial reforms must be grounded in a solid empirical basis and identify local problems and opportunities in order to avoid introducing reforms that are based on false assumptions, erroneous beliefs and perceptions. It is of crucial importance to understand how the local justice system operates, including the set of formal rules and informal practices governing the court system, to identify bottlenecks in processing cases through the judicial process. It may also be enlightening to analyse the incentives of the various stakeholders involved- including judges, lawyers, bailiffs, clerks and other court personnel- with the view to rewarding those who perform well and sanction those hindering the judicial process. Ensuring active participation of judicial personnel in the assessment as well as reform design process may help overcome resistance to change, gain support for reform and promote changes that are tailored to the specific context and circumstances of the local judiciary.

There are not many instruments or monitoring systems in place to assess judicial performance and quality in developing countries. Such attempts are also often challenged by the lack of information required to monitor performance. However, some assessment tools have been developed by various actors to help developing countries assess judicial independence and reform as well as improve the way in which they monitor the enforcement of their anti-corruption laws.

The **Judicial Reform Index** for example assesses judicial reform and judicial independence in emerging democracies, monitoring progress towards establishing more accountable, effective and independent judiciaries using a set of 30 indicators covering 1) quality, education and diversity 2) judicial powers, 3) financial resources, 4) structural safeguards and 5) accountability and transparency. (Please see: [http://www.abanet.org/rol/publications/judicial\\_reform\\_index.shtml](http://www.abanet.org/rol/publications/judicial_reform_index.shtml)).

The **World Bank** is also developing tools to support governments' efforts to monitor the enforcement of anti-corruption laws. Such initiatives typically collect data answering the following questions: What kind of cases is the court receiving? Who is bringing them? How long are the cases taking to resolve? To what degree are allegations of corruption investigated and prosecuted? What percentage of complaint is investigated? How many investigations are prosecuted? How many result in conviction? What penalties are imposed on different forms of corrupt practices?

In **Macedonia**, the coalition "All for fair trials", with the support of the OSCE, monitored corruption related court procedures between 2005 and 2007. The study looked at indicators such as volume of cases, nature of offences, duration and outcome of the procedure, type of sanctions with the view to assessing the state's response to the fight against corruption as well as capacity and willingness of



the judiciary to handle corruption cases<sup>6</sup>. The project enabled the identification of various problems at different steps in the judicial process, from detection of corruption cases, prosecution to reaching the verdict. (Please see: <http://www.all4fairtrials.org.mk/en/3NabSudProekti.htm>).

### ***Need for Local Ownership of Reforms***

Within the framework of its Global Programme against corruption, UNODC has provided support in strengthening judicial integrity and capacity to Nigeria, South Africa, Indonesia, Mozambique and Iran. The first step of the reform process consisted in conducting a comprehensive assessment of the status of the judiciary in each country, looking at:

(Please see: [http://transparency.org/publications/publications/gcr\\_2007](http://transparency.org/publications/publications/gcr_2007)).

- Access to justice;
- Timeliness and quality of justice delivery;
- Independence, impartiality and fairness of the judiciary;
- Levels, forms and costs of corruption in the justice sector;
- Coordination and cooperation across justice sector institutions;
- Public trust in the justice system;
- Functioning of accountability and integrity safeguards in the justice sector.

Plans for reforms stemmed from these assessments, with constant effort to support local ownership for reforms. The participatory and collaborative nature of the project development helped foster support for reform. A more detailed account of the impact that such approaches can have is given in the progress report on Nigeria.

(Please see: [http://www.unodc.org/pdf/crime/corruption/nigeria/Progress\\_Report\\_2.pdf](http://www.unodc.org/pdf/crime/corruption/nigeria/Progress_Report_2.pdf)). UNODC sought to foster local ownership through the formation of implementation committees comprising various stakeholders of the justice sector. Committees were given responsibility for coordinating and managing the implementation of the action plans. The initiative has illustrated the value of pilot testing and producing sound data upon which decisions for programme design and extension can be based. Small low cost items (such as the introduction of complaint boxes in Nigeria) were the most visible achievements.

### ***Need for Holistic Judicial Reform***

A strong judiciary has sufficient institutional capacity to handle legal cases in an efficient and impartial manner as well as mechanisms in place to ensure its integrity, accountability and independence. Most promising justice reform efforts have adopted a holistic approach that combine general capacity building initiatives with measures specifically targeting judicial integrity. The Strategy plan for the Justice System of Mongolia provides an example of such a comprehensive approach, fostering an impartial, independent and accountable judiciary while strengthening the overall capacity of the justice sector. In 2000, Mongolia passed the Strategy plan for the Justice System of Mongolia that inaugurated a comprehensive process of judicial reforms. Reform focussed on five key areas:

- Court administration and case-flow
- Continuing legal education
- Creation of a qualification examination for lawyers
- Improved ethical education for law professionals
- Public education about justice processes.

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<sup>6</sup> The report can be accessed through TI International Secretariat.

The project's main achievements include full automation of all Mongolian courts, random assignment of cases, improved access to case files through public terminals in court, creation of a central database of court information. Training of lawyers has been intensified, including in ethics and a qualification exam for legal professionals has been introduced. The two main monitoring agencies – the judicial disciplinary committee and the prosecutor's special investigative unit have been strengthened by providing computers and training in investigative techniques. (Please see: <http://www.usaid.gov/mn/programs/jrp/index.html> and <http://www.usaid.gov/mn/programs/jrp/jrp-updates-Q2-06.html>).

## **Part 4: Zambia's Efforts to Modernise the Judiciary**

### ***Overview of the Zambian Judiciary***

The Zambian Judiciary faces similar challenges of capacity, resources, integrity and accountability as most developing countries.

Although considered relatively independent by sources such as Freedom House, the judiciary has not been spared by corruption. Lower levels of the judiciary and the supporting staff are perceived to be extremely prone to corruption and known to demand and/or accept bribes from ordinary citizens. According to the 2004 World Bank and IFC assessment of investment climate, only 64 % of companies believe that the judicial system will enforce contractual and property rights in business disputes.

([http://www.ifc.org/ifcext/economics.nsf/AttachmentsByTitle/IC-zambia.pdf/\\$FILE/IC-zambia.pdf](http://www.ifc.org/ifcext/economics.nsf/AttachmentsByTitle/IC-zambia.pdf/$FILE/IC-zambia.pdf)).

A country-wide survey of corruption conducted by the World Bank the same year indicates that 63% of the businesses surveyed see corruption as a very important obstacle for using the courts in Zambia. It further reports that 40% of Zambian households and 25% of businesses employ bribes to speed up judicial processes. Over 80% of the household surveys reported that they needed to use the courts but decided not to while 60% of the businesses said the same. ([http://www.worldbank.org/wbi/governance/zambia/pdf/Zambia\\_Executive\\_Summary.pdf](http://www.worldbank.org/wbi/governance/zambia/pdf/Zambia_Executive_Summary.pdf)). There have also been some cases of high level judicial corruption in recent years. In 2003, the Chief Justice was reported to have received US\$ 168.000 in bribes from former President Chiluba over a three-year period.

Salaries of judges and magistrates remain largely unsatisfactory, especially in lower courts. Inadequate human resources also delay the dispensation of justice, contributing to increased case loads and slow court proceedings. Lack of budgetary resources have resulted in wide absenteeism and oversized case loads, backlogs and delays, overextended trials and slowdown of the overall justice process. Magistrates denounced the worsening economic conditions of the judiciary by going on strike in the course of 2006 and protesting against low pay and benefits.

Judicial efficiency is also hampered by lack of training and shortage of magistrates, resulting in poorly trained individuals applying complex laws to complicated cases. They have to rely on the competence of lawyers to make their decision and are easily manipulated by the defendants' lawyers. Lack of information and basic resources aggravates this situation. No legal literature is provided to the local courts and judges and magistrates need to rely on their knowledge of customary law.

Please see the 2007 Global Corruption Country report on Zambia:

([http://transparency.org/publications/gcr/download\\_gcr#7](http://transparency.org/publications/gcr/download_gcr#7)).

### ***Current Reforms***

Reforms are currently on underway in Zambia supported by the various donors to strengthen judicial capacity. Efforts have included:

- Building and/or furnishing of court buildings;
- Provision of equipment such as electric typewriters;
- Providing training to mediators to promote alternative dispute resolution;
- Training local court personnel;
- Amendment of the judicial code of conduct regulating the conduct of judges.

### **Recommendations by Civil Society**

There is still a long way to go as a 2005 survey of Lusaka residents suggest that corruption in courts is perceived to have significantly worsened. The following recommendations are based on the 2007 GCR country report on Zambia's judiciary:

- There is a need to increase the number of court officials, sustain continuous professional training and improve salaries.
- Further training and capacity building of judicial personnel is required.
- The method of appointing judges, magistrates and court personnel needs to be reformed.

## **Part 5: Further Reading**

### **Global Corruption Report 2007 on Corruption in Judicial Systems (2007)**

This reports examines how, why and where corruption mars judicial processes and reflects on remedies for corruption-tainted systems. Two problems are analysed in depth: political interference to pressure judges and influence process outcomes including in corruption cases and petty bribery involving court personnel. <http://www.transparency.org/publications/gcr>

### **Report of the Fourth Meeting of the Judicial Integrity Group (2005)**

This report summarises the discussions that took place at the initiative of UNODC at a meeting of the Judicial Integrity Group on strengthening judicial integrity and capacity. The purpose of this meeting was to review materials prepared to support Member States' efforts to strengthen judicial integrity and capacity, including the draft UNODC manual on the Judicial Reform Process. [http://www.unodc.org/pdf/corruption/publication\\_jig4.pdf](http://www.unodc.org/pdf/corruption/publication_jig4.pdf)

### **UN Handbook on Practical Anti-Corruption Measures for Prosecutors and Investigators (2004)**

This handbook is part of a larger package of materials intended to provide information and resource materials for countries developing and implementing anti-corruption strategies. <http://www.unodc.org/pdf/crime/corruption/Handbook.pdf>

### **Strengthening Judicial Integrity and Capacity in Nigeria – A Progress Report (2003)**

In this report, UNODC gives an account of the status of judicial reform initiatives in Nigeria at the federal level and within 11 Nigerian states. The process identified detailed actions to take to i) improve access to justice, ii) increase the timeliness and quality of justice, iii) enhance public confidence in courts, iv) establish an efficient and credible complaints system and v) enhance co-ordination and collaboration throughout the justice system.

[http://www.unodc.org/pdf/crime/corruption/nigeria/Progress\\_Report\\_2.pdf](http://www.unodc.org/pdf/crime/corruption/nigeria/Progress_Report_2.pdf)

### **Court Case Management and Other Procedural Reforms (2003)**

This presentation was made by a Judge of the High Court of Uganda at a seminar for legal and judicial reform for improving governance in October 2003 within the framework of the World Bank's distance learning programme for Anglophone Africa. It highlights the benefits and characteristics of a good case management system, including specialised court divisions, automated registries and recording of court proceedings, progressive procedural rules, filing of comprehensive pleadings.

[http://info.worldbank.org/etools/docs/library/108523/sebutinde\\_paper.pdf](http://info.worldbank.org/etools/docs/library/108523/sebutinde_paper.pdf)

## U4 Expert Answer

### [Case Tracking and Management Guide](#) (2001)

This guide published by USAID's Center for Democratic Governance provides practical guidance on successful case tracking and management improvement projects. The purpose of this guide is to help rule of law officers make informed decisions about such initiatives, oversee the design of programmes and ensure sustainability.

[http://www.usaid.gov/our\\_work/democracy\\_and\\_governance/publications/pdfs/pnacm001.pdf](http://www.usaid.gov/our_work/democracy_and_governance/publications/pdfs/pnacm001.pdf)