

# U4 Expert Answer



## Tracking the progress of grand corruption cases: best practices and indicators

### Query:

*Can you suggest effective indicators for tracking the progress of grand corruption cases from referral to the investigating agencies, through to the Director of Prosecutions, onward to the courts and progress while they are in court without compromising the individuals right to a fair trial/hearing or reputation before they are convicted? What is considered good practice in this area and are there any countries that do this particularly well?*

### Purpose:

The purpose of the information requested is for monitoring and evaluation of grand corruption cases.

### Content:

**Part 1: Referral and investigation of grand corruption cases**

**Part 2: Adjudication of grand corruption cases**

**Part 3: Further reading**

### Summary:

Grand corruption is defined as corrupt acts, "committed at a high level of government that distorts policies or the central functioning of the state, enabling leaders to benefit at the expense of the public good" (Source:

[Transparency International Plain Language Guide](#)). Expert sources such as Transparency International (TI) and Global Integrity have repeatedly highlighted political parties as the sector perceived to be most corrupt by the general populace ([TI Global Corruption Barometer](#); [Global Integrity Report: 2008](#)). Effective prosecution is essential to deter grand corruption which has devastating impact on countries. For example, former president Ferdinand Marcos of the Philippines is estimated to have siphoned off between \$5 and \$10 billion in his 14 year reign. Even taking the lower estimate and assuming a nominal interest rate of 5 percent, the \$5 billion would have accumulated to over \$13 billion by today, which amounts to approximately 22 percent of the country's foreign debt at the end of 2006. ([Stolen Asset Recovery \(StAR\) Initiative : Challenges, Opportunities and Action Plan](#))

Grand corruption cases are often controversial, complex and high profile. They raise unique problems of public perception and expectations – the "big fish"

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must be tried to ensure credibility of anti-corruption efforts. Because of their politically sensitive nature, the investigation and prosecution of grand corruption cases require considerable resources and careful planning. Given the powerful position of the players involved, more incentives are present for corruption to enter into the prosecution process. At the same time, integrity of the prosecution process – due process and preservation of the rights of the accused - is also important so that prosecution of grand corruption does not become a tactical tool against political opponents.

Grand corruption cases often involve an international dimension: corrupt money can be stored in foreign bank accounts or in the form of assets in foreign jurisdictions. Prosecution in these circumstances involve mutual legal assistance between jurisdictions in investigation, evidence sharing etc. Given the large scope of the topic, this expert answer focuses on progress monitoring and indicators in the domestic context and does not deal with international processes.

A literature review found that systemic efforts to improve prosecution of grand corruption cases often neglect the aspect of tracking their progress. While statistical information is available on the output of different parts of the criminal justice system that deal with grand corruption cases, no initiative was found that measures progress of these cases from their inception to their conclusion. Given the importance of tracking progress and developing indicators of successful prosecution of grand corruption cases to anti-corruption regimes as a whole, it is recommended that more research effort be focused on this subject.

## Part 1: Referral and investigation of grand corruption cases

### Complaint mechanisms

The ability to bring forth complaints against corrupt leaders is the first crucial step to launching a grand corruption case. Complaint mechanisms vary between countries and legal systems: specialised anti-corruption bodies (such as the Independent Commission against Corruption, ICAC, in Hong Kong), the office of the ombudsman (e.g. in Norway, New Zealand and Scandinavian countries) and the office of the public prosecutor (e.g. in Canada) are all examples of bodies that receive corruption related complaints from the general population. Complaints can be received in

person, through anti-corruption hotlines, in writing, or, in some cases, through online forms.

Regardless of the format in which the complaints are received, proper records of their receipt and follow-up are necessary to enable the tracking of progress of the complaints. Standardised procedures for handling and processing complaints are essential. These should include establishing a check list for screening and advancing complaints, and setting clear, transparent time limits for responding to queries and complaints. Tracking progress of complaints can be done by using a data management system to track cases. In the Czech Republic, the main government hotline uses a database which has been created by the Transparency International Czech chapter to log users of its Advocacy and Legal Advice Centre (ALAC). Some countries, including Moldova and Kenya, require by law that case monitoring be done. ("Making Government Anti-Corruption Hotlines Effective", TI Guidance Note, forthcoming)

Indicators for the effectiveness of complaint receiving bodies can be found in their reporting mechanisms. Some anti-corruption hotlines and/or their host institutions publish reports on their operations which can include the number of complaints received, number of cases that are referred to investigative authorities (such as the police, prosecutor's office, auditor or ombudsperson) and their outcomes (e.g. disciplinary action, sanctions and prosecution). In Kenya, the national anti-corruption commission publishes online its annual report of activities, including a statistical summary of all cases forwarded to the attorney general and their status. ("Making Government Anti-Corruption Hotlines Effective", TI Guidance Note, forthcoming) The Hong Kong ICAC produces detailed statistics of the number of complaints received, number of complaints that were investigated and cases that were pursued further, in their annual report. The statistics are further categorised into the sectors (e.g. police force, elections, government departments, etc.) in which corruption was alleged and the method through which the complaint was received, for example, in person, referred by government departments, by phone, etc. ([Hong Kong ICAC Annual Report 2008](#))

In all corruption cases, assuring the claimants protection from reprisals or negative consequences poses serious challenges to corruption

reporting/complaint mechanisms. This is especially true in cases of grand corruption, given the high stakes involved and the powerful position of the alleged perpetrators. The risks are compounded in many countries by the lack of legislation to safeguard individuals who are reporting corruption. Therefore, the possibility for anonymous reporting and the protection of the complainant's identity through effective whistleblower protection are crucial to the effectiveness of complaint mechanisms. ("Making Government Anti-Corruption Hotlines Effective", TI Guidance Note, forthcoming) In Kenya, the anti-corruption commission has set up a 'virtual' internet hotline where individuals can anonymously report cases of corruption. Similarly, the ICAC of New South Wales in Australia provides online forms for filing corruption complaints and completion of any personal details requested on this form is optional.

(<http://www.icac.nsw.gov.au/go/reporting-corruption/information-for-the-public/is-this-a-matter-for-icac>) In Lithuania, the Criminal Procedure Code stipulates that victims and witnesses may remain anonymous – their identity is only disclosed to the pre-trial investigator, prosecutor and judge. The Law on State and Official Secrets says that the data from which the identity of a witness or a victim in a criminal case may be established should be treated as a state secret. (European Partners against Corruption report, "[Common Standards and Best Practice for Anti-Corruption Agencies](#)")

In conjunction with ensuring effective anti-corruption mechanisms, it is also important to protect individuals' rights and reputations against frivolous, vexatious and malicious allegations. Whistleblower legislation should therefore include clear rules to restore damage caused by false allegations. Such measures can include the publication of apologies and the correction of personal files, among other items.

Civil society organisations can also help to monitor the effectiveness of legal frameworks and complaint mechanisms and the protection of the rights of the accused. Public Concern at Work (PCAW), a UK-based NGO works to ensure that the whistleblower legislation functions properly and works with the community to promote whistleblowing. PCAW has also been working with a similar NGO in South Africa, the Open Democracy Advice Centre. (OSCE Report, "[Best Practices in Combating Corruption](#)")

### Investigation of grand corruption allegations

Evidence gathering and analysis is critical in uncovering corruption. Clearly established investigative techniques, processes with clear time limits and transparency in investigative decisions are essential components to enable proper progress-monitoring of grand corruption cases.

One method that has been proven to be highly effective in the context of intelligence gathering is financial monitoring. Pro-active monitoring of politically exposed persons to determine if their financial assets and lifestyle is commensurate with their salary can not only help efficient investigation of corruption charges, but also help determine the integrity of investigative results. Article 52 of the United Nations Convention against Corruption establishes special measures to monitor the personal financial affairs of politically exposed persons. The UNODC anti-corruption toolkit also recommends the implementation of legal instruments that require comprehensive disclosure of assets, as well as periodic review of such assets. ([UNODC Anti-Corruption Toolkit](#))

Investigation of grand corruption cases are often more complex than regular corruption cases. Unearthing evidence requires complex financial investigations - suspects are unlikely to place the proceeds of crime into their regular bank accounts and instead may transform the proceeds into other forms of assets or transfer them to spouses and relatives. Investigations can also include international aspects and may require mutual legal assistance with foreign jurisdictions. The bribe giver may be a foreign investor, the slush fund might be located in a country other than where the bribe is paid, or the bribe may be transferred directly into a recipient's foreign bank account. ([UNODC Anti-Corruption Toolkit](#))

The requirement of confidentiality is also crucial in corruption investigations. Corruption investigations need to be conducted covertly before overt action is taken, in order to reduce the opportunities for compromise or interference. Targets of investigation may later prove to be innocent and fairness dictates that their reputation is preserved before there is clear evidence of corrupt deeds. In case of the Hong Kong ICAC, disclosing any details of ICAC investigation until overt action such as arrests and searches have been

taken is prohibited by law. This method is seen to preserve the right balance between the need for transparency and effective law enforcement. ([Activities of the Hong Kong Independent Commission Against Corruption \(ICAC\): Its investigative technique](#))

The above reasons (among others) make tracking progress of grand corruption investigations very difficult. Efforts have been made, however, by leading Anti-corruption agencies such as the Hong Kong ICAC. Each year they publish detailed data on the number of investigations commenced, completed, number of investigations carried over from the previous year and number of investigations that will continue in the coming year. They also provide aggregate data on how long investigations have taken for both completed and outstanding cases and information on the types of crimes that were prosecuted. ([2008 Annual Report of the Independent Commission](#)) In addition, their Operations Department Review reports include detailed information on cases that were successfully prosecuted, without revealing the name of the accused ([Hong Kong ICAC: Operations Department Review](#)).

It has been found that proper training and a high level of professionalism is invaluable to ensure the integrity of the investigations and due process. Professional interview techniques, proper oversight, and video and audio recording of suspect interviews not only help to ensure that the rights of the accused are protected, but also enhance the integrity of the evidence which is crucial for successful prosecution. ([Activities of the Hong Kong Independent Commission Against Corruption \(ICAC\): Its investigative technique](#))

Similar practices were prescribed by the European Commission in the “cooperation and verification mechanism” of Romania’s accession to the EU. In order to ensure effective investigation of grand corruption cases, the Commission recommended: professional and non-partisan investigations should be ensured in grand corruption cases and that the general public should be informed on the results of investigations in grand corruption cases, although this needs to be reconciled with the observance of confidentiality and rules on protection of personal data. ([Romania: Action Plan for Meeting the Benchmarks Established within the Co-operation and Verification Mechanism](#))

A multi-stakeholder oversight mechanism can help to provide robust oversight of investigations. In Zambia,

the government has constituted a five-institution-committee (made up of the anti-corruption commission, Governance Development Unit, Transparency International Zambia, the Cabinet Office and an independent Consultant) to develop the draft National Corruption Prevention Policy and Implementation Strategy. ([U4 Helpdesk Query: Political Corruption in Zambia](#))

## Part 2: Adjudication of grand corruption cases

An effective, efficient and corruption-free judiciary is essential to the prosecution of grand corruption cases. The Helpdesk was not able to find much information on tracking progress of grand corruption cases through the judiciary. However, indicators of judicial efficiency and integrity can be used as a proxy to determine the ability of a judicial system to effectively adjudicate grand corruption cases.

### Judicial Efficiency and Integrity

Enhancing judicial efficiency reduces opportunities for corruption in all court proceedings, not just those dealing with corruption. Indicators of judicial efficiency usually track the volume of case passing through the system, the speed of decision making/duration of proceedings and the nature of decisions that are finally reached. More specifically, such indicators look at the total number of court decisions rendered in a year, the total number of new incoming cases and the total number of cases registered but still pending (backlog). ([UNDP Governance Indicators Project: “Justice Indicators”](#))

In Macedonia, the coalition “All for Fair Trials” has applied such approaches to corruption-related offences. It 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 procedures and types of sanctions with the view to assess the state’s response to corruption as well as the judiciary’s capacity to handle corruption cases. Mozambique’s Central Office for the Fight against Corruption (GCCC) looks at numbers of corruption related court cases tried and sentenced, numbers and nature of cases processed, investigated, prosecuted or dropped, etc. This data is disaggregated according to different variables, including a provincial breakdown. Higher numbers of cases tried in a

particular province are interpreted as greater efficiency of the provincial courts to deal with corruption rather than as higher levels of corruption in a particular province. The GCCC also looks at the rank of public officials being tried and sentenced as an indicator of the levels of independence and efficiency of the judicial system.

(<http://allafrica.com/stories/200809040831.html>).

Measures aimed at strengthening the capacity to handle corruption cases typically strive to address court inefficiencies, case loads and capacity challenges through changes in rules and procedures, training, increased number of judges and the introduction of computerised case management systems.

Characteristics of a good case management system include a well-organised computerised registry and recording of court proceedings and cover key areas such as controlling forms, establishing record controls, scheduling case events and controlling filings of final records. (U4 Expert Answer: [Indicators of judicial efficiency in corruption cases](#))

Indicators of judicial performance in investigating and prosecuting corruption cases, however, cannot be isolated from a broader set of indicators looking at judicial independence and integrity. Procedural indicators, such as selection of cases and assignment of judges have implications for both efficiency and integrity of judicial processes.

### Checklists of Judicial Independence and Integrity

Although not specifically focused on handling corruption cases, there have been many attempts at developing checklists of indicators to assess judicial performance and integrity. Such checklists work under the assumption that a well functioning judiciary will apply the law in an equitable, predictable and transparent manner, free from political interference, and that it will comply with minimum standards of internal and external accountability. Within this framework, indicators of judicial efficiency usually belong to a broader set of categories used to assess judicial performance and promote judicial independence and accountability reforms.

The American Bar Association (ABA)'s Central and East European Law Initiative (CEELI) Checklist on Judicial Independence, for example, have been

designed to assess the independence of the judiciary in any given country. Indicators used include selection and appointment, education and training, budget, salary, safeguards from improper influences, jurisdiction and judicial powers, transparency, case loads and work conditions, assignment of cases and support by non-governmental organisations. The IFES Judicial Transparency Checklist provides another example of a set of indicators used to measure judicial integrity and independence. It considers key, mutually supporting elements of judicial integrity including i) impartiality; (ii) integrity; (iii) transparency; (iv) accountability and (v) public trust. The checklist looks at various categories such as judicial career (e.g. judicial selection, promotion and disciplinary processes), guarantees for judges (e.g. security of tenure, judicial immunity, salaries, benefits and functions), budgetary and administrative control (e.g. control over the judicial budget, transparency of case assignment process), judicial ethics and corruption (e.g. effective judicial codes of ethics, asset disclosure, disciplinary measures against corrupt judges, conflict of interest rules), access to justice and legal information, freedom from interference whether internal or external and monitoring and performance evaluation by civil society and judicial watchdog groups.

In 2007, within the framework of TI's Global Corruption Report on Corruption in Judicial Systems, a checklist for assessing safeguards against judicial corruption was developed by a working group of experts. The checklist synthesises existing international standards on judicial independence, accountability and corruption and was developed through a process of consultation with judges, judges associations, legal professionals, academics and professionals in the justice reform field. This checklist covers two main areas: 1) the system requirements for a clean judiciary, including safeguards for the protection of judicial independence, good working conditions for judges, appointments of judges, judicial accountability and transparency and resources and 2) responsibilities of actors involved (judges, judiciary, legislature and executive, judges' associations, prosecutors, lawyers, media, civil society, donors, etc). (U4 Expert Answer: [Indicators of Judicial Efficiency in Corruption Cases](#))

### Transparency in adjudicating grand corruption cases – the Romanian example

As one of the benchmarks in their accession process to the European Union, in 2007 Romania undertook judicial reform to facilitate effective prosecution of grand

corruption cases. The activities prescribed by the “cooperation and verification mechanism” include: improving security for the judiciary, ensuring the electronic archiving of files within the judiciary, ensuring the recording of court sessions through the creation of a unitary and effective audio-video recording stream and ensuring the hearing of witnesses with protected identity by creating a unitary and effective court hearing system. ([Romania: Action Plan for Meeting the Benchmarks Established within the Co-operation and Verification Mechanism](#)) If properly implemented, these provisions will not only enhance the capacity and integrity of the judiciary, but also allow for effective tracking of grand corruption cases by official and outside sources.

### **Civil society efforts in monitoring corruption cases – an example from Cambodia**

The Center for Social Development (CSD) in Cambodia has been working on anti-corruption issues since its inception in 1995, mainly through its Governance Unit. Although most of its work focuses on advocacy and training, the CSD also helps bring corruption cases to court and then monitors their progress at court hearings. Cases are scrutinised in terms of adherence to court procedures, as well as standards of professionalism and the application of codes of judicial ethics is examined. The results are shared with the media, other civil society organizations, networks of human rights and legal luminaries, international networks, and the general public. (CSD: [Documentation of Corruption Cases](#))

### **Part 4: Further Reading**

#### [OSCE Report on “Best Practices in Combating Corruption”](#)

This report provides examples of best practices in combating corruption, from the OSCE region and beyond. It contains case studies whose lessons can be applied as individual country circumstances allow.

#### [UN Anti-Corruption Toolkit](#)

The toolkit is meant to provide information and resource materials for countries developing and implementing anti-corruption strategy at all levels, as well as for other elements of civil society with an interest in combating corruption.

#### [Strategies for Using Information Technologies for Curbing Public-Sector Corruption: The Case of the Czech Republic](#)

This research report summarizes the findings of a research on corruption and the possible employment of information and communication technologies in curbing it.

#### [Justice Indicators – Vera Institute of Justice](#)

This paper discusses the use of traditional justice sector indicators, suggests principles of good practice for the development of pro-poor, gender-sensitive measures, and offers several broadly applicable examples.

#### [Hong Kong ICAC – 2008 Annual Report](#)

#### [Hong Kong ICAC – 2007 Operations Department Review](#)

This report contains reports on corruption cases prosecuted by the Hong Kong ICAC in 2007. It provides a good example of the type of reporting a corruption prosecution body can undertake.

#### [Interim Report from the Commission to the European Parliament and the Council](#)

This report describes Romania’s efforts in judicial reform and the fight against corruption under the Co-operation and Verification Mechanism of EU accession.