



UNITED NATIONS  
*Office on Drugs and Crime*

# STRENGTHENING JUDICIAL INTEGRITY AND CAPACITY IN INDONESIA

Palembang, October 11-12, 2004



PROCEEDING DOCUMENT  
First Provincial Integrity Meeting  
For The Justice System of South Sumatera



The Supreme Court  
of The Republic of Indonesia



National Law Development Agency  
Department of Law and Human Rights  
Republic of Indonesia

**First Provincial Integrity Meeting  
In  
South Sumatra**

**Palembang, October 11-12, 2004**

## **Acknowledgement**

The Following staff of UNODC and Indonesian Ministry of Law and Human Rights contributed to the preparation of this reports

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This publication has been made possible thanks to a contribution by the Government of Germany.

**First Provincial Integrity Meeting  
in South Sumatra  
Palembang, October 11-12, 2004**

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## **I. FOREWORD BY THE HEAD OF NATIONAL LAW REFORM AGENCY**

The Government of the Republic of Indonesia, through its National Law Reform Agency, Department of Law and Human Rights RI and its Supreme Court, in collaboration with the United Nations Office on Drugs and Crime, has embarked on the implementation of a project on strengthening the capacity and integrity of the justice system. This project reflects our comprehensive and integrated vision of reform of the legal and justice sectors. It aims at enhancing the rule of law and human rights based on justice and truth. This partnership with the United Nations will enable us to draw from international experiences when working towards increased legal socialization, a broadened legal awareness among our people and a culture of legality. The pilot project is carried out within two provinces, South Sumatera and South East Sulawesi. It entails the conduct of a comprehensive assessment of the integrity and capacity of the justice sector carried out by Moores and Rowland Indonesia and, based on the findings, the development of plans of action. These action plans aim at strengthening access to justice, enhancing quality and timeliness of the justice process, improving the accountability and integrity of the justice sector institutions, reinforcing public trust in the judiciary, and facilitating coordination across the justice sector. The lessons emerging from this project will significantly contribute to the government's efforts to promote the rule of law, strengthen good governance and eradicate corruption. I, therefore, deeply appreciate the assistance provided by the United Nations Office on Drugs and Crime to the Government and the People of Indonesia.

Jakarta, 10 July 2005

**Head of National Law Reform Agency  
Department of Law and Human Rights RI**



Prof. Dr. Abdul Gani Abdullah

## **II. FOREWORD BY THE CHIEF JUSTICE OF THE SUPREME COURT, R.I.**

Within the framework of a project on Strengthening Judicial Integrity and Capacity, the National Law Development Agency, the Department of Law and Human Rights and the United Nations Office on Drugs and Crime have conducted an assessment of integrity and capacity of the justice sector in two Indonesian Provinces, South East Sulawesi and South Sumatra, assisted by the services of an independent consulting company, namely Moores Rowland Indonesia.

Surveys were conducted, as part of the assessment, between July and September 2004 in South Sumatra and South East Sulawesi by interviewing 1467 stakeholders in South Sumatra and 1018 stakeholders in South East Sulawesi. Respondents included judges, court staff, prosecutors, lawyers, courts users, business people, and prisoners awaiting trial. For this survey, Moores Rowland was supported by the staff of the law faculties of the Sriwijaya University in Palembang and the Halu Oleo University in Kendari.

In South Sumatra, the 1467 respondents included 60 judges, 60 prosecutors, 136 lawyers, 218 court staff, 307 court users, 328 businessmen, and 358 prisoners waiting trial were interviewed, while in South East Sulawesi, the 1018 respondents included 39 judges, 38 prosecutors, 61 lawyers, 137 court staffs 211 court users, 249 businessmen, and 283 prisoners waiting trial.

As a follow-up to this survey, provincial integrity meetings were held in Kendari, South East Sulawesi, on 7-8 October 2004, and in Palembang, South Sumatra, on 11-12 October 2004, providing stakeholders with the opportunity to review and analyze the data, and design action plans, based on the findings of this assessment, with the aim of strengthening the integrity and capacity of the court system. This report gives a detailed account of the deliberations of the workshop in Kendari.

As the Chief Justice of the Supreme Court of the Republic of Indonesia, I welcome all actions, which have taken place since the launch of this project in late 2003. They constitute important steps towards the creation of an integrated criminal justice system, and as such support the implementation of Blue Print for judicial reform of the Supreme Court of the Republic of Indonesia.

I hope that all of these actions will contribute to our efforts in the fight against corruption, a fight which has received renewed impetus under the Government of President Susilo Bambang Yudhoyono. I am confident that the publication of this report will provide guidance also to the judiciaries of the other provinces of Indonesia, and support their efforts to strengthen the integrity and capacity of their courts.

Jakarta, 15 February 2005

**CHIEF JUSTICE OF  
THE SUPREME COURT OF  
THE REPUBLIC OF INDONESIA**

A handwritten signature in black ink, appearing to read 'Bagir Manan', written in a cursive style.

Prof. Dr. Bagir Manan, S.H., M.C.L.



### **III. OPENING SESSION**

#### **A. Welcoming Remarks by the Chief of the High Court for South Sumatra**

I would like to thank and welcome all participants, in particular our colleagues from the United Nations Office on Drugs and Crime (UNODC) Dr. Peter Langseth, Dr. Oliver Stolpe, and Dr. Satya Arinanto.

Timothy Lindsey the Director of the Centre for Asian Law Studies at the Melbourne University, Australia and a specialist on Indonesia, once said and I quote: “One of the nice things about studying Indonesia is that order and chaos look very much alike...” I believe that the current situation of Indonesia is a result of chaos in the field of law. UNODC in collaboration with the Supreme Court and the Ministry of Justice and Human Rights are working towards improving this situation. Both the research conducted in August this year as well as this workshop are part of this endeavor.

In order to provide the basis for delineating measures to enhance the capacity and integrity of the justice sector and for establishing a benchmark for the monitoring, Moores and Rowland Indonesia, an American consulting company, was hired to survey stakeholders within the justice sector, including judges, prosecutors, court users, businesses as well as court staff. The survey was carried out in collaboration with the Law School of Sriwijaya University during three weeks in August. While, it may take more than this to comprehensively understand the problems of the justice sector in Indonesia today, I believe that the problems of justice sector are the reflection of the problem facing the entire country and its institutions. I also believe that there is no ‘magic word’ that can change this problem over night. What we need is time and long-term commitment. The time is now for all stakeholders to show such commitment.

It is in this spirit that we would like to express our gratitude for the UNODC sponsorship. We do hope that this workshop will provide a significant contribution to our efforts to review and improve our legal system.

## **B. Welcoming Remarks by the Governor of South Sumatra**

His Excellency, Mr. Syahrial Oesman, Deputy Governor of South Sumatra, welcomed participants on behalf of the Governor of South Sumatra.

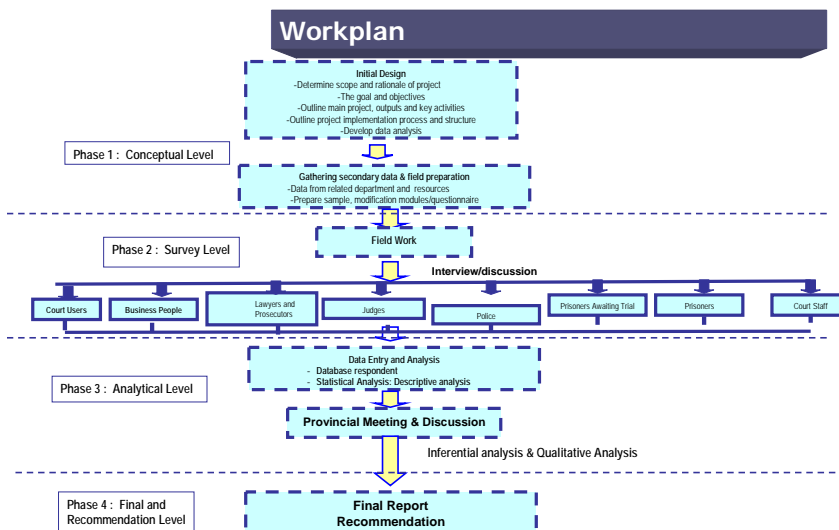
He emphasized the importance of good governance for the functioning of the state administration. In this context, it was key that all three branches of Government paid particular attention to the needs of the public. This meant also that they should be held accountable for any abuse of power. The public's perception of good governance is closely related to the simplicity of procedures, the accessibility of public institutions and the accountability of public servants. Another pillar of good governance is the political system. Politicians must role-model the right behaviour, political parties and election campaigns must be perceived as clean, and seen to actively support good governance.

South Sumatra stands ready to get actively involved in any programme aiming at improving governance.

# IV PRELIMINARY ASSESSMENT OF JUSTICE SECTOR INTEGRITY AND CAPACITY IN SOUTH SUMATRA

## A. Presentation by Moores and Rowland Indonesia

### 1. Methodology



### Profile of Respondent

		South Sumatera (%)						
		Judge	Prosecutor	Lawyer	Court Staff	Prisoner	Court User	Business
Sex	Man	75	52	86	74	99	67	81
	Woman	25	48	14	26	1	33	19
Education	Illiterate	0	0	0	0	9	1	0
	Elementary	0	0	0	0	60	23	20
	High School	0	0	0	40	28	49	56
	Academic/ University	94	95	95	57	3	27	21
	Post Graduate	6	5	5	3	0	0	3
Ethnic	Java/Sunda/Madura	44	19	11	15	16	14	23
	Malay/Padang/Batak/tapanuli	53	74	87	72	80	72	70
	Bugis/Makassar/Buton/Manado	0	2	1	1	1	4	0
	Lokal Etnik and others	3	5	1	12	3	11	7

## Sampling Methodology

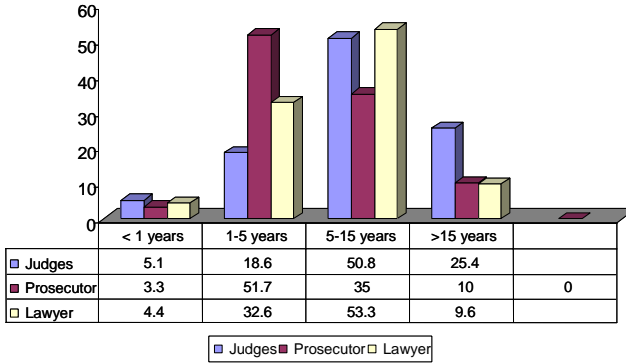
Type of Respondent	Estimated Population	Sampling	Sampling Methodology	Notes
Judges	60	60	Census (Because of few population)	
Business	1350	328	Random sampling (Confidence level 95%, Confidence interval 5%)	Estimated Population for the business, based on the number of Chamber of commerce's member in South Sumatera
Court Staff	495	218	Random sampling (Confidence level 95%, Confidence interval 5%)	
Court User	-	307	Random sampling (Confidence level 95%, Confidence interval 5%)	Estimated Population for court user is using formula : $(P \times 3) + \{(Q - Y) \times 2\}$ ; P=n Civil cases, Q=n criminal cases, Y=number of prisoners awaiting trial
Judge	60	60	Census (Because only small of population)	
Lawyer	200	136	Random sampling (Confidence level 95%, Confidence interval 5%)	
Prisoner	5155	358	Random sampling (Confidence level 95%, Confidence interval 5%)	
<b>Total Respondents</b>		<b>1466</b>		

## Respondents' Age and Income

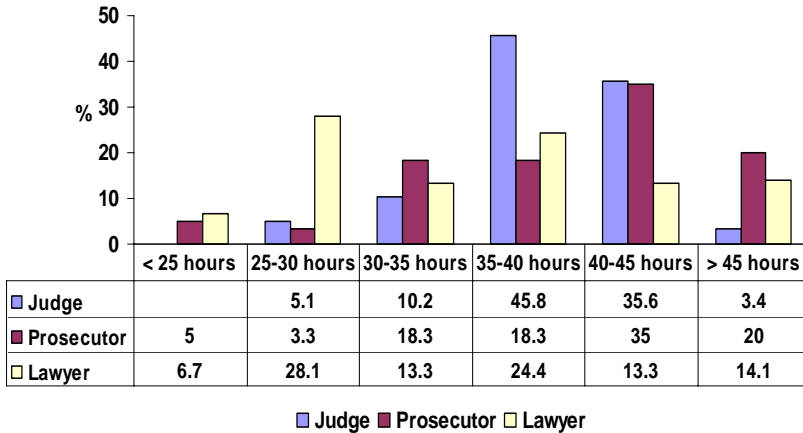
	South Sumatera		South East Sulawesi	
	Age (Average)	Income per year (Average)	Age (Average)	Income per year (Average)
Judge	44	Rp. 22,920,000	43	Rp. 19,400,000
Prosecutor	48	Rp. 22,800,000	39	Rp. 24,500,000
Lawyer	33	Rp. 24,500,000	34	Rp. 25,800,000
Court Staff	40	Rp. 14,730,000	38	Rp. 9,510,000
Prisoner	21	Rp. 4,100,000	23	Rp. 5,380,000
Court Users	35	Rp. 15,000,000	35	Rp. 13,560,000
Businessman	42	Rp. 18,000,000	39	Rp. 20,360,000

**Years of Legal Practice and average Working hours of Judges, Prosecutors and Lawyers**

**How many years have you been involved in Legal Practice ?  
(h4, j3,p3)**

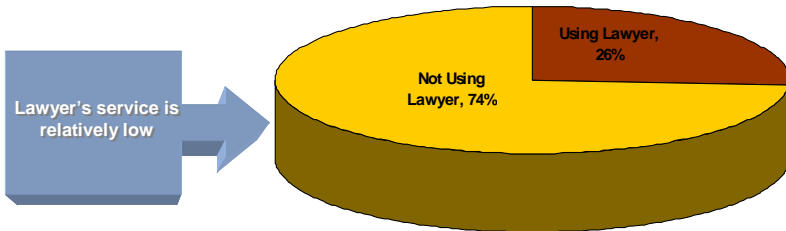


**Typically how many hours a week do you work? (h5,j4,p4)**

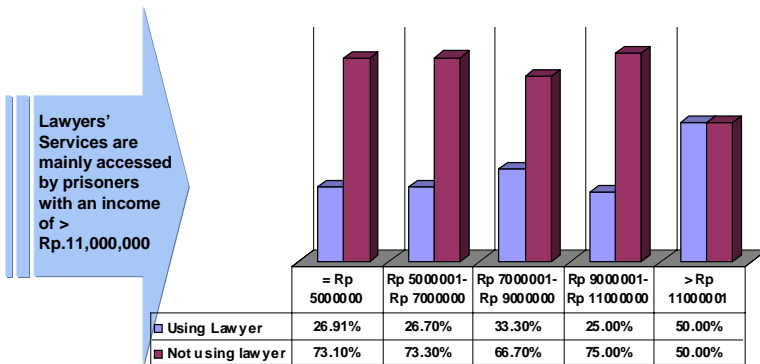


## 2. Access to Justice

### Have You Retained a Lawyer? (t5)

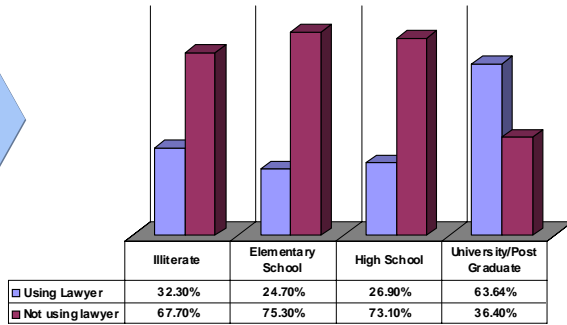


### Prisoners' Income Impacts On The Access To Legal Advise



## Prisoners' Education Impacts On The Access To Legal Advise

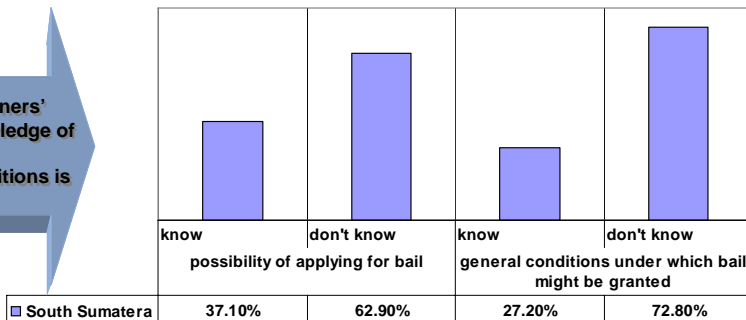
Lawyers' Services are mainly accessed by graduate respondents



## Prisoners' Knowledge About Bail

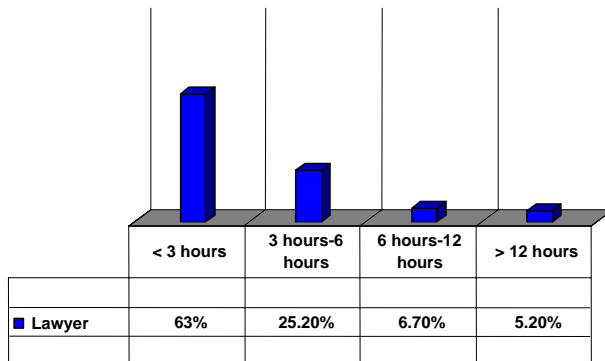
Are you aware of the possibility of applying for bail? (t7) ; Are you aware of the general conditions under which bail might be granted?(t8)

Prisoners' knowledge of bail conditions is low



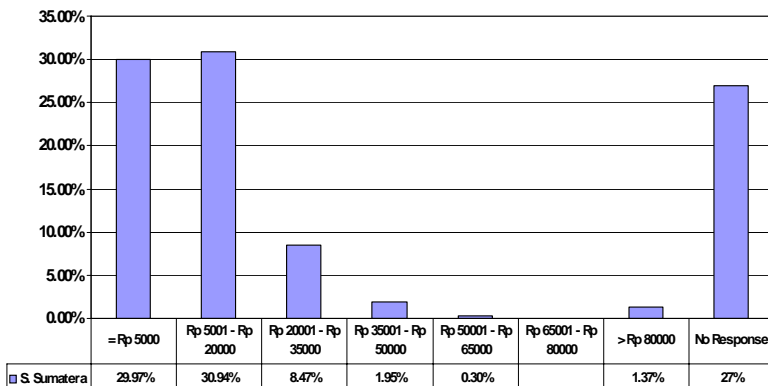
**Average Time Needed By The Court User To Reach The Court  
(according to lawyers)**

**How long does it take for you or your clients,  
normally to reach the court? (p6)**



**Transportation Costs According To Court Users**

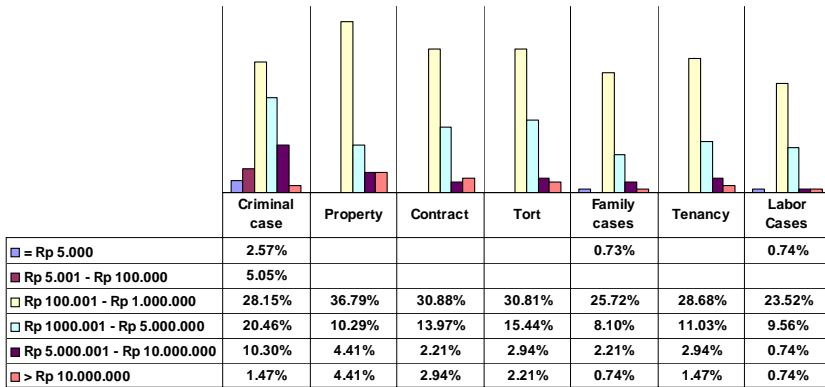
**How much do you pay for each travel? (Rp) (c7)**





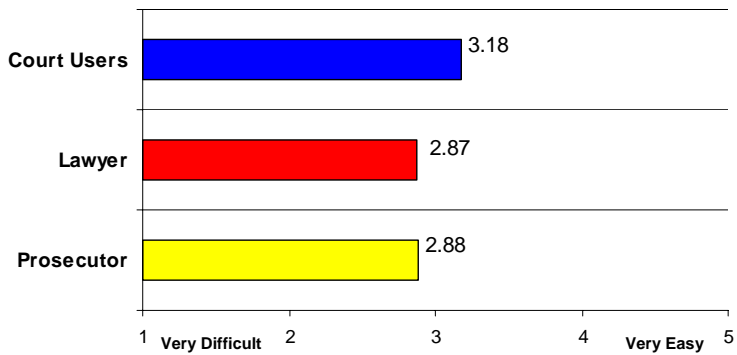
### Court Fees According To Lawyers

How much do your clients, normally, pay as court fees for : (p8-p14)



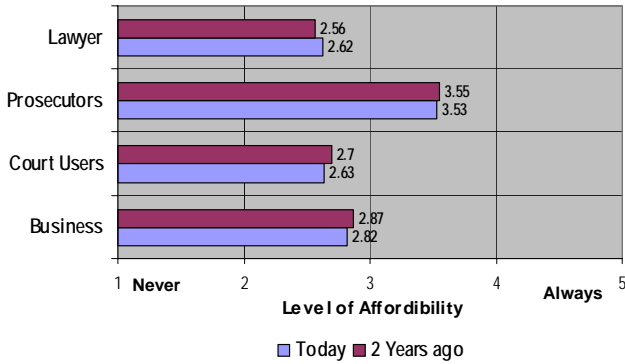
### Access To Information On Case Status

How difficult was it to obtain information regarding your current cases? (c12, j18,p18)



### Affordability Of The Justice System

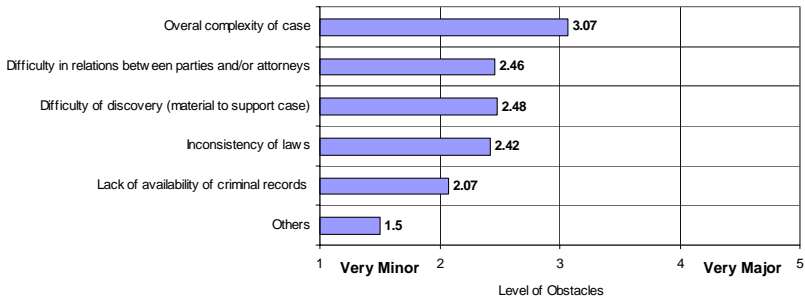
Do you believe your country's justice system to be affordable? Today/two years ago (j15-j16, p15-p16, c11-c12, b32-b33)



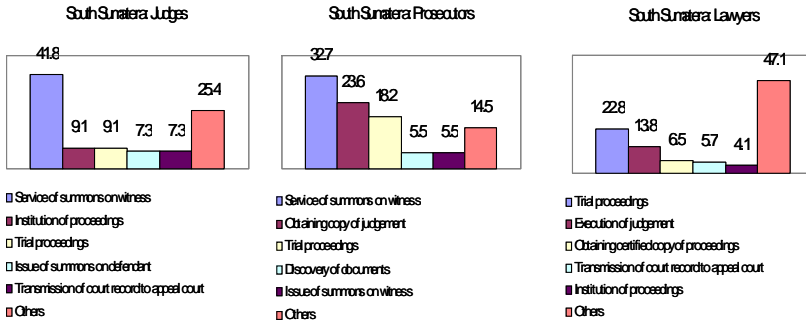
### 3. Timeliness of Justice Delivery

#### Difficulties In Case Handling According To Judges

When You Work on a Case, What are The Main Issues that Create Work and Require Time? Please Evaluate The Seriousness of The Potential Obstacles Listed Below (h7,h8a,h9-h12)

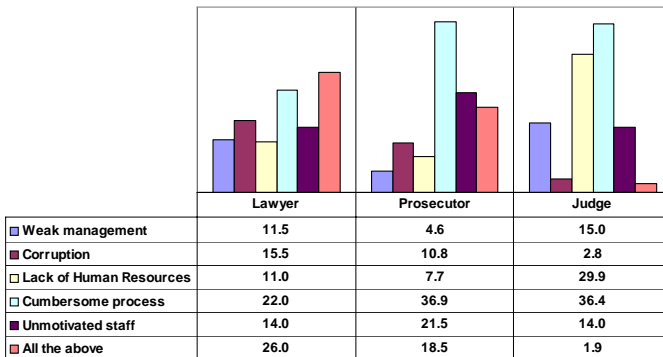


## Delays according to Judges, Lawyers and Prosecutors



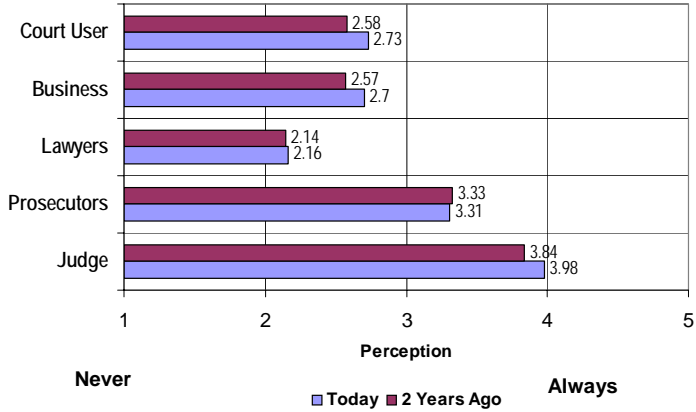
## The Reasons For Delays In The Court Proceedings

According to your experience, which of the following reasons would you attribute any such delay to : (j21,p21, h15)



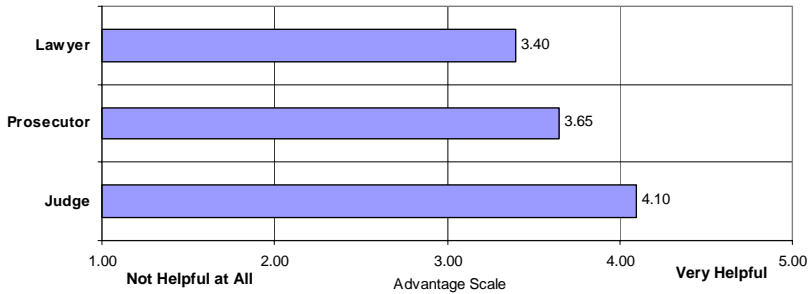
## Perceptions of Timeliness Of The Courts

According to your experience do you consider the courts quick? Today and two years ago  
(j33-j34, p33-34, h27-h28, c18-c19)



## The Desirability Of Procedural Time Limits According To Judges

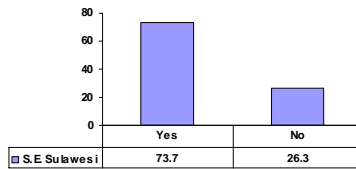
How Much Would the Establishment of Timeframes for the Completion of Certain Procedural Steps Help?(p22,j22,h16)



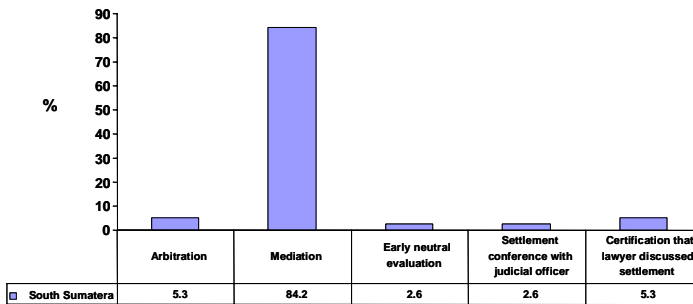
## 4. Quality of Justice Delivery

### Types of Alternative Dispute Resolution ( Judge)

Is any kind of court-related ADR method used in the cases you are in charge of? (h29)

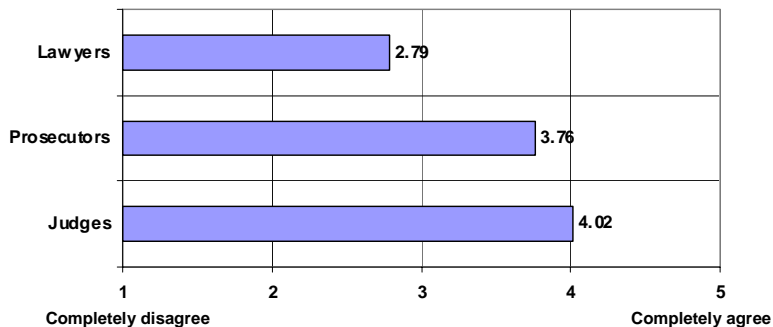


Please Indicate which mechanism were used ? (h30)



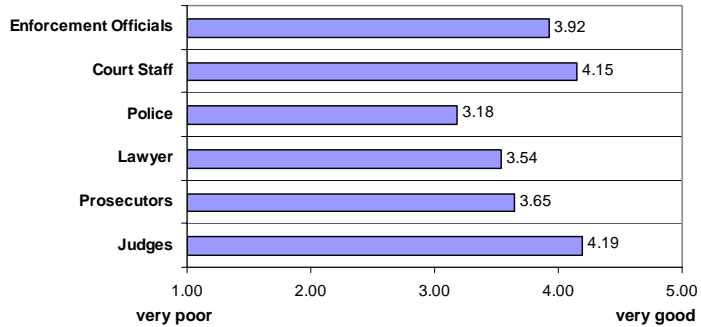
### The perception of Judges, Prosecutors and Lawyers Concerning The Justice System's Impact On The Economy And Private Sector

The Justice System Effectively and Efficiently Supports a Modern Economy and the Private Sector (h35,j41,p41)



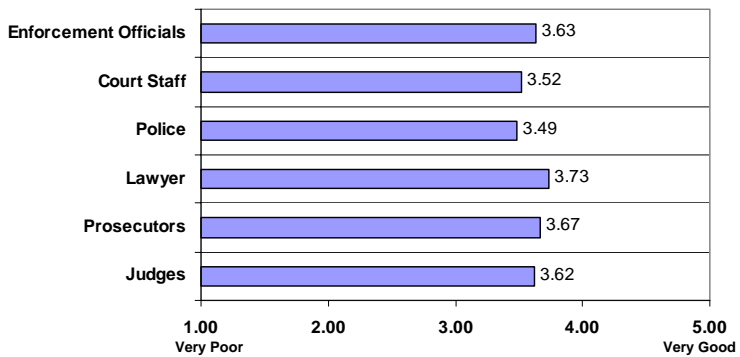
### Assessment Of Quality Of The Justice System According To Judges

Please evaluate quality of services provided by the following public organizations or officials related to the justice system (h37-h42)



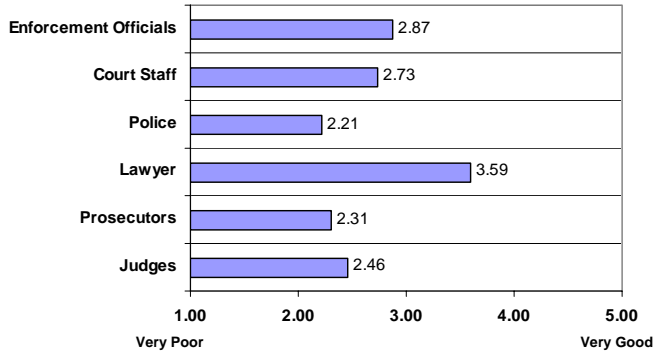
### Assessment Of Quality Of The Justice System According To Prosecutors

Please evaluate quality of services provided by the following public organizations or officials related to the justice system (j43-j48)



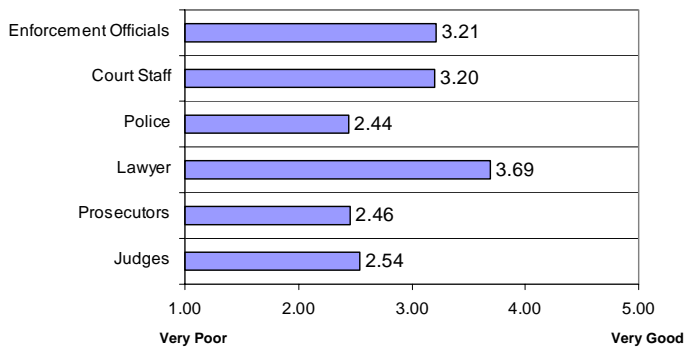
### Assessment Of Quality Of The Justice System According To Lawyers

Please evaluate quality of services provided by the following public organizations or officials related to the justice system (p43-p48)



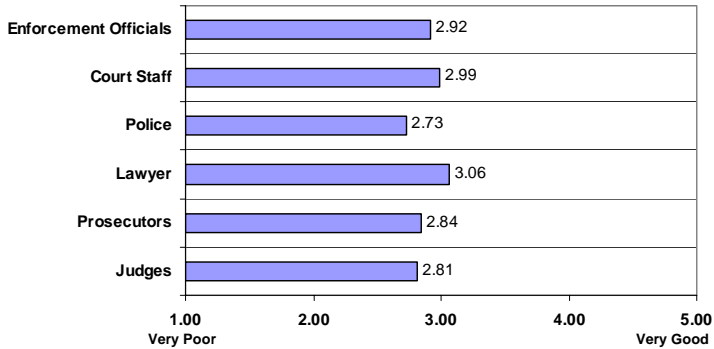
### Assessment Of Quality Of The Justice System According To Court Users

Please evaluate quality of services provided by the following public organizations or officials related to the justice system (c32-c37)



**Assessment Of Quality Of The Justice System According To Businesses**

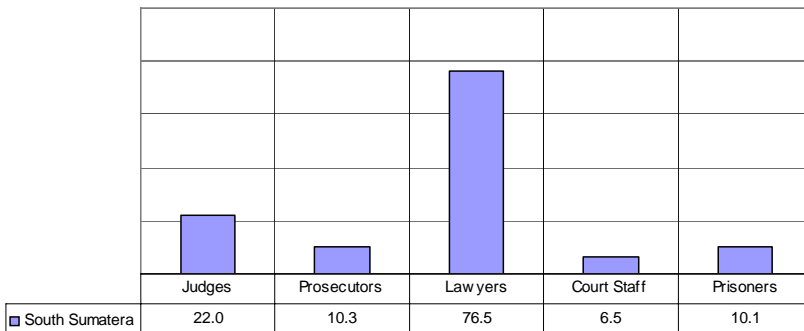
Please evaluate quality of services provided by the following public organizations or officials related to the justice system (b48-b53)



5. Corruption

**Frequency Of Unofficial Payments In Order To Expedite The Court Proceedings According To Judges, Lawyers, Prosecutors, Court Staff and Prisoners**

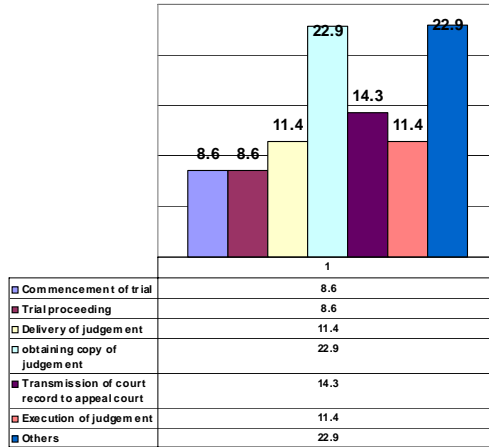
Have You Ever Been Asked To Pay a Bribe in Order to Expedite the Court Procedure?(% respondent)(h57,p49,j49,s3,t10)





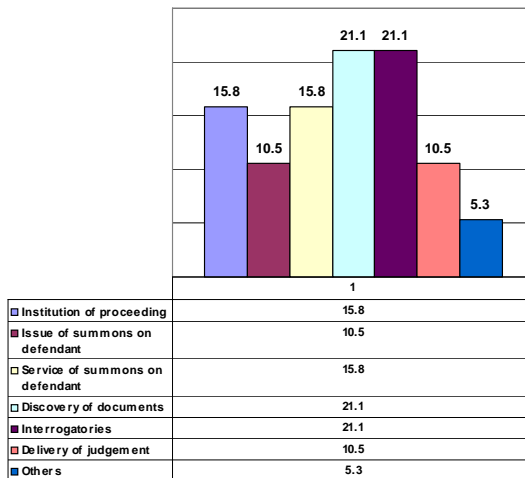
## Frequency Of Unofficial Payments At The Various Stages Of The Proceeding According To Judges

If yes, which stage? Judges (%) (n58)



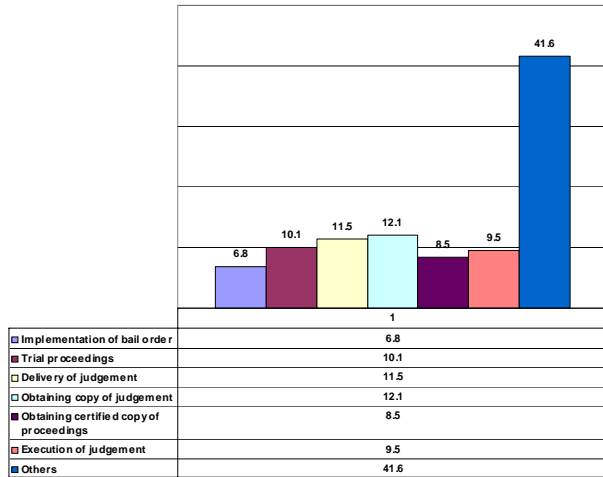
## Frequency Of Unofficial Payments At The Various Stages Of The Proceeding According To Prosecutors

If yes, which stage? Prosecutors (%) (n50)



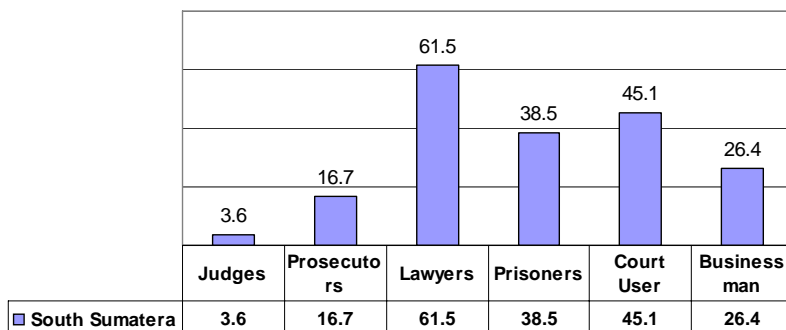
## Frequency Of Unofficial Payments At The Various Stages Of The Proceeding According To Lawyers

If yes, which stage? Lawyers (%) (p50)



## Experiences of Corruption Among Judges Across All Respondents

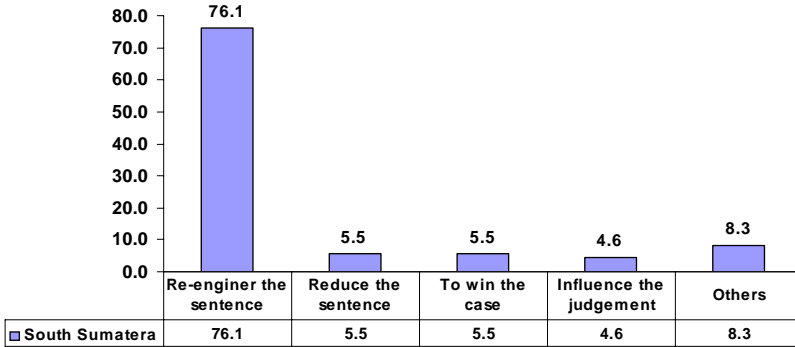
... in which a court user paid ... (h59,c53, p51, j51,b17,t11)



**Experiences of Corruption Across All Respondents**

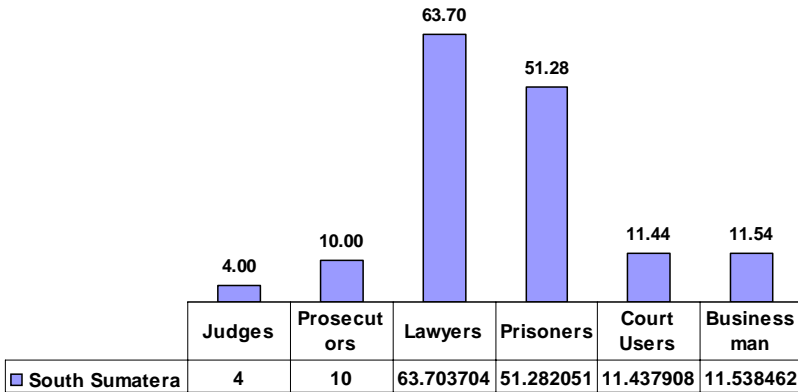
**Type of Offered/Given Service by the Judge**

If yes, for what services?(h60,c54, p52, j52,b18, t12)



**Experiences of Corruption Among Prosecutors Across All Respondents**

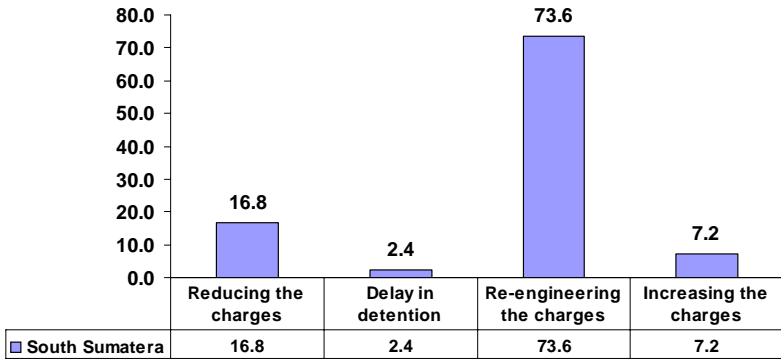
... in which a court user paid... (h61,c55, p53, j53,b21, t13)



Experiences of Corruption Among Prosecutors Across All Respondents

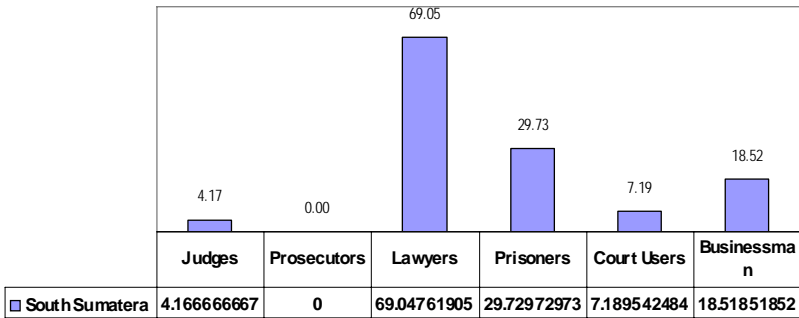
Type of Offered/Given Service by the Prosecutor

If yes, For What Services? (h62,c56, p54, j54,b22, t14)



Experiences of Corruption Among Police Across All

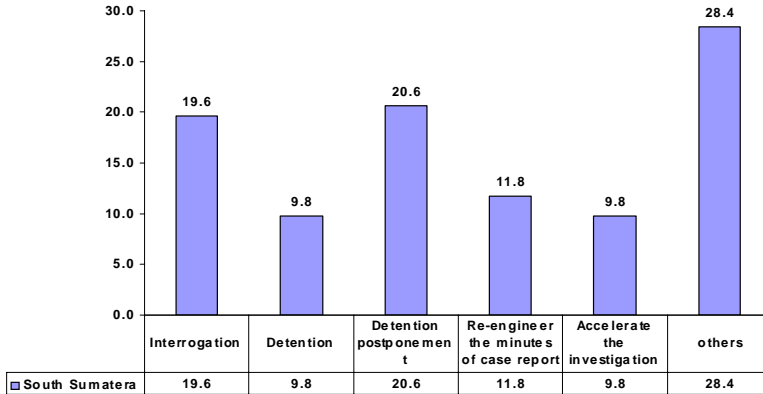
... in which a court user paid ... (h63,c57, p55, j55,b13, t15)



### Experiences of Corruption Among Police Across All Respondents

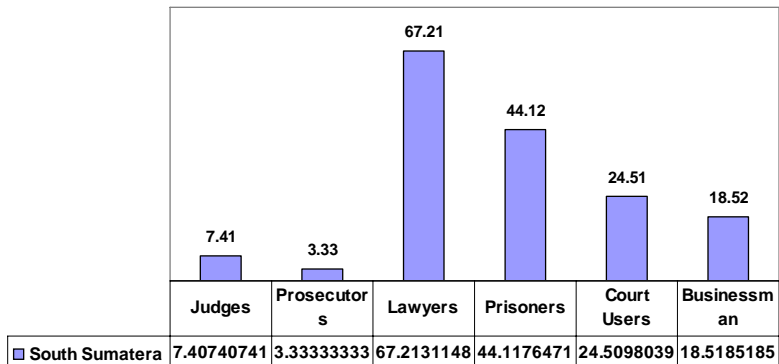
#### Type of Offered/Given Service by the Police

If yes, for what services? (h64,c58, p56, j56,b14, t16)



### Experiences of Corruption Among Court Staff Across All Respondents

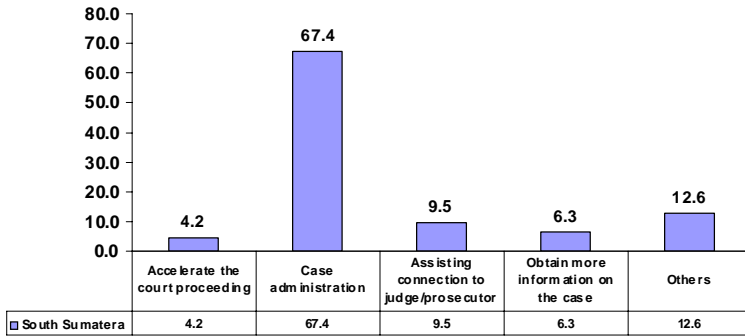
... in which a court user paid ... (h67,c61, p59, j59,b15, t19)



## Experiences of Corruption Among Court Staff Across All Respondents

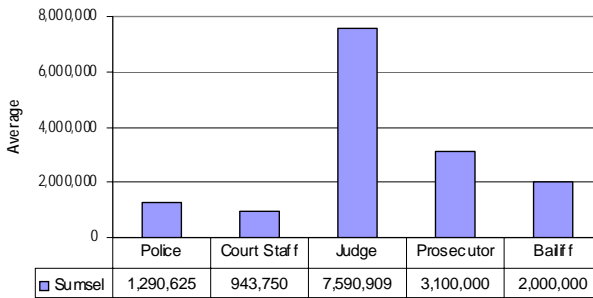
### Type of Offered/Given Service by the Court Staff

If yes, for what services? (h68,c62, p60, j60,b16, t20)



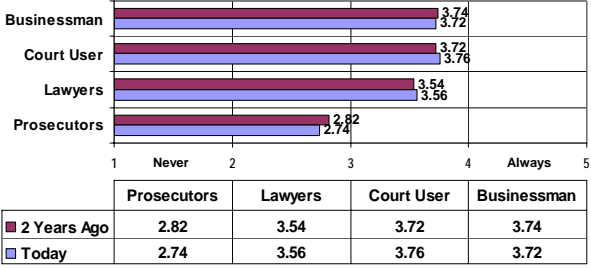
## The Average Value of Bribes Paid to Judges, Prosecutors, Court Staff and Bailiffs

How Much did you pay if you were required to pay bribes (Rp)?  
(b 14, b16, b18, b20, b22, b24)



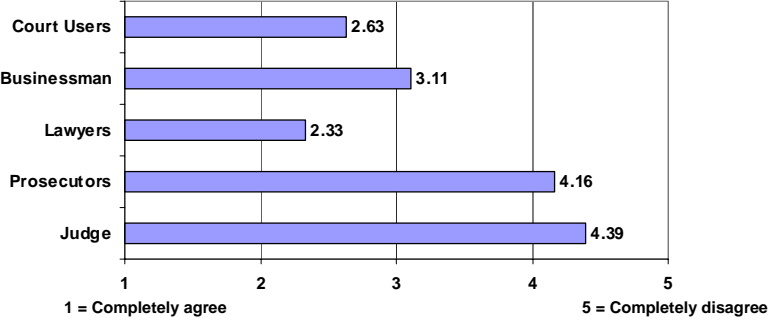
**The Respondent's Perception concerning the Corruption in Indonesian Justice System: Today & 2 Years Ago**

Do You Believe your country's justice system to be corrupted? Today and 2 Years Ago  
(p65-66,j65-66,c51-52, b30-31)



**Perceptions of the Independence of the Judiciary**

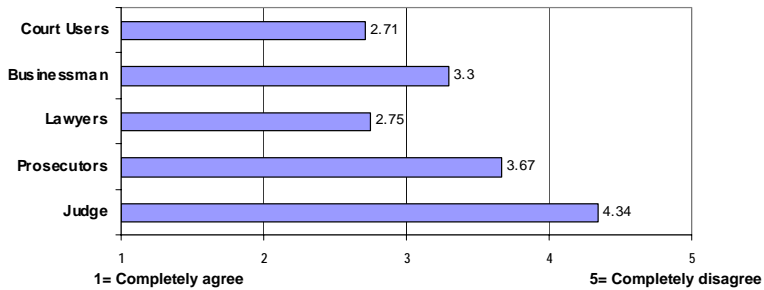
The Justice System Works Only For The Rich and Powerful  
(h84,j72,p72,b40,c38)



## 6. Independence, Impartiality and Fairness

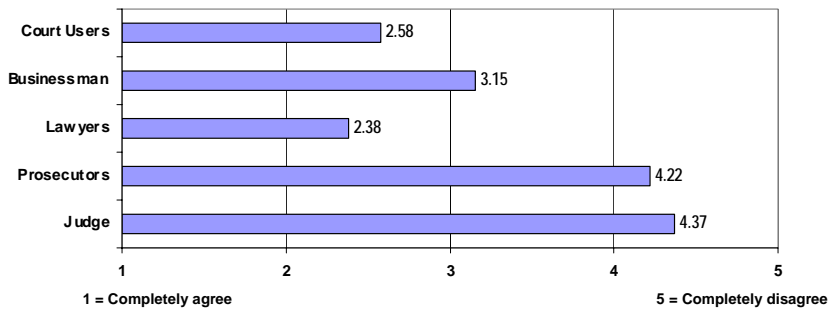
### Perceptions of the Independence of the Judiciary

The Executive Branch Of The Government Completely Controls  
The Justice System (h85,j73,p73,b41,c39)



### Perceptions of the Independence of the Judiciary

Political Pressures Completely Dominates The Justice System.  
(h86,j74,p74,b42,c40)

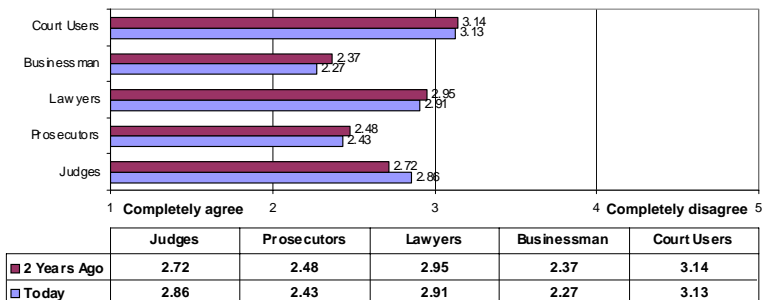




## 7. Public Trust in the Courts

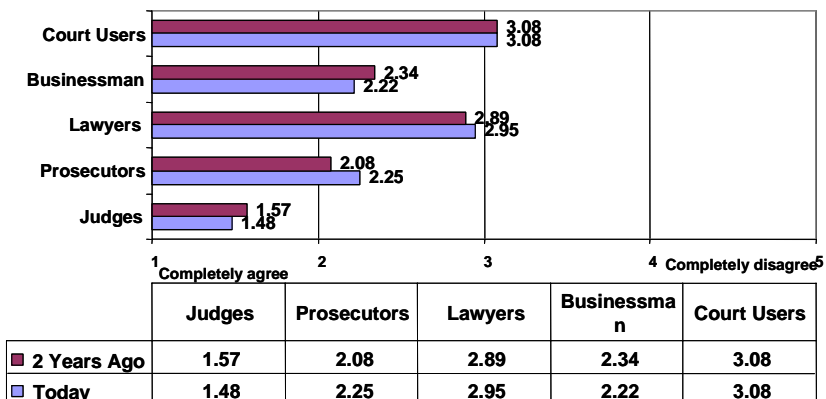
### Trust in the Judiciary

I am Confident That The Justice System Fairly and Competently Punishes Criminals and Protects Households from The Effects of Crime, Today and 2 Years Ago. (b43,b44,c47,c48,h87,h88,p75,p76,j75,j76)



### Trust in the Judiciary

I am Confident that The Justice System Will Uphold My Civil Rights, Including Contract and Property Rights, Today and 2 Years Ago. (b45,b46,c49,c50,h89,h90,p77,p78,j77,j78)



## 8. Conclusions and Recommendations

### Most Effective Measures To Improve The Justice System According To Judges, Prosecutors and Lawyers

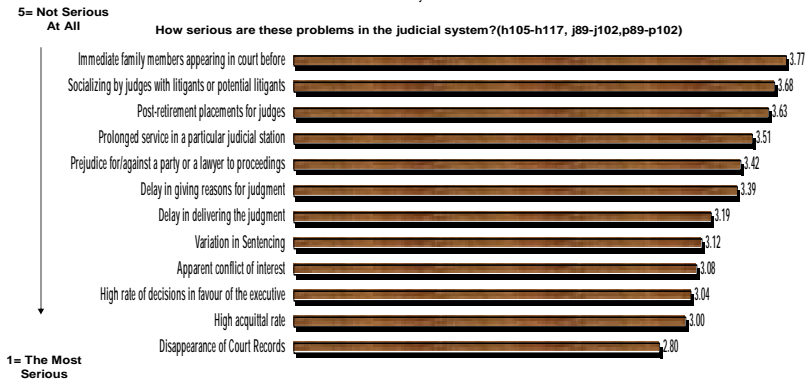
The recommended action to be done in order to improve the Court Working Quality based on Each Respondent's Opinion	South Sumatera
Trained Staff with better skill	Very Effective
Better arrangement on a case	Very Effective
Clear Working Standard of Procedure	Very Effective
The placement of promotion and compensation based on the achievement	Very Effective
Good and complete computerized tools	Very Effective
Good Law and Regulation	Very Effective
Easy access on Law and Jurisprudence	Very Effective
More sources of fund	Very Effective
Higher salary	Very Effective
Better capacity to detect and execute the corruptor	Very Effective
More Judges	Somewhat effective
More staff for Judge's Administration	Somewhat effective
Wide autonomy management	Somewhat effective
Immunity from the political influence	Somewhat effective

### Most Effective Measures To Improve The Justice System According To Judges, Prosecutors and Lawyers

How Effective would these measures be for improving court performance? (h91-104, j79-j88, p79-p88)	South Sumatera					
	Judge	%	Prosecutor	%	Lawyer	%
Trained Staff with better skill	Very effective	84	Very effective	74	Very effective	65
Higher salary	Very effective	86	Very effective	84	Very effective	58
Better arrangement on a case	Very effective	85	Very effective	62	Very effective	53
Immunity from the political influence	Very effective	62	Very effective	45	Very effective	65
Clear Working Standard of Procedure	Very effective	78	Very effective	53	Very effective	61
The placement of promotion and compensation based on the achievement	Very effective	94	Very effective	62	Very effective	56
Good Law and Regulation	Very effective	84	Very effective	76	Very effective	55
Easy access on Law and Jurisprudence	Very effective	77	Very effective	54	Very effective	52
Better capacity to detect and execute the corruptor	Very effective	70	Very effective	54	Very effective	72
More sources of fund	Very effective	79	Somewhat effective	49	Very effective	36
More Judges	Somewhat effective	48	Very effective	45	Somewhat effective	38
More staff for Judge's Administration	Very effective	58	Less Effective	36	Less Effective	40
Wide autonomy management	Somewhat effective	52	Somewhat effective	47	Very effective	49
Good and complete computerized tools	Very effective	75	Somewhat effective	50	Very effective	50

## Problem Ranking in Justice System

The Rank of Serious Problems in Justice System in South East Sulawesi



## **B. Perspectives of the Criminal Justice Sector**

### 1. Public Prosecutor's Office

Mr. Tarwo Hadi Sadjuri, S.H., M.H., Vice Deputy Chief of Public Prosecutions of South Sumatera

In this era of reform there is a growing demand by the public for re-establishing the supremacy of the law, and ensuring justice, truth and the respect of human rights. This demand makes the fight against corruption a priority of law enforcement in general, and the public prosecutor's office in particular. First and foremost this requires that the independence of the prosecution be guaranteed. Since the enactment of Bill No 16 of 2004 this is now the case.

However, there are several factors, which continue to hamper the successful investigation, prosecution and adjudication of corruption cases. Many cases are complex and require specific skills, such as forensic accounting or knowledge of the banking sector. Moreover, the bribe giver and the bribe taker often cover each other, making the gathering of evidence difficult. Seldom corruption cases are brought immediately to the attention of law enforcement authorities, and, sometimes, years pass before investigations even start. As a consequence evidence may have disappeared, bribes may have been spent and witnesses may have moved away or simply died. Also, bribe givers and bribe takers take additional precautions to prevent corrupt transactions from being discovered. Complex financial transaction schemes, shell companies and front men are being used to disguise the illicit origin and true ownership of assets obtained through corrupt practices. In the case when suspects are state officials, immunities need to be lifted, which takes additional time. Furthermore, the prosecutor's office has only limited recourses, both human and financial to handle corruption cases.

Handling corruption cases poses many challenges to the courts. Unlike in other criminal cases, witnesses tend to change their testimony when appearing in court. At the same time legal loopholes allowed until recently the bribe-giver and bribe-taker to avoid punishment even when all elements of the crime had been established. Under Indonesian criminal law, as an element of the crime of corruption it was necessary that the State, as a consequence of the crime, has suffered a monetary or otherwise economic damage. Therefore, in corruption cases normally technical experts were called upon to determine the financial losses due

to the acts of corruption. However, if the accused during the court process refunded the state for these losses, one element of the crime ceased to exist. In other cases, the prosecutors may need to access bank documentation. However, banks are only obliged to make such documentation available when ordered by the Indonesian National Bank – an authorization which is cumbersome to obtain and typically being delayed.

There are several actions that could be taken in order to enhance the effectiveness of the prosecutor's office in handling corruption cases. First the professionalism of prosecutors needs to be improved. There is a need to increase the technical and legal expertise of prosecutors, and to improve working procedures. Corruption cases need to be prioritized in accordance with the public interest, and more attention needs to be paid to enhancing and maintaining the public's trust. At the same time the prosecutor's office should establish permanent cooperation with other relevant institutions, such as the Finance and Development Supervisory Board (BPKP), the Ministry of Interior, and the Center for the Monitoring and Analysis of Financial Transactions (PPATK).

## 2. Judiciary

Mr. Wahyana Endra jarwa, S.H., Vice Chief of High Court of Palembang

The fight against corruption has gained momentum through increased legal action against public officials. This fight is bound to continue. According to the Annual Report of the Financial Control Body (BPK) presented to the People's Consultative Assembly (MPR) on 24 September 2004, there were 22 cases of grant corruption identified since mid 2003. The amounts involved in these cases add up to a total of US \$ 62,7 Million or 16,63 thousand billion IDR.

Several laws have been enacted in the recent past in order to strengthen the capacity, integrity, independence and accountability of the judiciary, including Act 28/1999, Act 31/1999, Act. 20/2001 and Act 30/2002. In addition changes have been made to the criminal code. However, the public remains dissatisfied and critical of the judiciary. This may be due to a variety of factors. There is a general misconception of the newly gained independence of the judiciary. Under the new regime many judges do not feel bound anymore by law or precedents. This is despite the fact that the independence continues to be limited by procedural law, accountability regulations applicable to all public servants, professional

rules of integrity and transparency, as well as the supervisory regime for judges. Moreover, the judiciary lacks adequate human, technical and financial resources to deliver quick, coherent and predictable decisions. When it comes to handling corruption cases, the public and the media make it difficult for judges to decide in a completely independent manner. Finally, the complexity of corruption cases is not fully appreciated by the public.

Several steps could be taken immediately in order to address some of the above described shortcomings and problems. In order to maintain the accountability of judges, the head of each court should continue to be responsible for the supervision of the judges under him. Moreover, the tutoring center for junior judges should be re-established and provide continuing professional education and training. Also, the recruitment system needs to be changed so as to enhance the quality of the newly recruited judicial officers. In particular in corruption cases, judges should be requested to make qualified and well-reasoned decisions so that the public is able to know exactly the underlying motivations. Further, there is a need to raise the budget for maintaining court facilities and providing for materials and computers.

### 3. Department of Justice and Human Rights

Mr. Soejoto, Head of the Regional Office of the Department of Justice and Human Rights

Until April 2004, the judiciary was under the authority of two institutions, the Department of Justice for all matters concerning facilities and human resources, and the Supreme Court for all technical juridical matters. Since then, as a result of the reform of the Indonesian Judiciary with a particular view to strengthen the position of the judiciary as the third arm of government, the Supreme Court has obtained full authority over all matters concerning the Indonesian judiciary. The Department of Justice continues to carry out its responsibilities over the penitentiary system and matters relating to immigration. Particular relevance for corruption cases have these two functions when it comes to ensuring the appearance of the accused in court and, to preventing the accused or witnesses from leaving the country.<sup>1</sup>

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<sup>1</sup> Relevant laws include: Law No 8/1981 about KUHAP (The Law about criminal justice procedures), Law No 12/1995 and Government Decree No 27/1983 about the Penitentiary system according to which the Department of Justice is responsible to maintain the health of the prisoner physically and mentally, it is responsible for

#### 4. Police

Mr. AKBP Rahadi M, South Sumatra Police Department

Until now the handling of corruption cases cannot be described as satisfactory. This has led to public discontent and considerable negative press. Corruption as a crime has been defined by Law No.3/1997, which amended Law No. 31/1971. More recently corruption has been defined as an offence against the public's right to justice, Law No. 31/1999. This last law has also closed a loophole which prior permitted the accused to avoid punishment by refunding the damages caused by the corrupt act. Nevertheless there are a series of problems, which continue to hamper the effective investigation of corruption. In particular, there is a lack of clarity concerning the division of responsibilities between the prosecutor's office and the police when it comes to investigating the various forms of bribery and related offences. Moreover, Law No 31/1999 Section V Article 4 (1) – (5) provides for the public's participations in the fight against corruption; even if so far the public's response has been relatively weak.

#### 5. Bar Association

Mr. Yohanes Suprio, S.H., Adv, Vice Chief of IKADIN Palembang

As far as the access to justice is concerned, in particular the poor face the problem of financial barriers. While according to the law everyone has the right to legal aid, in reality the financial and human resources are not sufficient to meet these needs. Since legal aid has been recognized as a basic human right, this situation creates a systemic human rights violation. Costs involved in accessing justice are unaffordable for many in particular because of extra-ordinary "fees" charged by all justice sector institutions. Moreover, widespread blackmail, corruption, cronyism and nepotism undermine the effective and reliable justice delivery. Often it is those who should enforce the law who actually violate it.

It is therefore recommendable that the legal aid system should be strengthened. In particular sufficient financial resources should be made available. Moreover, clear regulations on the costs of the legal process

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guaranteeing the defendant's rights (rights to do religious activities, rights to education, rights to information, rights to have a legal consultant in the trial processes, etc), the Department of justice is also responsible for ensuring that the prisoner complies with his obligations (example: to follow the penitentiary program; education and other activities)

should be applied and made accessible to the public in all courts, so as to put an end to the system of extraordinary and additional fees not foreseen by the law. Also, the quality of the human resources currently employed in the justice sector should be improved. In this context it is crucial that existing codes of conduct are strictly enforced with the aim of cleaning the justice sector from all those public servant who do not meet the required standard of professionalism and integrity.

### **C. Discussions**

Following the presentations several questions were posed to the panelists, and comments were made. Regarding the issue of legal aid, the representative of the Department of Justice and Human Rights further clarified that there are divisions for legal aid in each regional office of the Department of Justice and Human Rights. These offices assist both defendants and their lawyers with financial support and legal advisory services. Moreover, in each court there is a legal aid office.

As far as the issue of extraordinary “fees” is concerned, the representative of the Department of Justice and Human Rights informed the participants, that lists for court and legal fees had been send to all courts in the country and that any act of bribery or extortion would be strictly sanctioned. However, participants remained skeptical. In particular lawyers, based on their professional experience with some courts in the province, doubted that all courts would process any case without additional financial benefits being paid.

Moreover, on the issue of prisoners’ rights, the representative of the Department of Justice and Human Rights emphasized that in addition to the criminal and other laws protecting the prisoner, each penitentiary officer is obliged through the code of conduct to respect and protect the human rights of the inmates.

Furthermore, it was raised that often bail bonds, which were submitted by the defendant to the public prosecutor’s office, were not returned after the trial process had been finished. The representative of the prosecutor’s office confirmed that all defendants had the right to receive back whatever surety they had given as bail to the public prosecutor’s office once the trial had ended.

Participants also questioned the effectiveness of those mechanisms designed



to hold public prosecutors accountable to the highest standards of moral integrity and ethics. The representative of the prosecutor's office clarified that all prosecutors were subject to three forms of controls, the so-called "*Trikrama Adiyaksa*" doctrine. More specifically, there is an internal oversight mechanism within the prosecutor's office, in addition to the control by the Independent Anti-Corruption Commission and the Independent Control Commission within the President's Office.

Several participants claimed that there had been indications for corruption, collusion and nepotism in the recruitment of public officials, in particular in the justice sector. The representative of the Department of Justice and Human Rights confirmed that there had been reports on corrupt practices in the recruitment process, however, until now, no single concrete case had been identified. Nevertheless, the Department of Justice took these allegations seriously and continuously worked towards designing a transparent and merit based recruitment system, which would be reducing the opportunities for corrupt practices.

It was observed that judges in their application of the law should not be limited to a textual interpretation but take also into account morality and social rules.

With a particular view to corruption cases, participants raised the issue of witness protection, in particular, once the trial has been finished. Responding to this concern, the representative of the Police assured that the police department was fully conscious of the witnesses' right to give testimony without putting himself into danger. The Police, therefore, provides adequate protection to all witnesses, if there was such a request and there was a real possibility that the safety of the witness was in danger.

In reaction to the presentation of the preliminary findings from the comprehensive assessment of integrity and capacity within the justice sector, panelists were asked their opinion. In general panelists believed that the study presented the problems faced by the Indonesian justice sector institutions adequately. With a particular view to the issue of corruption, panelists emphasized that the phenomenon was endemic in all sectors of government. They also voiced the hope that the findings of the study would provide the basis for promoting reform within the justice sector.

## **D. Purpose and Objectives of the Provincial Integrity Meeting**

Dr. Petter Langseth, Programme Manager, Global Programme against Corruption, UNODC

This provincial integrity meeting is integral part of a project launched by UNODC in late 2003 aiming at supporting the Indonesian Government in addressing the particularly preoccupying situation of the justice system in order to enhance the rule of law in the country. For this purpose it will assist the Chief Justice and all other relevant stakeholders in strengthening judicial integrity, capacity and professionalism within the overall framework of the *National Blueprint for Judicial Reform*. As such the project forms also part of a larger effort carried out by UNODC in several countries pilot-testing measures and approaches to improve access to justice, strengthen the quality and timeliness of justice delivery, enhance public trust, building a reliable and effective complaints system, and improve coordination across justice sector institutions. All the lessons emerging from these various pilot projects will feed into the judicial reform strategies of each of the participating countries.

Therefore, the project and activities carried out in Palembang and the province of South Sumatra are not only important for the province itself, but also for the future of Indonesia as a whole. If successful, the project will be rolled out to other provinces of Indonesia. It is in this sense that the justice sector institutions, and the judiciary in South Sumatra has been given a leadership role in this “action learning process”. Judges and other justice sector representatives from all over Indonesia will evaluate and draw from the successes and failures experienced in the two pilot provinces at the National Integrity Meeting for the Judiciary planned for late 2005.

The two days Provincial Integrity Meeting has the most difficult task of launching the process in Palembang through the identification and description of the problems hampering justice delivery in the province, to discuss solutions, analyze the potential consequences of reforms and design a concrete action plan, which will be implemented with the assistance of UNODC over the coming months.

The most difficult part in this problem solving process is always to describe and understand the problem. Without a good problem description it is almost impossible to come up with a valid action plan.

Therefore, UNODC has hired an independent consulting company, Moores Rowland Indonesia, to conduct the assessment consisting of a desk research and surveys of judges, court staff, prosecutors, lawyers, prisoners, businesses and court users.

The main objectives this meeting will be to come up with a comprehensive action plan delineating measures in the five areas of reform, namely:

- Access to Justice
- Public Trust in the Courts
- Quality and timeliness of the Court process
- Effectiveness of the complaints system
- Coordination across the criminal justice system

For this purpose, after the opening session, the meeting will split into five working groups with the task of first identifying the problems that the judiciary and the other criminal justice system institutions in South Sumatra face today, and developing a shared understanding why these problems exist, including possible solutions.

On the second day, the meeting is expected to produce measures and actions to address these priority issues identified. The workshop participants will prioritize the recommended actions using a decision matrix developed by UNODC. Moreover, the meeting is expected to determine a timetable, a responsible focal point and the resources needed for each of the recommended measures. The resulting action plans will then guide the judiciary, the police, the prison authority, civil society, bar association and the prosecutors in their work to control corruption and strengthen rule of law.

It is crucial for participants to bear in mind that justice sector institutions have a crucial responsibility with regard to the overall economical development of the country. As it has been confirmed by recent research of the World Bank Institute, countries that invest in the fight against corruption and the strengthening of the rule of law can increase their GDP per capita up to eight times over a four year period. In the case of Indonesia this would mean a per capita GDP in 2012 as much as US \$ 3200.

## **V. PROBLEM IDENTIFICATION AND DESCRIPTION**

### **A. Access to Justice – Group 1**

After intense discussion participants agreed that the main challenges hampering currently the public's access to justice in South Sumatra included the following. First and foremost, there is a cost barrier, which makes justice inaccessible, in particular, for the poor. The budget assigned for the purpose of legal aid is not sufficient even to cover criminal cases. During 2004 the budget was hardly enough to cover the costs of three cases

As far as civil cases are concerned, the main obstacle consists in the uncertainty of the costs as well as the lack of a reliable court schedule. Also, it was criticized that often it proved too difficult for court users to obtain documents or other information from the courts.

Moreover, there is lack of legal education among the general public. Many do have little knowledge of their basic civil rights and how to access the justice system in the defense of these rights. Courts do not enough to assist in the general legal education of the public and in the communicating their functions, services and mandate to a broader audience. There is a general distrust towards public officials, including judges and prosecutors,; hence many do not to use the formal justice system but rather seek dispute resolution through alternative means.

Many cases stall because witnesses do not appear. In some case their absence may be due to a lack of protection against retaliation by the defendant. Also, witnesses are not properly informed in advance about their rights and obligations. In other cases it may simply be an issue of unreliable or insufficient reimbursement of costs. Moreover, there are no sanctions for witnesses who refuse to appear in court.

When asked to prioritize the obstacles hampering the access to justice, both among each other and in comparison to some shortcomings in the other relevant areas, access to justice turned out to be less a problem then some other issues.

## **B. Quality and Timeliness of Justice Delivery – Group 2**

While there are strict time limits for the courts when handling criminal cases, there are no such limits during the investigations phase. Moreover, at the Supreme Court level there are no time limitations either. As a result the backlog has reached preoccupying dimensions. However, even at the first instance level participants did not feel that compliance with the existing six-months time limit was satisfactory.

As far as the quality of the justice delivery was concerned, or the lack thereof, participants felt that this was mainly a problem linked to the poor quality of human resources in the courts and the other justice sector institutions. Judges' decisions were often perceived as unfair and did not satisfy the people's sense of justice. There is a need for more training, improved legal education, a merit-based recruitment system, adequate salaries, as well as functioning accountability and integrity safeguards. Moreover, the lack of budgetary resources and infrastructure created significant challenges for the justice sector. Particularly critical were participants with regard to the capacity of the district courts.

Participants raised furthermore the lack of independence of the investigations as a problem. Both, prosecutors and investigators were not sufficiently independent in their decision to open and close an investigation, carry it through and submitting the case to the court for prosecution.

Moreover, participants criticized that neither the Criminal nor the Civil Code had been updated in recent years. As a result many of the provisions were outdated and did not respond to the new legal needs of Indonesian society and economy. In criminal cases poor quality decision were often due to the wide discretionary powers of the judge. In particular, many provisions do not contain minimum sanctions. Other shortcomings of the legal framework included the sometimes unclear, sometimes overlapping responsibilities and mandates of institutions.

## **C. Public Trust in the Courts – Group 3**

Participants concurred that the main reasons for the general distrust towards the judiciary was linked to the slow and bureaucratic process. Participants felt that delays at all stages of the justice delivery, independently whether the investigation, the prosecutor or the court

impacted negatively on the public's trust in the justice sector institutions. Court decisions are often perceived as biased and there is a lack of integrity, in particular among the law enforcement, which reflects negatively on all justice sector institutions.

#### **D. Accountability – Effectiveness of the Complaints System – Group 4**

Currently there is some reluctance by the public to come forward with reports of corruption or other misconduct. There is the wide-spread perception that justice sector institutions do not handle complaints appropriately. Justice sector operators are perceived as biased and unable or unwilling to investigate complaints against their colleagues. It does not come as a surprise that the public severely distrusts the so-called “Court Mafia”. This is certainly also due to the fact that the decisions of existing complaints boards are not sufficiently explained to the public.

In some cases citizens may refrain from complaining because they are simply not even aware that they are being victimized. This happens in particular in connection with the practice of overcharging or the charging of imaginary fees.

#### **E. Coordination across the justice sector – Group 5**

Participants were in particular concerned about the poor coordination among law enforcement institutions, a situation which may worsen with new specialized enforcement bodies, such as the Independent Anti-Corruption Agency becoming operational. According to participants the lack of coordination was mainly due to overlapping responsibilities and mandates on the one hand, and the absence of regular meetings among the heads of concerned institutions on the other hand.

## **VI. STRENGTHENING JUDICIAL INTEGRITY AND CAPACITY**

### **A. An Integrated Approach to Governance Reforms**

The development and implementation of an effective governance and anti-corruption strategy require the coordination and integration of many disparate factors. Elements must be integrated internally to form a single, unified and coherent strategy and externally with broader national efforts to bring about: (i) the rule of law, (ii) sustainable development, (iii) political or constitutional reforms, and (iv) major economic and criminal justice reforms. In most cases, the reforms must also be coordinated with the efforts of aid donors, international organizations or other countries.

In most cases, national strategies will be complex. To achieve a few basic goals, many interrelated elements will be required. Individual reform efforts must be carefully sequenced and coordinated over extended periods of time. Many information sources and other inputs must be integrated during strategy development and subsequently, at frequent intervals, as the strategy is implemented, assessed and adjusted.

Strategies require the support and concerted effort of individuals and organizations in the public sector, civil society and the general population. Some elements of national strategies must also be integrated with the strategies of other countries or with regional or global standards or activities. That will allow them to deal more effectively with transnational forms of corruption and to meet the commitments the United Nations Convention against Corruption.

To ensure integration, the following approaches should be adopted in developing, implementing, assessing and adjusting strategies<sup>2</sup>:

#### 1. Change based on assessment and on facts

It is important for strategies to be fact-based at all stages. Preliminary assessments of the nature and extent of corruption and the resources available to fight it are needed to develop a comprehensive strategy and to set priorities before the strategy is implemented. Upon

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<sup>2</sup> Langseth, P. 2002, *Global Dynamics of Corruption, the Role of United Nations*, in Strengthen Judicial Integrity and Capacity in Nigeria; State Integrity Meeting in Lagos, May 2002

implementation, further assessments of individual elements and overall performance should be undertaken, so that the strategy can be periodically adjusted to take advantage of successes and compensate for failures.

## 2. The need for transparency

Transparency in Government is widely viewed as a necessary condition for effective corruption control and, more generally, for good governance. Open information and understanding are also essential to public participation in and ownership of anti-corruption strategies. Lack of transparency is likely to result in public ignorance when, in fact, broad enthusiasm and participation are needed. It can also lead to a loss of credibility and a perception that the programmes are corrupt or that some elements of Government may have avoided or opted out of them. In societies where corruption is endemic, such an assumption will usually be widespread and can be rebutted only by programmes being publicly demonstrated to be free of corruption. Where transparency does not exist, popular suspicions about the programmes may well be justified.

## 3. The need for non-partisan or multi-partisan support

The perception that the fight against corruption is a partisan political issue can impede integrated good governance strategies and more general efforts to improve service delivery to the poor, introduce the rule of law and regular, stable political structures. The fight against corruption will generally be a long-term effort and, in most countries, is likely to span successive political administrations. That makes it critical for anti-corruption efforts to remain politically neutral, both in the way they are administered and in their goals. Regardless of which political party or group is in power, reducing corruption and improving service delivery to the public should always be priorities. The partisan scrutiny of Governments and political factions for corruption or other malfeasance is a valuable factor in combating corruption. Vigilance is important, but excessive partisanship can lead to retaliatory cycles in which each faction, on gaining office, corruptly rewards its supporters and punishes its opponents. Such behaviour corrupts and politicizes key functions such as the appointment of public servants and the awarding of public contracts. It also degrades the professionalism of the public service by replacing merit with political criteria in staffing, promotion and critical advisory and decision-making functions.



#### 4. The need for inclusiveness

It is important to include the broadest possible range of participants or stakeholders to ensure that all significant factors are considered and a sense of "ownership" of and support for the strategy are instilled. The elements of the strategy will work in virtually every sector of Government and society. Thus, information and assessments from each must be included so that advantages or strengths can be used to the best advantage and impediments or problems can be dealt with early on. Broad-based consultation and participation also address the concerns and raise the expectations of everyone involved, from senior officials, politicians and other policy makers to members of the public. Bringing otherwise marginalized groups into the strategy empowers them, providing them with a voice and reinforcing the value of their opinions. It also demonstrates that they will influence policy-making, giving them a greater sense of ownership of the policies that are developed. In societies where corruption is endemic, it is the marginalized groups that are most often affected by corruption and thus most likely to be in a position to take action against it in their everyday lives and through political action.

#### 5. The need for comprehensiveness

The need for a comprehensive approach to developing, implementing and evaluating an anti-corruption approach is vital, with all sectors of society from the central Government to the individual being involved at every stage. That includes elements from the public and private sector, as well as international organizations, national non-governmental institutions and donor Governments.

#### 6. The need for impact-oriented elements and strategies

Clear and realistic goals must be set; all participants in the national strategy must be aware of the goals and the status of progress achieved to date. Thus, measurable performance indicators must be established, as well as a baseline against which the indicators can be measured. While elements of the strategy and the means of achieving specific goals may be adjusted or adapted as the strategy evolves, the basic goals themselves should not be changed if that can be avoided, with the occasional exception of time lines.

#### 7. The need for flexibility

While strategies should set out clear goals and the means of achieving them, the strategies and those charged with their implementation should be flexible enough to permit adaptations to be made based on information

from the periodic progress assessments.

## **B. The UNODC project on Strengthening Judicial Integrity and Capacity**

The overall objective of the present project is to enhance the rule of law by strengthening judicial integrity and capacity and thereby to create more favourable conditions for the country's economical development and its transition to an open and democratic society.

The project aims specifically at addressing the precarious situation of the Indonesian Judiciary in terms of access to justice, timelines and quality of the trial process, the public confidence in the courts, the efficiency, effectiveness and credibility of the complaints system and the coordination across the justice system institutions.

The immediate objective of the project is, to support the Indonesian Judiciary, within the framework of the National Blueprint for Judicial Reform,<sup>3</sup> in identifying, pilot testing, and evaluating concrete actions to strengthen judicial integrity and capacity. For this purpose, and in line with the above described approach for developing and implementing Governance Reforms, the project assists the Judiciary within two pilot provinces in:

- Conducting a *comprehensive assessment* of judicial integrity and capacity within the two pilot provinces providing the basis for facts-based action planning;
- organizing and facilitating *Provincial Integrity Meetings for the Judiciaries* of the two pilot provinces involving all stakeholders within the justice system including civil society in order to develop detailed action plans for strengthening judicial integrity and capacity and to institutionalize a local implementation framework;
- Supporting with technical expertise, policy advice, management support and funding the *implementation of action plans* within

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<sup>3</sup> At the recent second summit meeting of senior officials in the legal and judicial sector (Law Summit II), held in October 2002 under the auspices of the Indonesian Supreme Court involving representatives of the Department of Justice and Human Rights, the Indonesian National Police, the Office of the Attorney General, the Office of the Coordinating Minister for Political and Security Affairs developed a blueprint for judicial reform in Indonesia as well as an action plan for the reform of the Supreme Court.

- three pilot courts across two pilot provinces, including the conduct of quarterly progress review meetings;
- Organizing and facilitating *National Integrity Meeting for the Judiciary* to share findings of the comprehensive assessment, action plans developed in the two pilot provinces and review progress made and experiences gathered from the implementation of the action plans.
  - Support Indonesian Judiciary in the organization and conduct of *a donor meeting* to present the progress made under the project to the donor community and mobilize funds for the implementation of the best practices identified across all Indonesian provinces in the context of a follow-up project.

In the absence of an in-depth knowledge of the current capacity and integrity levels within the judiciary and consequently of the precondition for facts-based action planning, UNODC in collaboration with the Ministry of Justice, the Judiciaries of the two pilot provinces and other stakeholders adopted the Global Programme's comprehensive assessment tool for judicial integrity and capacity to the specific needs and conditions of the Indonesian judicial domain. The data collection was carried out by Moores and Rowland International and the final report is expected to be completed in the first quarter of 2005.

Based on the outcomes of the assessment, UNODC advised the judiciaries within the two pilot provinces on developing action plans for strengthening judicial integrity and capacity, within the overall framework of the Blueprint, which was developed by the National Law Summit II. These action plans delineate measures to enhance (i) access to justice, (ii) the quality and timeliness of justice delivery, (iii) the public trust in the courts, (iv) the effectiveness, efficiency and credibility of the complaints system, and (v) the coordination and collaboration across the criminal justice institutions.

Further, UNODC will support the implementation and monitoring of the action plans within three pilot courts in each of the two pilot provinces. Focusing on pilot courts in a few selected provinces will give UNODC the possibility to refine its approach based on the lessons learned and to advise the Indonesian judiciary at the national level as well as within the remaining provinces accordingly. At the same time, as the experiences from other countries suggest, that the proposed approach will encourage the Judiciaries of the other provinces to follow best practices generated

by the pilot provinces. Hereby the impact of the project may be multiplied significantly. At this stage, the project will focus in particular on the transfer of planning-, monitoring- and implementing-skills in order to create the necessary local capacities to continuously broaden and intensify the reformatory process within the national and province Judiciaries.

In September 2005, UNODC will organize and facilitate Evaluation Workshops within the pilot provinces in order to review the progress made, assess the impact of the single measures implemented and identify those measures which have proven most effective by the pilot testing exercise.

Hereafter, a National Integrity Meetings for the Judiciary will be conducted to review the findings from the Evaluation Workshops, including the comprehensive assessment as well as the two action plans and a report on the experiences gained from the implementation of the measures. The emanating final analysis of the pilot testing phase will feed into the refinement and finalisation of a National Blueprint for Judicial Reform. By facilitating and supporting the above described activities, UNODC will contribute to the establishment of a systematic action learning process leading to the identification of best practices.

## VII. ACTION PLAN FOR STRENGTHENING JUDICIAL INTEGRITY AND CAPACITY

### A. Draft Action Plan for Strengthening Judicial Integrity and Capacity

Implementation framework	Responsibility	Starting date	Cost	Next Steps/ Remarks	Output/Impact Indicators
<b>1. Institutionalizing the Implementation Framework</b> - Implementation and Coordination Committee (ICC)	CJ	Immediately	Minimal	Next meeting on Monday 20.3. 2005 to: (1) Adopt TOR (including mandate, membership, meeting schedule, secretariat, minutes), (2) appoint Subcommittee members,	Committee established  TOR adopted  Regular meetings  Minutes of the meetings prepared and widely distributed
<b>2. TOR and Secretariat</b> Secretariat to prepare draft TOR for review and adoption by ICC (Mandate, Composition and Membership, Frequency of Meetings, Minutes, Secretariat).	Secretariat	Immediately	Minimal		Availability of TOR's
<b>3. Subcommittees</b> As required by the Action Plan implementation the ICC may establish permanent or temporary subcommittees in order to develop and implement single measures described by the action plan.	ICC	As required	Minimal	The following Subcommittees have been established: (1) Public Awareness Committee (PAC), (2) Court User Committee (CUC), Training Committee (TC), and Criminal Justice Coordination Committee (CJCC).  Focal points to prepare TOR for Subcommittees and submit for adoption at next ICC meeting on 20.3.2005.  <b>PAC</b> will be responsible for the development and implementation of all activities relating to public awareness.  <b>CUC</b> will be responsible for the receipt, review and follow-up to public complaints.  <b>CJCC</b> will be responsible for	TOR/ Proposals for the implementation of single activities submitted to UNODC

				enhancing coordination among justice sector institutions.  <b>TC</b> will be responsible for the design, organisation and conduct of all training activities.	
<b>4. Reporting of ICC</b> ICC to prepare bi-monthly report for submission to the Supreme Court, the Ministry of Justice and Human Rights the AG's Office and the Anti-Corruption Commission, as well as to other stakeholders as required.	ICC/ Secreteriat	May 2005	Minimal	Prepare first report to CJ Supreme Court and submit before end of May.	Reports submitted
<b>5. Select Pilot Courts</b>	ICC	March 2005	Minimal	The district court of Muara Enim and Palembang were selected as pilot courts	Pilot courts selected
<b>6. Progress Review Meetings</b> UNODC in Collaboration with ICC will hold two progress review meetings in Jakarta, inviting two members of the Implementation Committees.	ICC/ UNODC	June 2005			Progress Reports completed and submitted to all stakeholders
<b>7. Evaluation Workshop</b> UNODC in Collaboration with ICC will hold an Evaluation Workshop to review progress made in the action plan implementation	ICC/ UNODC	October 2005	US\$ 10,000	Dependend on actual progress in action plan implementation	Report of the Meeting completed, printed and widely disseminated

Access to Justice (Group 1)	Responsibility	Starting date	Cost	Next Steps/ Remarks	Output/Impact Indicators
<b>1. Developing Legal Awareness Campaign</b>	PAC/ Media, Local Gov. Info Institution/ UNODC	March 2005	Minimal	Prepare and submit proposal for various awareness raising initiatives and products (see below)	Awareness Campaign Designed,
<b>2. Legal information campaign for villagers</b>	Local Office, MOJ	ongoing	Funded by MOJ	PAC to coordinate legal awareness campaign with MOJ	Increased legal literacy of justice seeker about legal awareness
<b>3. Strengthening Legal Aid</b>	Chief Judge		tbd	Prepare proposal for the establishment of a legal aid centre	Increased access to justice by the poor.
<b>4. Enhance awareness of accused and prisoners concerning their rights</b> In particular provide easily accessible information on bail procedures etc.	PAC/ UNODC	March	tbd	Develop content of information flyers and posters for prisons and police stations providing information on (1) bail and bail conditions, (2) legal aid, and (3) complaints system, including contact details, and provide to UNODC.  UNODC to design flyers and posters containing above messages and making them available to the PAC for distribution.	Increased awareness of prisoners concerning their rights

Timeliness & Justice Quality (Group 2)	Responsibility	Starting date	Cost	Next Steps/ Remarks	Output/Impact Indicators
<b>1. Training on case management, prosecutorial tactics and preparation of indictment</b>	TC/ ICC	March 2005	tbd	TC to prepare agenda, list of trainers, expected output including number of trained personnel and curriculum.	Enhanced professionalism of prosecutors
<b>2. Consider establishing time-limits for investigation and submission to prosecution</b>	AG's Office	Completed	Minimal	AG circular on time limits for investigation and prosecution has been distributed to all Prosecutors	Increased timeliness of the investigation
<b>3. Enhance transparency and predictability of court decision</b> Improved reasoning of court decisions	TC	June 2005	tbd	TC to prepare proposal for judicial training including agenda, list of trainers, expected output including number of trained personnel and curriculum.	Increased transparency and predictability of Court Decisions.
<b>4. Ensure easy availability of copies of court decisions at the registry in two pilot courts</b> Install Xerox facility at the registry, accessible lawyers and court users against minimum fee.	Head of district courts of Muara Enim and Palembang/ Chief Judge / UNODC	March 2005	tbd	CJ to instruct heads of district courts to prepare a letter confirming the capacity to maintain the XEROX machines, including servicing, toner, paper	Improved service delivery and transparency
<b>5. Updating of the Civil and Criminal Procedure Code</b>	MOJ	ongoing	Nil	There is an ongoing review for the amendment of the civil and criminal procedure codes	
<b>6. Consider the establishment of specialized anti-corruption task force</b> Consider the establishment of a specialized anti-corruption task force including investigators and prosecutors.		ongoing	Nil	ICC concluded that establishment of specialized units is not allowed by the law, while the monitoring of the handling of corruption cases is already being provided by organisations, such as Indonesia corruption watch.	Increased effectiveness in handling corruption cases



Public Trust in the Court (Group 3)	Responsibility	Starting date	Cost	Next Steps/ Remarks	Output/Impact Indicators
<p><b>1. Law socialization through radio and television</b></p>	<p>PAC/ Media/ Local government Info Institute</p>	<p>April 2005</p>	<p>tbd</p>	<p>Pac to lobby with Media outlets for the gratis/ low cost provision of radio and tv time.</p> <p>Design outline for radio and tv programmes</p>	<p>Radio/TV programmes aired, public feedback, viewers interest</p> <p>Enhanced legal awareness and law socialization</p> <p>Enhanced transparency on the cost of services</p>
<p><b>2. Poster and Flyer Campaign</b></p> <p>Posters with various content, raising the general awareness of court users (e.g. Don't give Corruption a chance, etc).</p>	<p>PAC/ Media/ Local government Info Institute</p>	<p>March 2005</p>	<p>Tbd</p>	<p>Design posters and flyers carrying anti-corruption messages for court users, including guidance and practical information on how and to whom to complain to.</p> <p>Design a Court User Charta.</p>	<p>Posters installed in all courts in the province</p> <p>Legal awareness or people</p> <p>Transparency on cost and court services</p>
<p><b>3. Weekly newspaper adds</b></p> <p>Weekly newspaper adds with varying content (see posters).</p>	<p>PAC/ Media/ Local government Info Institute</p>	<p>March 2005</p>	<p>TBD</p>	<p>Design posters and flyers carrying anti-corruption messages for court users, including guidance and practical information on how and to whom to complain to.</p>	

Integrity and Accountability – Public Complaints (group 4)	Responsibility	Starting date	Cost	Next Steps/ Remarks	Output/Impact Indicators
<b>1. Establishment of a Credible Complaints Mechanisms</b>	ICC and CUC	April 2005		Develop TOR for CUC with the mandate (1) to function as a clearing house for complaints and suggestions concerning the judiciary, the prosecutor's office and the police, (2) to forward complaints concerning disciplinary actions to the responsible entities, (3) to provide citizen with a follow-up to the complaint, and (4) to monitor and report on types, nature and follow-up to complaints.	Enhanced credibility and integrity of justice sector operators
<b>2. Installation of complaints and suggestion boxes in two pilot courts in the province, and provision of a PO Box for complaints</b>	CUC/ UNODC	April 2005	tbd	UNODC to provide for complaints boxes.  CUC to install complaints boxes and to establish a P.O. Box for complaints.	Boxes Installed and accepted by users (e.g. number of submissions)
<b>3. Weekly emptying of Complaints boxes</b> Ensure weekly emptying of complaints boxes according to procedure that ensures accountability.	Registers of pilot courts under supervision of heads of pilot courts	April 2005	Minimal	Registers of pilot courts to collect complaints and forward to the CUC	
<b>4. Targeted campaign to publicize complaints system</b>	CUC	May 2005	tbd	Design posters, flyers and banners making court users aware of existence and purpose of the complaints system when entering the court.	All court users are aware of complaints mechanism when entering the court
<b>5. Computerisation of complaints system</b>	CUC	2006	tbd	Design computerized programme allowing for registration, tracking, monitoring and reporting on complaints, the production of standardized feedback to the complainant, as well as regular analysis and transparent reporting of emerging patterns of complaints, vulnerabilities and action taken.	Swift and reliable feedback to complainant, regular and transparent report on complaints, enhanced effectiveness of preventive action.

<b>6. Accepting and handling of public complaints</b>	CUC	April 2005		Effective, efficient and credible handling of complaints	Number of complaints received, percentage of complaints handled, action taken
<b>7. Reminder to all judges on content and obligations under the judicial code of conduct</b>	CJ	March 2005	Minimal	Prepare and send out a circular to all judges in the provinces reminding them of their obligations under the code of conduct	Enhanced awareness of judges concerning their obligations under the code of conduct
<b>8. Professional ethics training for judges and court staff</b> Training on content and interpretation of the Code of Conduct and other sources providing the framework for judicial behaviour.	TC	July 2005		TC to prepare proposal for judicial training including agenda, list of trainers, expected output including number of trained personnel and curriculum.	Enhanced ethical sensitivity and ethics competences to handle challenges posed to the judicial integrity in the daily work context.
<b>9. Enhance role modelling of the right behaviour</b> ICC to issue circular recalling all applicable rules of professional ethic and conduct to judges and court staff. Consider the establishment of an ethics incentive.	All judges,	Immediately		Reminder (see action 7) should also specifically call upon senior judges to guide their junior colleagues and court staff through the role modelling of the right behaviour.	Leadership by example

Measures to enhance coordination across the criminal justice system	Responsibility	Starting date	Cost	Next Steps/ Remarks	Output/Impact Indicators
<b>1. Assessment of current case flow system across justice sector agencies</b> (police, prosecutor's office, courts, Ministry of justice and HR, prisons).	CJCC	tbd	US \$	CJCC to determine the validity of the proposed action in view of the ongoing amendment of the criminal procedure code.	Assessment prepared
<b>2. Working Group on Case flow management to review and finalize assessment</b> The working group (police, prosecutor's office, Research will review the assessment and prepare proposal for the amendment and streamlining of current procedures.	CJCC	Tbd	US \$	CJCC to determine the validity of the proposed action in view of the ongoing amendment of the criminal procedure code.	Draft proposal prepared
<b>3. Adopt New working procedures</b> The Head's of Agencies adopt the new working procedures and disseminate them within their institutions	CJCC	tbd		CJCC to determine the validity of the proposed action in view of the ongoing amendment of the criminal procedure code.	Procedures adopted and disseminated
<b>4. Training on new case-flow procedures</b> The Head's of Agencies adopt the new working procedures and disseminate them within their institutions	CJCC	tbd		CJCC to determine the validity of the proposed action in view of the ongoing amendment of the criminal procedure code.	Staff of all agencies trained in the application of the new procedures
<b>5. Evaluation</b> Evaluation of the implementation of the new procedures.	CJCC	tbd		CJCC to determine the validity of the proposed action in view of the ongoing amendment of the criminal procedure code.	Implementation of working procedure Enhanced case flow management
<b>6. Regular Coordination Meetings</b> Regular meetings between police, prosecutors and lawyers to ensure proper coordination across justice sector institutions with a view of avoiding delays in particular in the pre-trial phase.	CJCC	April		Conduct monthly meetings with the heads of the five concerned stakeholders (judiciary, prosecutor's office, police, MOJ, and lawyers	Enhanced case flow management

## **B. Mandate and Draft TOR for the Implementation and Coordination Board**

The mandate of the Implementation and Coordination Board (ICB) is to:

- Oversee the implementation of the action plan
- Responsible for the allocation and monitoring of the budget and reporting to UNODC
- As required establish sub-committees and working groups for the implementation of single activities determined by the action plan
- Produce the Quarterly Progress Reports
- Participate in the semi annual Progress Review Meetings

The ICB should meet at least once a month. The Secretariat should prepare and circulate minutes of these meetings to all participants and ensure distributions to all other relevant stakeholders, including the UNODC Project Office in Jakarta.

## VIII. ANNEXES

### A. Defining Corruption

Dr. Petter Langseth, Global Programme against Corruption, UNODC

There is no single, comprehensive, universally accepted definition of corruption. Attempts to develop such a definition invariably encounter legal, criminological and, in many countries, political problems.

When the negotiations of the United Nations Convention against Corruption began in early 2002, one option under consideration was not to define corruption at all but to list specific types or acts of corruption. Moreover, proposals to require countries to criminalize corruption mainly covered specific offences or groups of offences that depended on what type of conduct was involved, whether those implicated were public officials, whether cross-border conduct or foreign officials were involved, and if the cases related to unlawful or improper enrichment.

Many specific forms of corruption are clearly defined and understood, and are the subject of numerous legal or academic definitions. Many are also criminal offences, although in some cases Governments consider that specific forms of corruption are better dealt with by regulatory or civil law controls. Some of the more commonly encountered forms of corruption are considered below.

#### 1. “Grand” and “Petty” Corruption

Grand corruption is corruption that pervades the highest levels of a national Government, leading to a broad erosion of confidence in good governance, the rule of law and economic stability. Petty corruption can involve the exchange of very small amounts of money, the granting of minor favours by those seeking preferential treatment or the employment of friends and relatives in minor positions.

The most critical difference between grand corruption and petty corruption is that the former involves the distortion or corruption of the central functions of Government, while the latter develops and exists within the context of established governance and social frameworks.

## 2. “Active” and “Passive” Corruption

In discussions of transactional offences such as bribery, "active bribery" usually refers to the offering or paying of the bribe, while "passive bribery" refers to the receiving of the bribe. This, the commonest usage, will be used in the Toolkit.

In criminal law terminology, the terms may be used to distinguish between a particular corrupt action and an attempted or incomplete offence. For example, "active" corruption would include all cases where payment and/or acceptance of a bribe had taken place. It would not include cases where a bribe was offered but not accepted, or solicited but not paid. In the formulation of comprehensive national anti-corruption strategies that combine criminal justice with other elements, such distinctions are less critical. Nevertheless, care should be taken to avoid confusion between the two concepts.

## 3. Bribery

Bribery is the bestowing of a benefit in order to unduly influence an action or decision. It can be initiated by a person who seeks or solicits bribes or by a person who offers and then pays bribes. Bribery is probably the most common form of corruption known. Definitions or descriptions appear in several international instruments, in the domestic laws of most countries and in academic publications.

The "benefit" in bribery can be virtually any inducement: money and valuables, company shares, inside information, sexual or other favors, entertainment, employment or, indeed, the mere promise of incentives. The benefit may be passed directly or indirectly to the person bribed, or to a third party, such as a friend, relative, associate, favorite charity, private business, political party or election campaign. The conduct for which the bribe is paid can be active: the exertion of administrative or political influence or it can be passive: the overlooking of some offence or obligation. Bribes can be paid individually on a case-by-case basis or as part of a continuing relationship in which officials receive regular benefits in exchange for regular favors.

Once bribery has occurred, it can lead to other forms of corruption. By accepting a bribe, an official becomes much more susceptible to blackmail.

Most international and national legal definitions seek to criminalize bribery. Some definitions seek to limit criminalization to situations where the recipient is a public official or where the public interest is affected, leaving other cases of bribery to be resolved by non-criminal or non-judicial means.

In jurisdictions where criminal bribery necessarily involves a public official, the offence is often defined broadly to extend to private individuals offered bribes to influence their conduct in a public function, such as exercising electoral functions or carrying out jury duty. Public sector bribery can target any individual who has the power to make a decision or take an action affecting others and is willing to resort to bribery to influence the outcome. Politicians, regulators, law enforcement officials, judges, prosecutors and inspectors are all potential targets for public sector bribery. Specific types of bribery include:

- Influence-peddling in which public officials or political or Government insiders peddle privileges acquired exclusively through their public status that are usually unavailable to outsiders, for example access to or influence on Government decision-making. Influence-peddling is distinct from legitimate political advocacy or lobbying.
- Offering or receiving improper gifts, gratuities, favors or commissions. In some countries, public officials commonly accept tips or gratuities in exchange for their services. As links always develop between payments and results, such payments become difficult to distinguish from bribery or extortion.
- Bribery to avoid liability for taxes or other costs. Officials of revenue collecting agencies, such as tax authorities or customs, are susceptible to bribery. They may be asked to reduce or eliminate amounts of tax or other revenues due; to conceal or overlook evidence of wrongdoing, including tax infractions or other crimes. They may be called upon to ignore illegal imports or exports or to conceal, ignore or facilitate illicit transactions for purposes such as money-laundering.
- Bribery in support of fraud. Payroll officials may be bribed to participate in abuses such as listing and paying non-existent employees ("ghost workers").
- Bribery to avoid criminal liability. Law enforcement officers, prosecutors, judges or other officials may be bribed to ensure that criminal activities are not investigated or prosecuted or, if they are prosecuted, to ensure a favorable outcome.



- Bribery in support of unfair competition for benefits or resources. Public or private sector employees responsible for making contracts for goods or services may be bribed to ensure that contracts are made with the party that is paying the bribe and on favorable terms. In some cases, where the bribe is paid out of the contract proceeds themselves, this may also be described as a "kickback" or secret commission.
- Private sector bribery. Corrupt banking and finance officials are bribed to approve loans that do not meet basic security criteria and cannot later be collected, causing widespread economic damage to individuals, institutions and economies.
- Bribery to obtain confidential or "inside" information. Employees in the public and private sectors are often bribed to disclose valuable confidential information, undermining national security and disclosing industrial secrets. Inside information is used to trade unfairly in stocks or securities, in trade secrets and other commercially valuable information.

#### 4. Embezzlement, Theft and Fraud.

In the context of corruption, embezzlement, theft and fraud all involve the taking or conversion of money, property or valuable items by an individual who is not entitled to them but, by virtue of his or her position or employment, has access to them. (5) In the case of embezzlement and theft, the property is taken by someone to whom it was entrusted. Fraud, however, consists of the use of false or misleading information to induce the owner of the property to relinquish it voluntarily. For example, an official who takes and sells part of a relief donation or a shipment of food or medical supplies would be committing theft or embezzlement; an official who induces an aid agency to oversupply aid by misrepresenting the number of people in need of it is committing fraud.

As with bribery and other forms of corruption, many domestic and international legal definitions are intended to form the basis of criminal offences. Thus, they include only those situations involving a public official or where the public interest is crucially affected. "Theft", per se, goes far beyond the scope of corruption, including the taking of any property by a person with no right to it. Using the same example of the relief donation, an ordinary bystander who steals aid packages from a truck is committing theft but not corruption. That is why the term "embezzlement", which is essentially the theft of property by someone to whom it was entrusted, is commonly used in corruption cases. In some

legal definitions "theft" is limited to the taking of tangible items, such as property or cash, but non-legal definitions tend to include the taking of anything of value, including intangibles such as valuable information. In the Toolkit, the broader meaning of "theft" is intended.

Examples of corrupt theft, fraud and embezzlement abound. Virtually anyone responsible for storing or handling cash, valuables or other tangible property is in a position to steal it or to assist others in stealing it, particularly if auditing or monitoring safeguards are inadequate or non-existent. Employees or officials with access to company or Government operating accounts can make unauthorized withdrawals or pass to others the information required to do so. Elements of fraud are more complex. Officials may create artificial expenses; "ghost workers" may be added to payrolls or false bills submitted for goods, services, or travel expenses. The purchase or improvement of private real estate may be billed against public funds. Employment-related equipment, such as motor vehicles, may be used for private purposes. In one case, World Bank-funded vehicles were used for taking the children of officials to school, consuming about 25 per cent of their total use.

## 5. Extortion

Whereas bribery involves the use of payments or other positive incentives, extortion relies on coercion, such as the use or threat of violence or the exposure of damaging information, to induce cooperation. As with other forms of corruption, the "victim" can be the public interest or individuals adversely affected by a corrupt act or decision. In extortion cases, however, a further "victim" is created, namely the person who is coerced into cooperation.

While extortion can be committed by Government officials or insiders, such officials can also be victims of it. For example, an official can extort corrupt payments in exchange for a favor or a person seeking a favor can extort it from the official by making threats.

In some cases, extortion may differ from bribery only in the degree of coercion involved. A doctor may solicit a bribe for seeing a patient quickly but if an appointment is a matter of medical necessity, the "bribe" is more properly characterized as "extortion". In extreme cases, poor patients can suffer illness or even death if medical services are allocated through extortionate methods rather than legitimate medical prioritizing.

Officials in a position to initiate or conduct criminal prosecution or punishment often use the threat of prosecution or punishment as a basis for extortion. In many countries, people involved in minor incidents, such as traffic accidents, may be threatened with more serious charges unless they “pay up”. Alternatively, officials who have committed acts of corruption or other wrongdoings may be threatened with exposure unless they themselves pay up. Low-level extortion, such as the payment of "speed money" to ensure timely consideration and decision-making of minor matters by officials, is widespread in many countries.

#### 6. Abuse of discretion

In some cases, corruption can involve the abuse of discretion, vested in an individual, for personal gain. For example, an official responsible for Government contracting may exercise the discretion to purchase goods or services from a company in which he or she holds a personal interest or propose real estate developments that will increase the value of personal property. Such abuse is often associated with bureaucracies where there is broad individual discretion and few oversight or accountability structures, or where decision making rules are so complex that they neutralize the effectiveness of any accountability structures that do exist.

#### 7. Favouritism, Nepotism and Clientelism

Generally, favouritism, nepotism and clientelism involve abuses of discretion. Such abuses, however, are governed not by the self-interest of an official but the interests of someone linked to him or her through membership of a family, political party, tribe, religious or other group. If an individual bribes an official to hire him or her, the official acts in self-interest. If a corrupt official hires a relative, he or she acts in exchange for the less tangible benefit of advancing the interests of family or the specific relative involved (nepotism). The favouring of, or discriminating against, individuals can be based on a wide range of group characteristics: race, religion, geographical factors, political or other affiliation, as well as personal or organizational relationships, such as friendship or membership of clubs or associations.

#### 8. Conduct Creating or Exploiting Conflicting Interests

As noted in the United Nations Manual on Anti-corruption Policy, most forms of corruption involve the creation or exploitation of some conflict between the professional responsibilities of a corrupt individual and his or her private interests. The acceptance of a bribe creates such a conflict of interest. Most cases of embezzlement, theft or fraud involve an

individual yielding to temptation and taking undue advantage of a conflict of interest that already exists. In both the public and private sector, employees and officials are routinely confronted with circumstances in which their personal interests conflict with those of their responsibility to act in the best interests of the State or their employer.

### 9. Improper Political Contributions

One of the most difficult challenges in developing anti-corruption measures is to make the distinction between legitimate contributions to political organizations and payments made in an attempt to unduly influence present or future activities by a party or its members once they are in power. A donation made because the donor supports the party and wishes to increase its chances of being elected is not corrupt; it may be an important part of the political system and, in some countries, is a basic right of expression or political activity protected by the constitution. A donation made with the intention or expectation that the party will, once in office, favour the interests of the donor over the interests of the public is tantamount to the payment of a bribe.

Regulating political contributions has proved difficult in practice. Donations may take the form of direct cash payments, low-interest loans, the giving of goods or services or intangible contributions that favour the interests of the political party involved. One common approach to combating the problem is to introduce measures that seek to ensure transparency by requiring disclosure of contributions, thus ensuring that both the donor and recipient are politically accountable. Another is to limit the size of contributions to prevent any one donor from having too much influence.

## **B. Strengthening Judicial Integrity and Capacity**

Dr. Oliver Stolpe, Crime Prevention Expert, Global Programme against Corruption, UNODC

### 1. Introduction

Economic and social progress cannot be realized in a sustainable way without respect for the rule of law. Research conducted has confirmed that corruption and lack of rule of law is a significant impediment to development. It shows that countries improving their control over corruption and strengthening the rule of law could expect - an average- to

enjoy a four-fold increase in incomes per capita in the long run. The research also confirmed that business sector grows significantly faster where corruption is lower, and property rights and rule of law are safeguarded. Effective protection of human rights and human security, each of which require a well-functioning judiciary with integrity, that is capable of interpreting and enforcing the law in an equitable, efficient and predictable manner. A fair trial, one of the most fundamental human rights, can only be achieved through an impartial tribunal and the procedural equality of parties. Within a corrupt judicial system none of these elements exist, since a bribed judge will not be independent or impartial. A corrupt judiciary also means that the legal and institutional mechanism designed to curb corruption, however well-targeted, efficient or honest, remains crippled. Apparently, evidence is increasingly surfacing of corruption in the judiciary in many parts of the world. A recent national household survey on corruption in Bangladesh revealed that 63% of those involved in litigation had paid bribes to either court officials or the opponents' lawyers, while 89% of those surveyed were convinced that judges were corrupt. In a similar poll in Tanzania, 32% of those surveyed reported payments to persons engaged in the administration of justice.<sup>4</sup> Whereas in Uganda in 1998 approximately 50% of the interviewed people reported of having paid bribes to the Judiciary. The number, however, decreased significantly with only 29% of the respondents claiming to have bribed the judiciary in 2002.<sup>5</sup>

An in-depth assessment of justice sector integrity and capacity conducted by UNODC in Nigeria drew an equally discouraging picture.<sup>6</sup> On the average more than 70% of the lawyers interviewed had paid bribes in order to expedite court proceedings. Mostly these bribes were paid to court staff, enforcement officers and police. However, more than 20% of the respondents claimed to have made such payments to judges. Even if less frequent, court users confirmed the experiences of lawyers. More than 40% of the respondents had experienced corruption when seeking

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<sup>4</sup> Petter Langseth, Oliver Stolpe, Strengthening Judicial Integrity against Corruption, CICP-Global Programme against Corruption, p.4, <http://www.unodc.org/pdf/crime/gpacpublications/cicp10.pdf>, published first in the CIJL Yearbook, 2000.

<sup>5</sup> Inspector General of the Government of the Republic of Uganda, Second National Integrity Survey Final Report of the IGG-, July 2002, published at [http://www.igg.go.ug/integrity\\_report.htm](http://www.igg.go.ug/integrity_report.htm)

<sup>6</sup> UNODC, Assessment of Justice Sector, Integrity and Capacity in three Nigerian States, [http://www.unodc.org/pdf/crime/corruption/Justice\\_Sector\\_Assessment\\_2004.pdf](http://www.unodc.org/pdf/crime/corruption/Justice_Sector_Assessment_2004.pdf).

access to the justice system. As it has been highlighted by other studies,<sup>7</sup> in particular the less privileged, both in terms of monetary means and education, as well as ethnic minorities tend to have worse experiences and perceptions of the justice system. They are more likely to be confronted with corruption, encounter obstacles when accessing the courts, and to experience delays. Furthermore, a strong link between corruption, timeliness and access to justice emerged, confirming that corruption mostly occurs when proceedings are being delayed and adjourned. It also turned out that corruption within the justice system affects negatively grass roots economic development and discourages direct foreign investment.

Hence, for many countries judicial reform remains a priority on the overall development agenda. Important developments in this field have taken place in recent years. The paper gives an overview of best practices as they have been enshrined in some of the international instruments in the other annexes. For the practical implementation of these principles and guidelines it draws, to a large extent, from the lessons learned during the judicial reform in Singapore, which represents one of the most prominent experiences available. Today, Singapore's judiciary is known for its efficiency, effectiveness, integrity, and capacity to provide its citizens with access to justice. Various regional and international rankings by different organizations indicate that the Singapore Legal System and Judiciary continue to lead not only within the Asian region. In its 2002 and 2003 Comparative Country Risk Report about the quality of legal systems and the judiciaries of twelve Asian countries (table 1), the Political and Economic Risks Consultancy (PERC) rated Singapore's legal system best in the region.<sup>8</sup>

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<sup>7</sup> For an overview see Anderson, Getting Rights right, in Insights – Development Research, September 2002

<sup>8</sup> The PERC's Risk Report covers China, Hong Kong, India, Indonesia, Japan, Malaysia, Philippines, South Korea, Taiwan, Thailand and Vietnam. It rates countries on a scale from 0 to 10, with 0 being the best grade possible and 10 being the worst. Singapore showed not only a noteworthy increase from a score of 1.7 in 2002 to 1.38 in 2003, but its score surpassed at the same time in both years the one of Japan and Hong Kong.

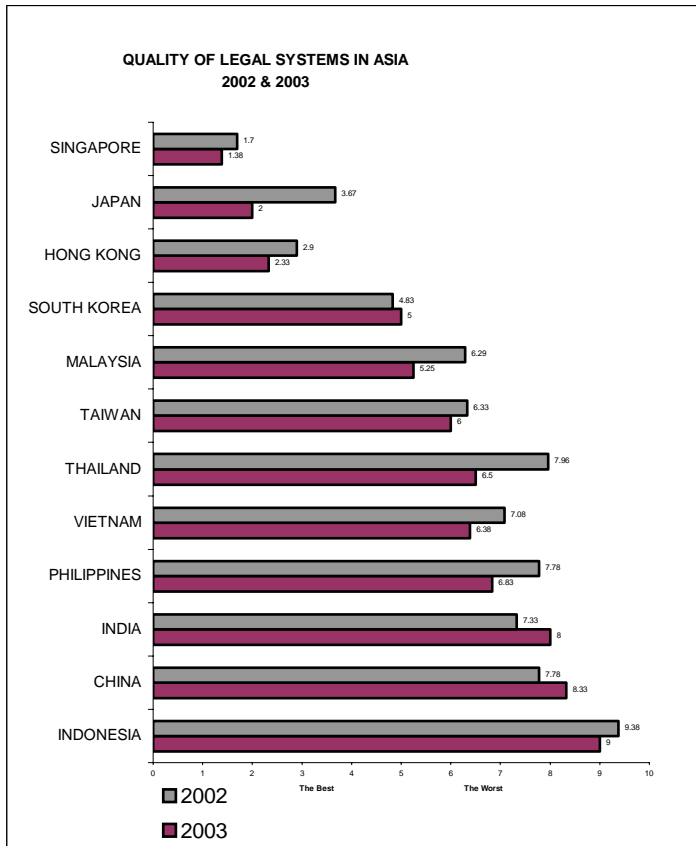


Table 1

Also in a global context, the Singaporean justice system ranks among the best, enjoying broad public support.<sup>9</sup> The International Institute for Management Development (IMD) compared a total of 59 countries in 2003 in terms of the competitiveness and performance of their respective legal frameworks and justice sectors.

As table 2 illustrates, Singapore was ranked first relative to twenty-eight other countries with less than twenty million inhabitants, when asked, if the legal framework was not detrimental to the country's competitiveness. On a scale from 0 to 10, with 0 being detrimental and 10 not being detrimental to the country's competitiveness, Singapore scored 8.215.

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<sup>9</sup> Singapore's judicial system has consistently ranked highly in the World Competitiveness Yearbook, published by the World Economic Forum, Maria Dakolias, Court Performance around the World, A comparative Perspective, pp.46-49

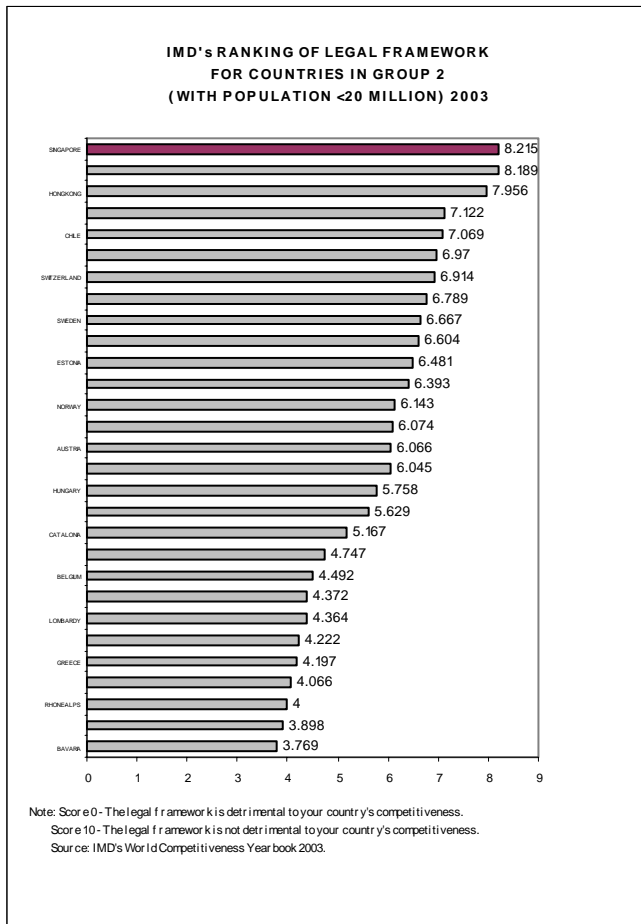


Table 2<sup>10</sup>

Another assessment of the public's confidence in the fair administration of justice (table 3), on a scale from 0-10 with 0 indicating no confidence and 10 full confidence in the justice administration, Singapore ranked 6th among the countries in its group.

<sup>10</sup> Source taken from the International Institute for Management Development's (IMD) World Competitiveness Yearbook 2003, published also in 'Subordinate Courts Annual Report 2003 – Anchoring Justice, p. 68



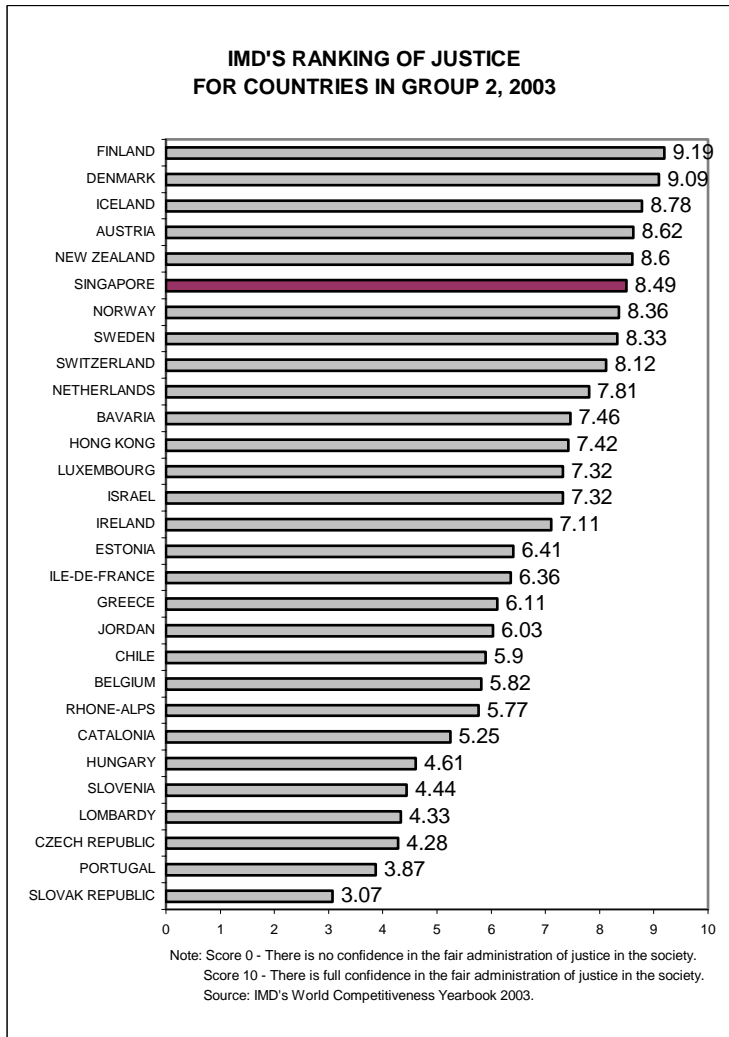


Table 3

## 2. Leadership, Management of Change and Benchmarking

### *a. Prerequisites for successful judicial reform*

It is now widely recognized that successful implementation of judicial reforms in any country requires certain conditions. These include: (1) vision and strong political will, (2) adequate resources, (3) enforcement of credible accountability structures, (4) strategy, plan and approach, (5) public support, and (6) management of expectations.

*Vision and strong political will:* It is critical that the Chief Justice (CJ) shows leadership and has a vision and is in a position to: (i) communicate that vision effectively to public at large, the judiciary, the broader criminal justice system, and the donor community; (ii) mount the necessary resources to implement the vision without risking the independence of the judiciary, and finally (iii) establish a credible monitoring mechanisms.

*Adequate resources:* National leaders and international donor agencies must recognize that the successful implementation of a comprehensive judicial reform requires adequate human and financial resources. The financial resources “invested” into the judiciary should be long-term and part of the regular budget of the country and allocated without limiting the independence of the judiciary. The human resources must have integrity, capacity and proper incentives

*Strategy, plan and approach:* To implement its vision the judiciary needs: (i) a integrated national strategy for the criminal justice system and (ii) an approach that is holistic, comprehensive, coherent, evidence based, transparent, non-partisan, inclusive and (iii) comprises an impact oriented strategy and action plan. This requires (i) measurable objectives, performance indicators and baseline data establishing the current performance levels, (ii) performance targets for the various justice sector institutions; (iii) monitoring of performance against baselines; and (iv) timely and broad dissemination to the public of periodic and independent assessments.

*Enforcement of credible accountability structures:* In countries where the judiciary is facing corruption in its own ranks the introduction and enforcement of judicial code of conduct becomes critical. Key elements when enforcing such a code are: (i) broad dissemination of the code to all judicial officers; (ii) ethics training for all judicial officers to make them aware of ethical and professional standards and the consequences of non-compliance; (iii) public awareness raising to make court users understand their rights and where to complain when judicial officers are not complying; (iv) a credible and independent disciplinary mechanism; (v) a complaints system trusted and used by the public; (vi) a timely and transparent reporting system informing the public about number and types of complaints and action taken.

*Public support:* The Judiciary cannot function in isolation. Rather it must involve and empower the public to balance judicial independence and accountability. Hence, the public must be involved in the judicial reforms from the very beginning. It is also critical to monitor public trust not only in the judicial reform in general but also in all other criminal justice institutions. To protect the independence of the judiciary these accountability measures should be initiated by the judiciary itself.

*Management of Expectations:* Everyone must realize that judicial reforms take time and can be painful, in particular in countries suffering from corruption within the criminal justice system. Furthermore, once rule of law has been established, it must be retained. Consequently, the commitment must be long-term and that requires leadership and the provision of adequate resources on a continuous basis.

*b. Leadership*

Leadership is the single most important component of a successful reform effort in any branch of Government. Without the vision and political will at the top, little can be achieved and sustainability remains questionable. Further, the vision on the top must be transmitted through the ranks of the respective institution in an inclusive manner taking the views of all stakeholders into account and melding them into one mission statement.

With respect to this, the Singaporean Judiciary can be regarded as a model. Here the leadership was able to produce a vision and mission which has become a daily reality for the organization and its staff. Mission and vision are shared by all members of the judiciary and the work of each single organizational unit is linked eventually through the common objectives and goals. The mission statement, its objectives, goals, values and principles are in display everywhere in the courts and have been widely distributed to all stakeholders.

**CASE STUDY #1: The Subordinate Courts Justice Statement**

**ONE MISSION**

*To Administer Justice*

**TWO OBJECTIVES**

*To Uphold the Rule of Law*

*To Enhance Access to Justice*

**THREE GOALS**

*To Decide and Resolve Justly*

*To Administer Effectively  
To Preserve Public Trust and Confidence*

**FOUR JUSTICE MODELS**

*Criminal Justice – Protecting the Public  
Juvenile Justice – Restorative Justice  
Civil Justice – Effective and Fair Dispute Resolution  
Family Justice – Protecting Family Obligations*

**FIVE VALUES**

*Accessibility  
Expedition and Timeliness  
Independence and Accountability  
Public Trust and Confidence*

**SIX PRINCIPLES**

*The Judges and Magistrates  
subscribe to the principles in their  
oath of Office and Allegiance  
to Faithfully Discharge Judicial Duties  
to do Right to All Manner of People  
after the Laws and Usages of the Republic of Singapore  
without Fear or Favour, Affection or Ill Will  
to the Best of their Ability, and  
to be Faithful and Bear True Allegiance  
to the Republic of Singapore*

c. *Providing Incentives for Excellency*

The Managing for Excellence Award Systems in Singapore contributes to the creation of an open and responsive public service. The Singapore Quality Award is just one example of the wide range of performance incentives. The SQA is the highest accolade given to organisations for performance excellence based on widely accepted international standards. The focus is laid on people-centred management responsive to the changing needs of an evolving workforce, and on customers, combined with a system-oriented approach and a networked government, respectively and based on common values, such as visionary leadership, customer-driven quality, innovative focus, organizational and personal learning, valuing people and partners, agility, knowledge-driven systems, societal responsibility, systems perspective and result orientation, stimulating systematic reviews within organisations concerning their people and management practices.

## CASE STUDY #2: Award Framework

In relation to the core values a comprehensive evaluation framework was elaborated, consisting of the seven subcategories Leadership, Planning, Information, People, Processes, Customers and Results.

Within the category *Leadership* vision, values and responsibility of Senior Management are reviewed by examining whether the Management has developed a clear vision and mission, and whether Senior Managers are personally and visibly involved in communicating the goals and in performance improvement activities as well as recognition of teams and individuals for their contribution.

The *Planning* process focuses on how internal data, e.g. quality indicators, and external data such as, customer feedback and industry trends are integrated and translated into the organization's plans and performance targets.

Under the category information, the SQA evaluation explores whether comparative and benchmarking information is used to support decision-making.

Category 4, "*People*", deals with all Human Resource related matters, such as employees' participation, performance and satisfaction as well as training needs.

*Processes*, the 5<sup>th</sup> category, covers the innovation, management and improvement processes as well as the building of partnerships with suppliers.

Under the category customer, the evaluation focuses on the extent to which the organisation has proven capable to respond to customer needs and marked requirements. This includes service standards and customer surveys.

The overall performance of the organisation is evaluated based on the *results* achieved both in view of internal benchmarks and compared with peers or competitors.

### d. *Benchmarking and Monitoring*

Benchmarking and monitoring can further improve the performance architecture of courts. It encompasses the regular review of performance, identifying gaps in performance; seeking fresh approaches to bring about improvements in performance; following through with implementing improvements; and following up by monitoring progress and benefits.<sup>11</sup>

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<sup>11</sup> See [http://www.benchmarking.gov.uk/about\\_bench/whatisit.asp](http://www.benchmarking.gov.uk/about_bench/whatisit.asp).

It is a recognised means of helping an organisation improve by comparing its standards and results both with its own past performance and with those of other organisations<sup>12</sup>.

#### CASE STUDY #3: Benchmarking and Monitoring

In order to achieve excellence for the organization by setting benchmarks, several steps can be followed. First of all, a precise identification of the critical success factors, such as accessibility, expedition and timeliness, equality, fairness and integrity, independence and accountability, public trust and confidence, is necessary as well as an identification of the competitors to benchmark against. Before the collection of needed data, the method of data collection should further be determined. This preparation can then lead to the comprehensive analysis of the lacks in the current and prospective future performance. In order to gain broad acceptance, which is important for a successful project, the benchmark findings need to be communicated, so that, subsequently, the avenue is opened for the establishment of concrete functional goals. By so doing, an action plan can be developed which upon the specific may be implemented. As a final phase, the progress should be monitored and reviewed in the context of the set benchmarks.

In this context, the Subordinate Courts of Singapore experienced positive results with the introduction of the so-called eJustice Scorecards (eJS) in the various divisions of the Subordinate Courts, namely the criminal, civil, family, small claims tribunals, information technology, and the corporate services division. The Scorecard software provides an overview of the organisation's performance by integrating financial measures with key performance indicators such as customers' perspective, internal business processes and organisational growth, learning and innovation.

As such the Scorecard provides important monthly information from different perspectives, creating a holistic view of the organisation's health, and brings together in a single management report many disparate elements of the organisation's agenda. As such it helps the organisation to translate strategic intentions into tangibles that can be understood throughout the organisation. Other clear advantages of the scorecard are

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[http://www.psbcorp.com/consulting/trgsolutions\\_strategicexcel\\_sqa\\_benchmark.shtml](http://www.psbcorp.com/consulting/trgsolutions_strategicexcel_sqa_benchmark.shtml)

See

that it provides early warning signals when targets are not met, and allows for diagnostic and interactive control system.

*e. Training*

In order to improve the predictability and quality of justice, many countries have undertaken measures strengthening the capacity, attitude, skills and ethics of judges. Such measures include training, increasing access to legal materials, developing codes of conduct and improving the incentive system.<sup>13</sup>

There are several approaches regarding content as well as organization and follow-up to training activities. Lately, there seems to be an increasing shift from training on theoretical-legal to managerial issues and practical skills, including computer courses, case and court management, quality and productivity and leadership skills.<sup>14</sup> Yet, critical voices complain that there is still too much emphasis by donors on training programme that do not really have any impact because they are run by foreign experts without any knowledge of the specific country's context and they do neither go into the necessary depth nor provide for any follow-up.<sup>15</sup> Therefore, training programmes need to increasingly draw from national and regional expertise and ensure sustainability by linking training activity to the curriculum of the respective judicial schools or other training institutions.<sup>16</sup> Training should focus on improving organizational performance. Evaluations should not be conducted once training is completed, but rather when knowledge has been applied. Research demonstrates that training is not effective until workers assimilate the acquired skills and the skill is applied naturally.<sup>17</sup>

Moreover, training programmes are mostly held in the capital cities and often do only reach the judicial leadership, while the biggest training

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<sup>13</sup> USAID, Office for Democracy and Governance, Guidance for Promoting Judicial Independence and impartiality, p. 27

<sup>14</sup> USAID, Office for Democracy and Governance, Guidance for Promoting Judicial Independence and impartiality, pp. 27, 28; Dakolias, Court Performance around the World (Peru), p. 44

<sup>15</sup> Dietrich, Legal and Judicial Reform in Central Europe and the Former Soviet Union (Russia, Georgia, Romania and Romania), pp. 11, 12; Hammergren, Institutional Strengthening and Justice Reform, p. 59

<sup>16</sup> Dietrich, Legal and Judicial Reform in Central Europe and the Former Soviet Union (Romania), p. 13

<sup>17</sup> Said/ Varela, Colombia, Modernization of the Itagiú Court System, pp. 11,12 & 18

needs exist at lower courts, especially outside the capital. Even though the latter may impose even greater challenges of sustainability there is a more urgent need.<sup>18</sup> Study tours that for long have been observed with suspicion seem to have potentially an impact that goes beyond a mere increase of professional skills. Participants report that their entire vision of their profession and role in society changed.<sup>19</sup> It is important to observe that training does not only enhance the quality of justice by increasing the professional qualification and even vision, but it also contributes to the attractiveness of the profession as such, which ultimately draws more and better qualified candidates to the bench.<sup>20</sup>

As far as the academic legal training is concerned, in many countries complaints have been raised that teaching methodologies are antiquated, inefficient and do not prepare for the profession. Clinical legal education seems to represent a promising alternative.<sup>21</sup> Here in addition to skills, law students acquire values and ethical attitudes. Students under professional supervision provide legal services in actual cases to people who would otherwise not have access to counsel. Clinical law education programmes have been implemented with great success in various countries in Eastern Europe and the former Soviet Union.<sup>22</sup> The key seems to be the relative limited number of students that are coached by a professor and a professional lawyer. Other countries try to bridge the gap between theoretical legal education and judicial praxis by transforming their judicial training centers into actual schools for judges, where senior judges train the magistrates of the future.<sup>23</sup>

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<sup>18</sup> USAID, Office for Democracy and Governance, Guidance for Promoting Judicial Independence and impartiality, p. 28

<sup>19</sup> Dietrich, Legal and Judicial Reform in Central Europe and the Former Soviet Union (Russia, Georgia, Romania and Romania), p.12; USAID, Office for Democracy and Governance, Guidance for Promoting Judicial Independence and impartiality, p. 29; Goddard, Institution Building and Strengthening of Corruption Control Capacity in Romania, Evaluation of UN Centre for International Crime Prevention Project, p. 25

<sup>20</sup> Dakolias, Court Performance around the World (Peru), p. 44

<sup>21</sup> Dietrich, Legal and Judicial Reform in Central Europe and the Former Soviet Union (Romania), p.25

<sup>22</sup> Dietrich, Legal and Judicial Reform in Central Europe and the Former Soviet Union (Romania), p.26; USAID, Office for Democracy and Governance, Guidance for Promoting Judicial Independence and impartiality, p. 30

<sup>23</sup> USAID, Office for Democracy and Governance, Guidance for Promoting Judicial Independence and impartiality (Romania & Georgia), p. 66



*f. Skills*

Being a conservative profession, most judiciaries will only involve staff with a legal background in the running of the court systems. Singapore is one of the few judiciaries willing to break with this tradition bringing in professionals with no legal background to build management, information and performance monitoring systems, and other innovative management techniques similar to those that are being applied by the most advanced private sector organizations. This approach has allowed the Singaporean judiciary to increase its effectiveness and efficiency to levels where a judge is handling a case load several times higher than what can be found in other developed countries while maintaining the highest levels of user-satisfaction and quality (see under A).

3. Measures to enhance efficiency and effectiveness

*a. Court Infrastructure*

Inadequate physical facilities that constrain smooth operations of courts are an important issue for judicial reform. Shortages, rundown conditions, inappropriate space distribution, a lack of security, poor lighting as well as poor maintenance and a lack of decorum and appropriate symbolism, poor locations and a lack of facilities in rural areas can be identified as only the main shortcomings.<sup>24</sup> In some countries courthouses have consciously been conceptualized a catalysts of change taking into account five main concepts: Cultural and judicial decorum, expansion of facilities, reform oriented spaces taking into account needs for increased transparency, access to the public and upgraded technology.<sup>25</sup>

Many judiciaries suffer from a lack of timely accessibility to judicial information, including laws, prevailing jurisprudence, doctrines and legal literature due to defective court information systems and antiquated technology as one of the main obstacles to the successful delivery of

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<sup>24</sup> World Bank, Staff Appraisal Report – Peru, Judicial Reform Project, p. 9; Dakolias/Said, Judicial Reform, A Process of Change Through Pilot Courts, p. 13

<sup>25</sup> Malik, Judicial Reform in Latin America and the Caribbean: Venezuela’s search for a New Architecture of Justice, p. 9

justice.<sup>26</sup> Singapore makes full use of modern technologies both in and out of court. Particular features include the Electronic Case Filing System (see below) and the use of Video-Conferencing technology (E-Court). The latter allows for the hearing of witnesses (in particular children) and victims who, for (justified) fear of the accused, are better not exposed directly to the court proceedings. They can be questioned through video-link from a location next to the court room. However, this technology can also be used to hear witnesses who are located in other countries, and to link up with foreign courts. The technology is further used in the pre-trial phase during first hearings or case-management conferences.

Courts in Singapore are constructed with the purpose of creating an environment comfortable for court users and conducive to the aims of justice. This includes providing separate waiting areas for parties in the family courts, children's rooms and special witness rooms. Video-linking is also used in order to allow court users to contact the Family courts from one of the four family service centres distributed across Singapore.

#### *b. Judicial Budget*

Judicial budget is an important economic instrument to ensure an efficient judicial system.<sup>27</sup> In order to secure the necessary resources to the judiciary and to increase its budgetary independence, in some countries a minimum portion of the overall Government budget has been assigned to the judiciary in the constitutions. While an increase of budgetary resources has helped judiciaries in several countries to improve their overall performance,<sup>28</sup> a common problem remains the

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<sup>26</sup> Dietrich, *Legal and Judicial Reform in Central Europe and the Former Soviet Union* (Poland), p. 32; USAID, *Office for Democracy and Governance, Guidance for Promoting Judicial Independence and impartiality*, p. 45; Dakolias, *Court Performance around the World* (Ukraine), p. 51; Finnegan, *Observations on Tanzania's Commercial Court – A Case Study*, p. 5; Buscaglia/ Langseth, *Empowering the Victims of Corruption through Social Control Mechanisms*, p.24

<sup>27</sup> John McEldowney, *Developing the Judicial Budget: An Analysis*, p. 3

<sup>28</sup> John McEldowney, *Developing the Judicial Budget: An Analysis*, pp. 11, 12. Crucial in this context were the development of sound management rules for the judicial budget. As e.g. in Venezuela:

The judicial budget should be linked to a transparent system of case management that covers the main sectors of court activity,

Budget formulation should be capable of providing information and planning as one of the primary means of implementing efficiency studies in the court.

Internal budget arrangement should ensure that policy formulation is implemented and efficiency structures supported,

poor allocation and lack of resource management.<sup>29</sup> More detailed studies have proven that budgetary increases were particularly effective where the capital budget grew exponentially comparing to those resources used for salaries, benefits and additional staff.<sup>30</sup> One important lesson learned is that an increase in capital resources affects time to disposition, but adding general resources to the budget does not. While the latter allows for increasing salaries and number of staff,<sup>31</sup> the first sets aside the necessary monies to improve information technology and facilities, which in turn increases the clearance rate.<sup>32</sup> In Singapore, for example, a significant increase of capital budget in 1991 was rewarded by a subsequent 39% decrease of pending cases in 1993. Increasing salaries of judicial personnel does not seem to have the same effect. However, on the long-run higher salaries should attract better qualified judges and may also assist in reducing corruption.

**CASE STUDY #4: The Net Economic Value System (NEV)**

NEV is a resource management initiative introduced to all public sector agencies under the auspices of the Managing for Excellence (MFE) Office in the Ministry of Finance. It is a financial decision tool aimed at helping management to maximize the value of resources available. It raises the awareness of the total cost of resources and encourages better budgetary management. This awareness of cost and accountability forces the managers and the staff alike to use the assets at hand diligently and to take ownership in making better decisions in resource allocation. In order to acquaint court staff with the system an interactive NEV e-learning package was developed. In addition, a team of NEV specialists was set up to communicate between staff and

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The management of the judicial budget should reflect cases heard by the courts, and the resources needed for each sector of the judicial system should be evaluated as a whole, Internal controls over the judicial budget should assist in the development of a management strategy. Case management systems should be sufficiently flexible to take into account variations in caseload

External control such as audit system should be fully integrated into the judicial budget, Judicial statistics should fully reflect the resources allocated and the detail of cases including case outcome,

Capital assets, regular items of expenditure and expenditure on special programs should be fully reflected in the way the judicial budget is organizes.

<sup>29</sup> USAID, Guidance for promoting judicial independence and impartiality, p. 26

<sup>30</sup> Buscaglia/ Dakolias, Comparative International Study of Court Performance Indicators, p. 15

<sup>31</sup> In many countries almost the 95% of the budget is used for salaries.

<sup>32</sup> Buscaglia/ Dakolias, Comparative International Study of Court Performance Indicators, p. 21

management with regard to feedback and queries.

c. *Filing and record-keeping*

Singapore has introduced an Electronic Case Filing System (EFS). By now, the complete case-files are only available in electronic format. Lawyers file their submissions electronically directly through this system or on a CD-Rom.

CASE STUDY #5: The Electronic Case Filing System

Electronic Filing was first introduced in the Small Claim Tribunals in 1997.<sup>33</sup> Whereas, traditionally, documents are filed manually through the court registry and in paper form, the *Electronic Filing Service* offers a new way of filing all court documents electronically through the internet.<sup>34</sup> The current Filing System offers four services to meet the evolving needs of civil litigation: the Electronic Filing Service, the Electronic Extract Service, the Electronic Servicing of Documents and the Electronic Information Service.

The *Electronic Extract Service* facilitates the process of seeking approval and extraction of documents filed in court. Whereas, formerly, extracts of documents had to be requested directly from the court registry counter, everything can presently be done electronically. For instance, lawyers can make online searches on the index of documents filed for a case and retrieve soft copies of documents transmitted to them electronically.

The *Electronic Service of Documents Facility* enables law firms to serve court documents electronically to other law firms concurrently. Documents which are served using the Electronic Service of Documents Facility are deemed to be effectively served in compliance with the Rules of Court.<sup>35</sup> Apparently, the advantages of this service is not only more convenience for the lawyers but it also saves human resources, since despatch clerks need not to serve court documents

<sup>33</sup> 'The Supreme Court Singapore Annual Report 2003', p. 35.

<sup>34</sup> Presently over 84% of documents are filed in court electronically by more than 320 law firms *via* the web-based system. More than 800,000 court documents have been electronically filed to-date. On average, 2,000 documents are processed electronically daily, see Supreme Court Singapore, Electronic Filing System, published at <http://www.supcourt.gov.sg/>.

<sup>35</sup> A certificate of service is automatically generated by the system. This certificate can be filed in court in lieu of the affidavit of service as evidence of service.

personally.

With the *Electronic Information Service*, information can be obtained on all classes of actions in the court which may be of interest for law firms and the public, since they are able to perform search queries on the courts' database electronically.

d. *Case management system*

A more active role of judges in case management rather than leaving the management to the parties and their lawyers has helped in many countries to reduce delays and increase individual clearance rates. Increased judicial activism in case management has proven to be one of the main factors capable of reducing the time it takes to dispose of a case.<sup>36</sup> This may include the strict enforcement of deadlines as well as a more mediating approach to encourage settlement among parties.

Other jurisdictions increased court time and extended the working hours of the registrars' office, a measure which enhanced the overall productivity of staff, increased the access to justice, and impacted positively on the perception of service users.<sup>37</sup> As a Georgian lawyer stated, “[b]efore, you could go there in the middle of the day and not to be able to find a judge. Now, everyone is there, working”.<sup>38</sup> In Singapore, official working hours are 42 hours. Saturday is –non-working day. However judges and staff are rostered on a rotational basis to work on Saturdays so that essential courts services can continue to be provided on Saturdays.

Most countries embarking on judicial reform projects were forced to address delays and extensive backlogs if their reform efforts were to be successful. Delays are one of the main reasons for public distrust, undermining the judiciary's legitimacy and, ultimately, calling for interventions by the executive, often limiting judicial independence.

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<sup>36</sup> Ernst & Young, *Reducing Delay in Criminal Justice System*, p. 2; In the U.K. in a pilot project aiming at delay reduction in criminal cases, it was possible to decrease the average number of days-to-disposal from 85.5 to 30 by introducing early first hearings and increasing the powers of single judges and justices' clerks to assist case management.

<sup>37</sup> Dakolias, *Court Performance around the World*, pp. 28 (Chile), p. 33 (Colombia and p. 48 (Singapore)

<sup>38</sup> Dietrich, *Legal and Judicial Reform in Central Europe and the Former Soviet Union*, p. 8

Hiring more judges is a favourite solution for problems of inefficiency.<sup>39</sup> The lack of judges has been cited frequently as the main reason for delay.<sup>40</sup> This perception, however, relates primarily to courts that are not well-managed rather than understaffed. While hiring additional staff may sometimes be necessary, more successful have been those attempts that aim at increasing the output of the system through strengthening efficiency rather than over all capacity in terms of human resources.<sup>41</sup>

Often the delays are caused by an unnecessary high number of procedural steps combined with a lack of time limits.<sup>42</sup> Delay reduction programmes may include reducing procedural steps and the complexity of the single steps through more simplified, oral-based procedural codes as well as establishing time limits for each procedural step.<sup>43</sup> Still, "delays cannot be legislated away".<sup>44</sup> Meaningful service delivery deadlines can only be achieved, where the judges and court staff are involved in their establishment and commit themselves to the prescribed times.<sup>45</sup> Regular meetings to review whether deadlines are being met are useful, since they confirm the commitment and allow for eventually needed adjustments. In most jurisdictions the reduction of procedural times will require changes in the respective procedural codes. Such measures will take time and require consolidated action by all areas, i.e. the judiciary, the executive and the legislative.<sup>46</sup>

Delay reduction programmes will normally be combined with backlog-solving exercises. It has shown that courts when reducing the backlog experienced at the same time substantial reduction in processing time. Some countries made good experiences with the hiring of temporary personal whose sole purpose was to review the existing backlog of cases,

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<sup>39</sup> Buscaglia/ Dakolias, Comparative International Study of Court Performance Indicators, p. 13

<sup>40</sup> National Center for State Courts, How many judges do we need anyway?, March 1993, p. 1

<sup>41</sup> Dakolias, Court Performance around the World, p. 20

<sup>42</sup> This does not only increase the time-to-disposition but also the propensity of the system towards corrupt practices. As it has been found by Buscaglia, An Analysis of the Causes of Corruption in the Judiciary, p. 7

<sup>43</sup> Buscaglia, An Economic and Jurimetric Analysis of Official Corruption in Courts, p. 9

<sup>44</sup> Messick, Reducing court delays: Five lessons learned from the United States, PREM notes, Number 34, Des. 1999, p. 1

<sup>45</sup> Said/ Varela, Colombia, Modernization of the Itagüí Court System, pp. 17, 18

<sup>46</sup> In Peru it was possible to reduce procedures foreseen by the civil procedural code from over a 100 to 6. World Bank, Staff Appraisal Report – Peru, p. 10

purging inactive cases from the files,<sup>47</sup> identifying those cases that require immediate action by the judge and preparing for the hearing of the case.<sup>48</sup>

Much of the delays are caused by parties and their lawyers. Increasing the judges activism in case management has proven to be highly effective in this regard. This includes making judges personally responsible for their own share of the court's caseload, insisting on absolute adherence to time schedules, granting adjournments and temporary injunctions only when absolutely justified, limiting or even abolishing the possibility of interlocutory appeals and building a culture of timeliness among advocates and parties.<sup>49</sup> Also additional court fees, court fines for rejected motions, reducing the possibilities for appeal and revision to more important cases, and the accrual of legal fees on each new procedural step, can encourage clients and lawyers likewise to refrain from pursuing claims up to the highest instance regardless of the merit of the case.<sup>50</sup>

Some jurisdictions have used exponentially growing court fees according to court time used to enhance institutional efficiency. One such example is Singapore where for each additional day of trial an extra charge is incurred, which escalates with time in order to curb abuse. As a result, over 80% of the cases take only one day to complete.<sup>51</sup> In addition, cost orders are being used against parties and their lawyers for frivolous motions, appeals and complaints. This gives the court the flexibility to hold accountable the lawyers rather than their clients.

Excellence in case-management is one of the prominent features of the Singaporean justice system.. This is particularly true for the Subordinate Courts, where more than 95% of all cases start (roughly 500,000 cases/year). This works out to an average of more than 5700 cases per Judge per year in 2003. This is possible only due to strict adherence to time limits, which have been enshrined in the Court Charter that has been widely publicized to all stakeholders. All civil applications before a

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<sup>47</sup> Dakolias, *Court Performance around the World*, p. 14

<sup>48</sup> Buscaglia/ Dakolias, *Comparative International Study of Court Performance Indicators*, p. 15; World Bank, *Project Appraisal Report, Model Court Development Project - Argentina*, Annex 2

<sup>49</sup> Finnegan, *Observations on Tanzania's Commercial Court – A Case Study*, p. 7; World Bank, *Administration of Justice and the Legal Profession in Slovakia*, p. 12;

<sup>50</sup> World Bank, *Dominican Republic, Statistical Review of the Justice Sector*, p. 4

<sup>51</sup> Dakolias, *Court performance around the World*, pp. 47, 48

Registrar are fixed for hearing within 4 weeks after the filing of the application unless a longer period is specifically provided for by legislation. All civil trials are heard within 4 weeks after filing of set-down for trial. Criminal cases have to be mentioned within the same day the charge is tendered in court. The cases are then referred for Pre-Trial Conference where parties appear before a Judge to narrow the issues and explore resolution without trial. If the case proceeds for trial, trials are fixed within 4 weeks. All criminal matters must be concluded within 6 months from the time the accused is first charged in court. This timeline is reduced to 3 months if the accused is not on bail. . Claims by tourists and other urgent cases handled in the Small Claims Tribunals are mediated within 24 hours after filing. Urgent family matters have to be heard on the same day. Thereafter, parties have to be ready for trial within a week. Judges are in full control of the case-management. They and not the parties determine the pace of the case by setting the dates for hearings and trial. Judges lead, by example, in adhering to the time limits set forth in the Court Charter and lawyers follow suit. Adjournments are only granted on an exceptional basis. In addition, the Subordinate Courts utilizes the practice of assigning hearing dates in ‘tranches’. For examples, a case may be fixed for several days with several more days in ‘reserve’. The reserve dates are then given only when necessary. This is to reduce the number of ‘wasted’ court days should a matter that is fixed for trial settle without the need for trial. The use of reserve dates is closely monitored.

#### CASE STUDY #6: Case Management in the Family Courts

Specific case-management procedures are being applied in the family court, which handles an annual case load of 17,000 cases with only eleven judges. Here judges conduct case-management conferences every week-day except on Fridays. All the files scheduled for action are made available to the judge on that day. The respective parties or their lawyers have been notified, and are awaiting in front of the judges room. Each case has been assigned a number. Parties are being called in accordance with the number of their respective case, the case status and required action is reviewed, next steps are determined and a date for trial or the next case-management conference is established. This procedure allows a judges to deal with up to 30 cases during one morning session.



e. *Case flow Management and Case Assignment Procedures*

Fear of bias may stem, in particular, from the assignment of sensitive cases to judges (even wrongly) perceived as pro-governmental. Such concerns can be overcome through a system of random case assignment. Even though deliberate and systematic case assignment procedures may have some advantages in terms of optimizing the use of available expertise and of distributing workload equally, they clearly outweigh the disadvantages in terms of possible or actual partisan influence. The equal distribution of workload can still be assured by using formulas estimating the work on certain case types. Additionally, a potential loss of expertise can be avoided by forming subject related divisions within courts.<sup>52</sup>

Some countries have undertaken specific measures to enhance case flow management across various justice sector institutions in order to reduce congestion in prison caused by a high number of persons awaiting trial. Particular focus was given to the initial stages of the criminal justice process. Measures included the provision of out-of-hours advice by the Attorney General's Office, the location of State prosecutors in police stations, the introduction of "early first hearings" in the case of straightforward guilty pleas and of "early administrative hearings" for all other cases as well as the increase of case management powers of judges and justices clerks.<sup>53</sup> In particular regarding misdemeanours, administrative hearings and similar case flow management practices facilitate early negotiations that may lead to rapid, non-trial disposition of the case.<sup>54</sup> In some jurisdiction specialized courts<sup>55</sup> or the function of popularly elected lay judges<sup>56</sup> have been created with the exclusive function of dealing with minor criminal offences and small civil claims (see CASE STUDY #10)

f. *Coordination mechanisms with other Justice Sector Institutions*

A major aspect to strengthen the efficiency of the judiciary is improving coordination between various Criminal Justice System Institutions. Criminal Justice Committees, providing a regular platform of exchange between justice sector institutions are being used in several jurisdictions

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<sup>52</sup> USAID, Guidance for Promoting Judicial Independence and Impartiality, p. 48 & 49

<sup>53</sup> Ernst & Young, Reducing Delay in Criminal Justice System, p. 2;

<sup>54</sup> Council for Court Excellence, A Roadmap to a Better Criminal Justice System, p. 4

<sup>55</sup> Dakolias, Court Performance around the World, p. 26

<sup>56</sup> World Bank, Staff Appraisal Report – Peru, Judicial Reform Project, p. 22

around the world to enhance the cooperation and coordination.<sup>57</sup> Regular meetings of the various actors provide a vehicle for problem identification, the sharing of differing institutional perspectives, and the delineation of a common integrated approach to justice delivery.

As part of a proactive case-management philosophy and in order to maintain a dynamic and responsive criminal justice system, the Singaporean Judiciary works closely with other stakeholders, in particular the Police and the Attorney General Chambers, in the attempt to anticipate developments and emerging challenges in the field of criminal justice. For this purpose, meetings are conducted during the first quarter of the year to jointly assess crime trends and operational priorities of the respective agencies. Depending on the complexity and nature of cases which are expected to be brought to the courts during that same year, the judiciary adopts its case-management procedures and determines additional skills and knowledge which need to be acquired in order to deal effectively with the anticipated case-load. The meetings jointly assess whether the legal framework provides the adequate measures to deal with the emerging trends, to identify eventual loopholes in the law and, if needed, to determine additional legislation to be developed by the Attorney General's Chambers

#### 4. Judicial Independence and Impartiality

The United Nations Declaration of Human Rights and the International Covenant on Civil and Political Rights proclaim that each individual is entitled to a fair and public hearing by an independent and impartial tribunal. The UN Basic Principles on the Independence of the Judiciary further specify in article 1 that the independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country (Annex IV.A.). The Bangalore Principles of Judicial Conduct (Annex IV.B.), which were endorsed by judges from around the globe, put the various aspects of judicial independence into more concrete form, establishing that a judge shall be independent in relation to society, and to the parties. Also a judge shall be free from inappropriate connections with and influence by the executive and legislative branches of government and independent of judicial colleagues with regard to his/her

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<sup>57</sup> UNODC, Strengthening Judicial Integrity and Capacity in Nigeria, Report of the First Integrity Meeting for the Lagos State Judiciary, p. 72

decisions.<sup>58</sup>

a. *Selection, appointment, promotion, terms and conditions of service for judges*

The selection and appointment process are key to the quality and credibility of any judiciary. The UN Basic Principles on the Independence of the Judiciary which were adopted by the 7<sup>th</sup> UN Congress on the Prevention of Crime and the Treatment of Offenders provide that: “Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law”.<sup>59</sup> In practice, there are mainly three methods for appointing judges: by the executive, through a judicial council (whose members may be selected by the executive, the legislature or the judiciary itself), or through elections.

Although it is not possible to determine which selection process works best, some principles are emerging:<sup>60</sup>

- Transparency to be achieved, i.e. by advertising judicial vacancy widely, publicizing candidate’s names, their background, the selection criteria as well as the results of the selection process; inviting public comment on candidates’ qualification and dividing responsibility for the process between two separate bodies. Transparency in the selection process contributes to eliminating under-the table machinations that are going on in many judiciaries around the globe.<sup>61</sup>
- Composition of the judicial council by introducing actors to diluting the influence of any particular political entity or branch of government. Councils should also include lawyers, law professors and lower-level judges. Representative members should be chosen by the sector they represent. This will enhance their credibility and foster the likelihood of greater accountability to their own group as well as autonomy from the other actors.

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<sup>58</sup> The Arab Judicial Forum White Papers, Theme 1: Judicial Selection, Ethics and Training

<sup>59</sup> UN Principles on the Independence of the Judiciary, GA/RES/40/32 of 29 November 1985 and 40/146 of 13 December 1985, and "Procedures for the effective implementation of the Basic Principles on the Independence of the Judiciary". Annex IV.A.

<sup>60</sup> USAID, Guidance for promoting judicial independence and impartiality, pp. 17-18

<sup>61</sup> The Arab Judicial Forum - Judicial Selection, Ethics and Training, September 15-17, 2003, White Papers, p. 1; Hammergren, DO Judicial Councils further Judicial Reform?, Working Papers, p. 20

- Merit-based selection. Traditional criteria like mastery of law and the support of recognized jurists or community leaders – are increasingly recognized as inadequate, but additional qualities are both disputed and far harder to document. Knowledge on legal matters is easily acquired through the study of codes and commentaries, while the real challenge of the judicial profession is how the individual judge reacts to the elements of the case.<sup>62</sup> Rigorous background checks and the solicitation of comments from prior clients and colleagues will help to determine the integrity of the candidate.
- Diversity. A judiciary that reflects the diversity of its country is more likely to garner public confidence, important for a judiciary's credibility.

A positive example for a selection process is the experience collected in Chile. Here the selection was carried out with unprecedented transparency and appears to have achieved positive results both in terms of credibility and qualification of the selected candidates. The recruitment campaign is widely publicized and the Candidates are evaluated based on their background and tested of their knowledge, abilities and physiological fitness, the interviewed. Those selected attend a six month course at the judicial academy and the graduates receive preference over external competitors for openings. The obvious disadvantage is its expense. Few judiciaries have resources to provide long-term training for applicants who may not ultimately be selected as judges.

*b. Remuneration and benefits*

The appointment process, terms of appointment and salary directly impact on the quality of applicants, and ultimately on the quality of justice.<sup>63</sup> High salary and terms of appointment for life also contribute to the independence of judges. Public confidence seems to remain low where judges are appointed only for a limited time period.<sup>64</sup> Judges appointed to the bench for life with retirement at seventy and regular performance reviews, as well as incentives to improve their performance, such as system of bonuses based on productivity, have shown positive results.

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<sup>62</sup> Hammergren, DO Judicial Councils further Judicial Reform?, Working Papers, p. 21

<sup>63</sup> Dakolias , Court Performance around the world, p. 22

<sup>64</sup> Dakolias , Court Performance around the world (Ecuador), p.32

Internal procedures should ensure that the assignment of judges to different districts is changed on a regular basis with due regard to the gender, race, ethnicity, religion, and minority concerns.

Singapore has recognized the importance of remunerating adequately its public service in general and its judges in particular. In order to attract the best jurists to the bench, the salaries are determined based on 90% of the average salary paid by the six best law firms of Singapore to their lawyers with a comparable professional experience.

## 5. Accountability and Discipline

Establishing a functioning accountability structures in combination with some basic public awareness raising measures can become the most visible and trust-instilling component of a judicial reform effort. More specifically, these measures would include the establishment of codes of conduct for both judges and court staff, the training of all categories of staff in ethical concept and their practical implications on the everyday work in the courts, the raising of public awareness concerning the rules through radio and television programme as well as posters and information flyers (Court Users' Charter), the installation of complaints boxes in all courts, the establishment of a complaints committee that because of the involvement of non-judges (e.g. bar association, media, community leaders, anti-corruption commission) has credibility in the eyes of the public, the introduction of a transparent review process that ensures timely feed-back to the complainant on the result of the complaint, and the computerization of the complaints mechanism allowing for the analytical review of reported misbehaviours and the issuing of regular generic reports to the public.<sup>65</sup>

Another key requirement for judicial accountability is the publishing of judicial decisions, including the respective reasoning. Unless judges are obliged to provide the rational for their decisions, it remains impossible to ensure proper judicial review and accountability cannot be ensured.

### *a. Code of Conduct/ Ethical Standards*

Regardless of the differences across legal traditions and jurisdictions, it was possible for judges from all around the globe to agree upon the

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<sup>65</sup> UNODC, Strengthening Judicial Integrity and Capacity in Nigeria, Progress Reports #1 & #2

Bangalore Principles of Judicial Conduct, confirming that professional standards for judges are universal in nature. In Singapore, the Subordinate Courts have gone one step further to implement a Code of Ethics for their court administrators as well. This is in recognition that the integrity of the judicial system is not only dependent on the Judges but also on the court administrators.

Fairness and impartiality are necessary catalysts to public confidence in the courts. The conduct of judges both in and outside the court determines the level of confidence which the public could repose in the courts. Judges must not only be fair and impartial but must be seen to have been so by the general public. Judges must not only render impartial judgment but their entire behaviour must project an aura of fairness. In this regard a code of conduct and even more the respective guidelines help giving an account of what behaviour is expected and what behaviour is not acceptable.

Judges should be subject to many of the same rules as other public servants, with two significant differences. Compliance with basic standards of conduct is more important for judges because of the high degree of authority and discretion their work entails. Possible rules include:

- Rules intended to ensure neutrality and the appearance of neutrality, for example restrictions on participation in some activities, such as partisan politics and the public expression of views or opinions. Such restrictions may depend on the level of judicial office held and the subject matter that may reasonably be expected to come before a particular judge. In general, the restrictions must be balanced against the basic rights of free expression and free association, and any limitations imposed on judges must be reasonable and justified by the nature of their employment.<sup>66</sup>
- Rules intended to set standards for general propriety of conduct. Judges are generally expected to adopt high ethical standards; conduct failing to meet such standards, even if not criminal or in breach of a legal standard, may call the fitness of a judge into question. It is important that reasonably clear guidelines, standards are set out. Examples of inappropriate conduct may

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<sup>66</sup> See International Covenant on Civil and Political Rights of 16 December 1966, Articles 19 and 22.

include serious addiction or substance-abuse problems, public behaviour displaying a lack of judgment or appreciation of the role of judges, indications of bias or prejudice based on race, religion, gender, culture or other characteristics, and patterns of association with inappropriate individuals, such as members of organized criminal groups or persons engaged in corrupt activities.

- Rules prohibiting association with interested parties. Usually, judges are prohibited from having contact with any interested parties under any circumstances; any exceptions to this should be set out in detail in procedural rules. Judges should also be prohibited from discussing matters that come before them, and should be required to ensure that others do not discuss them in their presence. Rules governing other public servants, and especially those in high professional or political offices, should also prevent them from contacting judges or discussing matters that are before the courts.
- Rules governing public appearances or statements. Judges are often called upon to make public comment on contemporary legal or policy issues. The integrity of proceedings and any resulting case law depends exclusively on judicial interpretation and reasoning in a judgment; rules should therefore prohibit a judge from commenting publicly on any matter which has come before him or her in the past or is likely to do so in the future. Rules may also require judges to consult or seek guidance prior to making any comment.
- Rules limiting or prohibiting other employment. Codes of judicial conduct often prohibit alternative employment entirely, limit the nature and scope of such employment, or require disclosure and consultations with chief judges or judicial councils before other employment is taken up. Both the nature of the employment and the remuneration paid can give rise to conflicts of interest, and such limitations/prohibitions usually extend to unpaid (pro bono) work.
- Rules requiring disclosure and disqualification. Rules intended to prevent conflicts of interest are often supplemented by rules requiring judges to identify and disclose potential conflicts, and to refrain from hearing cases in which such conflicts may arise. Rules should also provide a mechanism whereby a judge can alert colleagues to an unforeseen conflict that arises while a case is ongoing, and in extreme cases, self-disqualification. Mechanisms

should also be in place for parties, witnesses, other participants or any other member of the public to identify possible conflicts of interest in judicial matters, and for the discipline of any judge who fails to disclose a known conflict.

A common weakness of many codes of conduct is that they do not entail consequences for non-compliance. This leaves those who have to apply the code with an inappropriate wide range of discretion inviting abuses and inconsistencies; and, at the same time with an unacceptable uncertainty concerning the consequences of non-compliance.<sup>67</sup>

*b. Judicial Ethics Training*

Enhancing ethical behaviour among judges through adopting codes of conduct is an approach that has been taken up by many countries. However, while the development of the code is quickly achieved, its enforcement remains difficult.<sup>68</sup> Training in judicial ethics is, therefore, an essential component of a comprehensive programme to strengthen judicial integrity. Such training may be part of the university education, the post-graduate training, or the professional education. Training should not be restricted to judges alone, but needs to include other court staff. Senior judges may offer ethics guidance and lead by example. An official ethics body, sometimes a sub-committee to a judicial service commission with the mandate to monitor compliance with the code of conduct, and to instil discipline in case of violations, may offer advice on specific ethical problems. Moreover, the disciplinary body will contribute to the implementation and evolution of the ethical standards through the publishing and regular reporting of its reasoned decisions. The judiciary needs a mechanism to interpret the code and to keep a record of those interpretations that will be available for those seeking guidance.

It appears that the most effective training is to work through exercises based on practical problems judges often confront. Also, visiting foreign judges have been well received in many countries. Discussing common ethical concerns with foreign colleagues may be perfectly acceptable.<sup>69</sup> Training programmes should be designed to change the attitude of judges. In large part this means educating judges about the importance of their role in society.

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<sup>67</sup> USAID, Guidance for Promoting Judicial Independence and Impartiality, p. 31

<sup>68</sup> USAID, Guidance for Promoting Judicial Independence and Impartiality, p. 31

<sup>69</sup> USAID, Guidance for promoting judicial independence and impartiality, pp.28-31



c. *Performance indicators and performance appraisal*

Performance monitoring requires first and foremost the definition of what is meant by good performance. Secondly, the means of measuring must be determined. Furthermore, there must be a monitoring system able to track these dimensions, and with the authority to request behavioural changes and encourage improvements.

Even though justice is not a service just like any other, there are qualitative and quantitative indicators that allow for reviewing judicial performance. Quantitative indicators could include the number of cases handled by a judge, absolutely, in relation to the total demand, and compared to his or her peers, as well as prior years. Other factors, which can be measured, comprise the average time to resolution, and the percentage of cases completed within reasonable time. Also, the proportion of cases that were appealed against should be monitored as it gives an - even if limited - indication of whether both parties concurred that justice had been done. More importantly, the performance review should cover the number of cases turned over in appeal.<sup>70</sup> While some may perceive this as an intrusion into judicial independence, the balanced combination of all indicators will ensure that the final evaluation will not be influenced unduly by any single factor. The problem often arising in this context is that in the quest for objectivity, there is over reliance on quantifiable criteria.

Qualitatively, the assessment is more subjective, and requires some external evaluation of predictability, conformity with the law and legitimacy as well as user satisfaction.<sup>71</sup> Practically, in order to determine the performance, it is necessary to assess whether judges sit on time, whether they are making efforts to reduce backlog of their cases, the level of procedural errors they commit in the discharge of their functions, and the level of public complaints against their conduct in court. The performance monitoring must be directly linked to training programmes, so that the system does not only demand improvements but also provides for the necessary tools in order to bring about behavioural change.<sup>72</sup>

In one jurisdiction the Supreme Court sets performance goals for courts across the country. It then measures the performance of each court

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<sup>70</sup> USAID, Office for Democracy and Governance, *Guidance for Promoting Judicial Independence and impartiality (Dominican Republic)*, p. 114

<sup>71</sup> Hammergren, *Institutional Strengthening and Justice Reform*, p. 75

<sup>72</sup> Hammergren, *DO Judicial Councils further Judicial Reform?*, Working Papers, p. 22

against these performance goals and awards a 5% bonus to the employees of the court that rank in the top 40%.<sup>73</sup> In a pilot court in another country judges are expected to meet a monthly quota of cases solved, and court staff have established exact service delivery deadlines for each type of service provided by the administrative office of the court. The compliance with these performance indicators is monitored on a regular basis.<sup>74</sup> This is also the case with the number of decisions revoked by higher courts and the reasons for these revocations.

*d. Public Complaints System and Disciplinary Action*

The need of the public to voice eventual complaints against judges in order to initiate disciplinary or even criminal action against them is a crucial tool in increasing accountability of judges, and hereby reducing both actual as well as perceived levels of corruption in the judicial domain. A credible and effective complaint system is an imperative way of holding the judiciary accountable to the general public which it should serve. For this reason, the establishment of such a system is not only necessary, but has to be well known to the public too. The general public needs to be enlightened on these avenues, as well as the procedures for making these complaints.

All judiciaries around the world have some form of disciplinary body; however, many of them do not contribute to the enhancing of the respect for a strong and independent, yet accountable judiciary. Some lack the trust by the public and others even by the judges themselves. In some countries, it is the dominant role of the executive branch on the disciplinary body that is perceived by judges as a direct attack on their independence.<sup>75</sup> However, relying exclusively on judges to discipline their colleagues may raise problems of credibility, and has proven problematic in terms of misinterpreted solidarity among judges.<sup>76</sup> Positive experiences were made in those countries where disciplinary bodies are composed of all relevant stakeholder groups, including judges from various levels, the bar, Attorney General's Office, the academia, the

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<sup>73</sup> Dakolias, *Court Performance around the World (Chile)*, p. 29

<sup>74</sup> Said/ Varela, *Colombia, Modernization of the Itagiif Court System*, pp. 17, 18

<sup>75</sup> E.g. in Romania one third of the members of the Superior Council of Magistrates, responsible for taking non-criminal disciplinary action are actually prosecutors. USAID, *Guidance for Promoting Judicial Independence and Impartiality*, p. 60

<sup>76</sup> USAID, *Guidance for Promoting Judicial Independence and Impartiality*, p. 61

parliament and civil society.<sup>77</sup>

Another challenge faced by any judicial complaints mechanism is the number and nature of complaints. Experiences from several countries confirm that complaints are filed often by disgruntled litigants. This needs to be taken into account especially with regard to eventual preliminary action such as suspension. Steps should be taken to ensure that judges are protected from frivolous or unfair attacks by unhappy litigants who seek to use the disciplinary system as an alternative appellate process or simply for revenge.<sup>78</sup> It also puts high pressure on disciplinary boards in terms of capacity. Complaints should be handled in a speedy and effective manner to limit the negative professional and personal impact on the concerned judge, who turns out to be falsely accused.<sup>79</sup> Citizen education about the role and responsibilities of judges should include information about how to file complaints when judges fail to fulfil their duties. Further, a strict separation of performance evaluation and the handling of complaints, as well as discipline seem to be key aspect.<sup>80</sup>

An important element is that the public can directly file their complaint with the body responsible for reviewing the complaint since litigants may perceive the courts as tainted and not trust them with the unbiased handling of the complaint.<sup>81</sup> Besides investigating complaints, statistical analysis and breakdown can be used in order to monitor the behavioural patterns of the judiciary at large.

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<sup>77</sup> E.g. the Ugandan Judicial Commission includes representatives of the supreme court, attorneys chosen by the Uganda Legal Society, the public service commissioner and lay people chosen by the President. In Paraguay the judicial disciplinary board is made up by two Supreme Court Justices, two Members of the Judicial Council, two senators and two deputies, who must be lawyers USAID, Guidance for Promoting Judicial Independence and Impartiality, p. 15 & 116; e.g. Public Complaints Committees established in Lagos, Borno and Delta under the UNODC Strengthening Judicial Integrity and Capacity Project in Nigeria, Progress Reports # 1 & 2, [http://www.unodc.org/unodc/en/corruption\\_projects\\_nigeria\\_project1b.html](http://www.unodc.org/unodc/en/corruption_projects_nigeria_project1b.html)

<sup>78</sup> USAID, Guidance for Promoting Judicial Independence and Impartiality, p. 115

<sup>79</sup> E.g. in Bolivia the lack of a system capable of resolving the complaints in a timely and effective manner discourage many judges, sometimes deciding to leave their position rather than defending themselves in prolonged disciplinary proceedings. USAID, Guidance for Promoting Judicial Independence and Impartiality, p. 115

<sup>80</sup> USAID, Guidance for Promoting Judicial Independence and Impartiality, p. 117

<sup>81</sup> USAID, Guidance for Promoting Judicial Independence and Impartiality (Georgia), p.

### CASE STUDY #7: The Complaints System of the Singaporean Law Society

Complaints against Lawyers for professional misconduct that reach the Singapore Law Society are dealt with through a transparent and inclusive procedure. After a first assessment of the credibility and nature of the complaint by the Council of the Law Society (Governing Body of the Law Society), an Investigative Committee is formed consisting of senior members of the Law Society with the mandate to assess the facts of the case. Generally, anonymous complaints are not being investigated. In cases that the complaint has been filed by a judge, the seriousness of the matter is presumed and investigations commence immediately, without prior assessment of the Council. The Investigative Committee prepares a report which then is evaluated by a Disciplinary Panel. This four-member Panel consist of Senior Lawyers of the Law Society, a Government Lawyer or Judge and a Lay-person. If found justified, the Disciplinary Panel can adopt measures against the erring lawyer, including a monetary fine up to Sing \$ 10,000, suspension for up to 3 years, or disbarment.

## 6. Supervisory mechanisms over the work of courts

The issue of who maintains the general oversight over the work of the courts is problematic. A balance must be struck between independence on the one hand and accountability on the other. Therefore, the oversight function may rather be removed from the Ministry of Justice to an independent judicial council, who in turn should be composed of both judges and representatives of other branches of government, and professional associations, as well as the civil society.

The general oversight may also be placed with the Supreme Court. While this may ensure the independence of the judiciary from the other two branches of government, it bares the risk of impinging on the independence of the individual judge, creating pressures to conform to certain corporative values.<sup>82</sup> While this model has encouraged high levels of judicial professionalism and more predictable judicial careers, it has been criticized for encouraging judicial formalism, isolation from changes in the surrounding political, social and economic environment,

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<sup>82</sup> Lin Hammergreen, Do Judicial Councils further Judicial Reform, WB Working Papers, p. 5.

and a tendency for lower level judges to shape their decisions to please their immediate superiors.

Another tool to ensure the monitoring of judicial behaviour consists in providing access to information to the public, including judicial decisions, the judiciaries' expenditures, its budget, the personal background of judges and other statistical information, full public disclosure to avoid conflicts of interest or even the appearance of such conflicts.<sup>83</sup>

## 7. Access to Justice

### *a. Awareness raising and Outreach*

The judiciary must relate effectively with the people which it is supposed to serve. Public enlightenment efforts and a media strategy have been important components of several judicial reform programmes. The regular interaction between judges and civil society does not only have an educating aspect,<sup>84</sup> but also contributes to a more favourable public perception.<sup>85</sup> Communication is a fundamental element of the change process. The leadership for change must communicate its mission and vision both inside and outside the organization to create the necessary support and pressure points that eventually will keep the reform initiative alive.<sup>86</sup> A media strategy is essential in this context. This is even truer since the media is not a natural ally to the judiciary. In some countries it paints a very negative image of judges – “absurd misconceptions become conventional wisdom”.<sup>87</sup> Journalists, just like the public, may not understand the role of the judiciary and therefore contribute to the

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<sup>83</sup> USAID, Guidance for Promoting Judicial Independence and Impartiality (USA), pp. 118, 119

<sup>84</sup> Dietrich, Legal and Judicial Reform in Central Europe and the Former Soviet Union (Russia), p. 21; Argentina, Legal and Judicial Sector Assessment, p. 77;

<sup>85</sup> Said/ Varela, Colombia, Modernization of the Itagiüf Court System. A Management and Leadership Case Study, p. 23; UNODC, e.g. Court User Fora and Bar-Bench Fora, Strengthening Judicial Integrity and Capacity in Nigeria, Progress Report #2,

<sup>86</sup> Fuentes-Hernández, Pending challenges for judicial reform: the role of civil society cooperation, pp. 6-9; Dakolias, Court Performance Indicators around the World, p. 32. In the Dominican Republic the judiciary succeeded in establishing such a relationship with the media, USAID, Guidance for Promoting Judicial Independence and Impartiality, p. 129

<sup>87</sup> Said/ Varela, Colombia, Modernization of the Itagiüf Court System. A Management and Leadership Case Study, p. 36; World Bank, Argentina, Legal and Judicial Sector Assessment, p. 20; USAID, Guidance for Promoting Judicial Independence and Impartiality, p. 129

negative image of judges.<sup>88</sup> A media strategy should therefore, seek to interest at least one media outlet in the process so that it identifies the reforms as a key issue, provides publicity, and calls for transparency. This does not only build public support for the judicial system, it also helps to communicate and reinforce through increased public scrutiny the notion that citizens have a legitimate interest in the integrity and capacity of the courts.<sup>89</sup>

Some studies suggest that the citizens' lack of information concerning their rights and obligations as well as of the court process rank among the most important obstacles to access to justice.<sup>90</sup> As mentioned above, the UNODC Assessment of Justice Sector Integrity and Capacity in three Nigerian States revealed that, in particular the less privileged, both in terms of monetary means and education, as well as ethnic minorities tend to have worse experiences and perceptions of the justice system. They are more likely to be confronted with corruption, encounter obstacles when accessing the courts, and to experience delays.<sup>91</sup> Judicial reform initiatives in some countries have, among others, specifically focused on taking a proactive approach towards educating communities, and representatives of businesses and schools on the administration of justice, including the basic rights and obligations of the citizen.<sup>92</sup> Such community outreach and other communication strategies were not only beneficial for the public but did also contribute to improving the judges'

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<sup>88</sup> In one country journalists were trained in legal literacy as part of a judicial reform project in order to improve understanding and accuracy of reporting.. Dietrich, *Legal and Judicial Reform in Central Europe and the Former Soviet Union (Russia)*, p. 15

<sup>89</sup> USAID, *Guidance for Promoting Judicial Independence and Impartiality*, p. 39

<sup>90</sup> In Colombia in a survey of 4500 rural households 66% and 44% respectively considered "Information on Rights and Obligations" and "Basic Information on the Initial Proceeding" the two most serious obstacles to the access to justice. Buscaglia, *Investigating the Links Between Access to Justice and Governance Factors*, p. 7. In the Dominican Republic Court User Focus Groups that were interviewed in the context of a World Bank sponsored assessment confirmed, that the lack of legal information was a significant barrier to the exercise of protection of citizen rights, to prevent and resolve conflicts, and to effectively use the justice system, World Bank, *Dominican Republic, Statistical Review of the Justice Sector*, p. 62; For an overview see Anderson, *Getting Rights right*, in *Insights – Development Research*, September 200

<sup>91</sup> UNODC, *Assessment of Justice Sector Integrity and Capacity in three Nigerian States*,

[http://www.unodc.org/pdf/crime/corruption/Justice\\_Sector\\_Assessment\\_2004.pdf](http://www.unodc.org/pdf/crime/corruption/Justice_Sector_Assessment_2004.pdf).

<sup>92</sup> Langseth/ Stolpe, *UNODC Strengthening Judicial Integrity and Capacity in Nigeria*, First State Integrity Meeting for the Katsina State, p.21; Stolpe, *UNODC Strengthening Judicial Integrity and Capacity in Nigeria*, First State Integrity Meeting for the Borno State, p.50;

public image and, ultimately, enhanced the public's trust in the judiciary.<sup>93</sup>

*b. Easy Access to Court related Information*

In some jurisdictions information centres were established in the courts with the purpose of providing information to the public on the court process and case status, as well as receiving comments, suggestions and complaints.<sup>94</sup> This did not only facilitate the access to timely and user-friendly information by the public, but also alleviated the burden previously borne by the judges.

In the effort of continuously enhancing the accessibility of its courts, the Singaporean judiciary is conscious of the necessity of providing timely information to its users. Court structures are modelled towards this goal, with service counters in the basement of all courts and information flyers available explaining in detail standard procedures. The courts make also a point of responding to user inquiries by mail within 24 hours. Information requests which are made in person must be dealt with immediately (one-stop service provision).

*c. Alternative Dispute Resolution (ADR)*

ADR can help in many ways to enhance the access to justice. It enhances user satisfaction, contributes to social peace through non-adversarial dispute resolution, it is more cost-effective, reduces the caseload of the courts as well as the number of appeals and judicial revisions

Some countries have established pre-trial conferences, with the sole purpose of encouraging parties to make an effort to resolve their dispute under judicial supervision or with the help of a mediator.<sup>95</sup> Other countries try, in addition, to reduce delay and increase user satisfaction by emphasizing negotiation and mediation.<sup>96</sup> All of them experienced significant success reaching settlement on the average in more than 70% of the cases.<sup>97</sup>

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<sup>93</sup> Said/ Varela, Colombia, Modernization of the Itagüí Court System, pp. 23, 24; Dakolias/ Said, Judicial Reform, A Process of Change Through Pilot Courts, p. 6

<sup>94</sup> Dakolias/ Said, Judicial Reform, A Process of Change Through Pilot Courts, p. 12, 15

<sup>95</sup> Dakolias, Court Performance around the World, p. 47

<sup>96</sup> Dietrich, Legal and Judicial Reform in Central Europe and the Former Soviet Union (Poland), p. 33; Dakolias, Court Performance around the World (Peru), p. 44; World Bank, Dominican Republic -Statistical Review of the Justice Sector, p. 5

<sup>97</sup> In Argentina a pilot project succeeded in settling more than 60% of the cases through mediation Dakolias/ Said, Judicial Reform, A Process of Change Through Pilot Courts

ADR is one of the main tools which allow Singaporean civil courts to deal with the heavy case load. In the Subordinate Courts, mediation judges have a successful settlement rate of 97% of the civil cases mediated, thus resolving a large number of cases without the need for trial. This procedure does not only saves time, but is also in comparison much cheaper, since court-time is more expensive than time spent on pre-trial management. Also cheaper for the users, since court fees will not be charged, as long as a formal suit has not been filed in court. In contrast to services of the Singapore Mediation Centre or the Singapore International Arbitration Centre that impose appropriate fees, all mediation done by the e@dr Mediator – an Singapore Subordinate Courts initiative - or judge-mediator are free of charge, and fees imposed by the Small Claims Tribunals are minimal.<sup>98</sup>

**CASE STUDY #8: Mediation in the Singaporean Subordinate Courts**

In Singapore, the infrastructure of mediation services and methods is widely developed and has been constantly expanding, drawing also from inputs received by judges from the United States, Europe and Asia Pacific. Unlike previous types of mediation and settlement conferences offered by the Subordinate Court, it now applies a combination of pre-trial based and pre-trial annexed mediation.<sup>99</sup> Indeed, these settlement processes have been endorsed by the Chief Justice of Singapore who has propounded that the main product of the civil courts and tribunals should be settlements rather than judgments. The large variety of ADR offered by the Primary Dispute Resolution Centre of the Subordinate Courts ranges from the so-called Early Neutral Evaluation, Binding Evaluation, Mediation-Arbitration to Assessment of Damages and Indication of Cost as well as Court Dispute Resolution International and Justice On-line.

In the *Early Neutral Evaluation* a Settlement Judge provides a

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(Argentina), p. 2. In a pilot court project in Tanzania it was possible to settle 80% of the cases short of trial; Finnegan, Observations on Tanzania's Commercial Court – A Case Study, p. 7. In Singapore, over the last five years, the Mediation Centre reaches an amicable settlement between the parties in 77% of the cases; the Hon. Chief Justice Yong Pung How, Speech at the Launch of “Disputemanager.com”, 31 July 2002.

<sup>98</sup> Compare Services of the Singapore Subordinate Courts, published at [http://www.subcourts.gov.sg/Civil/abt\\_CJ\\_e@dr\\_online\\_med.htm](http://www.subcourts.gov.sg/Civil/abt_CJ_e@dr_online_med.htm); see also Speech by The Honorable The Chief Justice of Singapore, ‘e@dr Online Mediation and virtual e-commerce dispute resolution, p. 8.

<sup>99</sup> Compare Speech by Chief Justice Yong Pung How, The Honorable The Chief Justice of Singapore, ‘e@dr Online Mediation and virtual e-commerce dispute resolution, p. 7.



preview of the likely outcome of the trial, well before the case is even brought for trial. Parties can use the Settlement Judge's evaluation as a platform to settle their case. Upon parties request, the Settlement Judge may continue to work further with parties to reach a mutually beneficial settlement. If the parties agree prior to the mediation session to bind themselves to the Settlement Judge's evaluation, he can issue a *Binding Evaluation* which will conclusively dispose of the dispute. This method is suitable for use in simple claims that turn on just a few issues of fact or law such as the supply of goods and services and non-injury motor accidents. Without the complex legal process and costs of a court trial, it offers the parties a way to quickly arrive at a result. Another mode of settlement that is suitable for all types of motor vehicle accident cases is also the *Mediation-Arbitration Service*. In order to simplify the litigation process, it allows for the Settlement Court to settle all those issues immediately which are not disputed by the parties while leaving only those disputed to the Subordinate Court for judgement. If the question of liability is already settled, mediation for *Assessment of Damages* provides a service to resolve the concrete amount of damages that should be paid. Instead of bringing the matter directly for taxation before a Deputy Registrar, the Settlement Judge can also assist with the *Indication of Cost Service* in determining how much costs (= party-to-party cost payable by one litigant to another) should be paid upon the settlement or disposition of a case. Through the *Justice On-line Service*, all of the above mediation services can also be accessed through video-link from different locations.<sup>100</sup>

High-value cases, often involving international litigants, suit the *Court Dispute Resolution International Service*, in which foreign judges from Australia, New Zealand, Norway, the United Kingdom and the United States co-mediate with the Singapore settlement judge using real-time video-conferencing technology.

#### d. *Restorative Justice*

While restorative justice – the consensual resolution of criminal offences, involving the offender, the victim and their respective social networks – have been incorporated in the criminal justice system, its application remains in an exploratory stage. Particularly, in areas where conventional criminal justice practices do not function adequately, a further promotion

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<sup>100</sup> Primary Dispute Resolution Centre, Singapore Subordinate Courts, July 2003.

of complementary restorative justice measures can be of assistance.

Restorative justice is concerned with restoration of the victim, restoration of the offender to a law-abiding life, and restoration of the damage caused by crime.<sup>101</sup> In search for restoration, repair or reconciliation, restorative justice opens a new avenue apart from, or alongside with the formal criminal justice system. It encompasses a diverse range of formal and informal interventions. These range from Truth and Reconciliation Commissions established, for instance, in Chile or South Africa, to traditional, community based forms of justice delivery. Exemplary, national courts and prisons hold victim-offender conferences in criminal justice context; policing initiatives in disputes between citizens; conflict resolution workshops in organisational contexts; team building sessions in occupational settings; marital advice and counselling services; parental guidance and admonishment of their misbehaving children; apologising for offensive or otherwise hurtful remarks in institutional and other settings.

Rather than privileging the law and the state, restorative justice seeks to empower individuals involved in the crime while emphasis is put on the role of communities and consensual decision-making, including a change of the mindset of professionals in the established criminal justice system. By so doing, it serves, mainly, balancing the interests of the key participants in a case and building partnerships to re-establish mutual responsibility for constructive responses to crime and wrongdoing within the community. Crime is seen as an injury of the individual victim, the community and the offender. Therefore all parties should be part of the response to the crime, including the victim, the community and the offender. The aim is to repair the harm caused by crime, while the victim's perspective should be central to deciding how to repair. Accountability for the offender means in the restorative justice context accepting responsibility and acting to repair the harm done. The community on the other hand is responsible for the well-being of all, including the victim and offender. Results are measured based on how well the repair was done. Restorative justice objectives offer a comprehensive service to the victim's needs in material, financial, emotional and social ways, including those who are similarly affected and/or personally close to the victim. The offenders shall be enabled to assume responsibility for their actions. By supporting the rehabilitation

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<sup>101</sup> For an overview see Tony F. Marshall, *Restorative Justice*, 1998

of the offenders and victims a working community can be created as well as active crime prevention.

Even though mediation programmes have been found to be equally effective with adults, most restorative justice interventions operate in the juvenile justice system. Also, interventions are not meant for all crime victims and offenders. Restorative justice holds a great deal of potential for diverting a large number of property offences and minor assaults from the formal justice system. Through a process of facilitated or mediated dialogue, these restorative interventions have been found to provide many benefits to victims of primarily property crimes and minor assaults.

**CASE STUDY #9: Restorative Justice in the Subordinate Court of Singapore**

An example of the application of restorative justice measures is the holistic approach taken by the Singaporean Juvenile Court.

The Children and Young Persons Act (CYPA)<sup>102</sup> gives the Juvenile Court the power to convene family conferences to deal with the offender. In *family conferences*, family members can participate as well as – depending on the case - school officials, government officers, institutional home officers, psychologists, and sometimes victims, etc. Issues of the conference's discussion can be the offender's remorse, the appropriate placement of the offender so as to maximise restorative potential and the relationship between the offender and victim/ family, etc. A family conference has not only the legal authority to require compensation for damages of crime, but also to mandate post-order rehabilitative counselling, to issue a 'formal caution' and to make recommendations to the Magistrate or Judge in charge of the case for appropriate dispositional orders.

The *Family Justice Team conferences* deals with the family as a holistic entity, exploring criminogenic roots and issues of rehabilitation and prevention linked thereto. This kind of conferences are held to avoid multiple appearances before different counselors and judges by bringing together the judge, a court team of counselors,

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<sup>102</sup> The Children and Young Persons Act (CYPA) is an Act that safeguards the care, protection and rehabilitation of children and young persons who are below 16 years of age. Amendments to the Children and Young Persons were passed in Parliament on 20 April 2001. The amendments to the Act have widened the scope of child protection and included more options in the rehabilitation process, and were implemented on 1 October 2001

<sup>103</sup> see Developing Holistic Approaches in Singapore at <http://restorativejustice.org>

social workers, mental health professionals with the family and other relevant parties at once to negotiate, mediate and counsel multiple issues.<sup>103</sup>

*e. Providing the Public with quick and inexpensive dispute resolution*

A large amount of cases coming to the courts every day concerns small claims, seldom posing complex legal problems. In these cases, timeliness and cost of dispute resolution become as important as a just decision itself. Litigants, generally, refrain from accessing the justice system, if courts are slow and cost-intensive; in other words, if the procedure appears lengthy and cumbersome and the costs incalculable. As a response to these needs, Singapore has instituted a special division within its first instance courts dealing exclusively with small claims. Low court fees, the exclusion of legal representation, a process encouraging mediation rather than adversarial hearing and non-public proceedings are all features which contribute to the speedy and inexpensive justice delivery in such cases. This service, which was originally foreseen exclusively for consumers, today can be accessed also by the providers of goods- and service. Annually, it handles more than 33,000 cases of which 70% are settled through mediation.

**CASE STUDY #10: The Small Claims Tribunal**

The small claims courts have jurisdiction over all cases involving disputes between consumers and businesses as well as among businesses for the purchase of goods or services, and for property damages (except when caused by a motor vehicle). The claim must not exceed Sing \$10,000. Up to the amount of Sing \$20,000 parties can agree in writing to submit to the jurisdiction of the Small Claims Tribunal. Parties can also consider withdrawing part of their claim amount in order to fall within the jurisdiction of the Tribunal. The monetary limits have gradually evolved since 1985 when the tribunal was first established, from initially Sing \$2,000 to Sing \$10,000 in 1997, while lodgement fees have not changed. Consumers pay Sing \$10 as lodgement fees for claims up to Sing \$5000 and Sing \$20 for claims up to Sing \$10,000. For claims exceeding \$10,000 to \$20,000, the lodgement fee is 1% of the claim amount. Businesses or non-consumers are required to pay lodgement fees of Sing \$50, Sing \$100 and 3% respectively. Legal representation is not allowed. Each party presents his own case. As a consequence, court users do not have to pay legal costs, which keeps the proceeding inexpensive. The absence

of lawyers also levels the playing field as most people cannot afford lawyers and the tribunals give them the opportunity to have their cases heard. Moreover, no costs beyond actual disbursements can be awarded to the winning party. However in the case of frivolous or vexatious claims which amount to an abuse of the system, the Tribunals are empowered to order costs as a sanction against the offending party. A case can be filed in person or through fax. The lodgement fees have to be paid immediately at the counter upon manual filing. For filing by fax or electronic filing, the latter which is open to certain approved users presently, the claimants has to make payment within 7 days of lodgement. Currently the electronic filing available for certain approved users but will be offered to the public in the next phase. Additionally, appearance of complainants through video link is possible – an option which is especially popular with companies. For consumer claims, the parties will attend their first consultation within 7 to 10 days and for non-consumer claims, within 14 days. First, parties must undergo “Consultation” (= mediation session) before the Registrar of the Small Claim Tribunals. If an agreed settlement between the parties is not possible, the case will be heard by a “Referee” (= Judge). Again, also at the stage of the hearing, the Referee can encourage parties to settle the dispute. The proceedings are not public, since laypersons may feel intimidated by the presence of observers, in particular of the press. The Referee assists in the fact finding, and the interpretation of the law. His Order (= decision) is final and binding. Only under certain circumstances, the decision of the Tribunal after a hearing can be appealed against, namely when there are mistakes of application of the law or that the claim is out of the jurisdiction of the Tribunal. The Orders of the Tribunals are usually enforced by way of Writ of Seizure and Sale (WSS) filed by the winning party. The WSS can be filed at the Tribunals where the Bailiffs section are conveniently located as well.

In most countries more serious obstacles to access justice stem from high-lawyer fees. The possibility of contingency fees and class action law suits as well as law clinics, consultation bureaus, ombudsman offices and advocacy NGO's can help providing cheap legal advise and services to the broader public.<sup>104</sup> Courts should be aware of such structures and in case indicate them to needy users.

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<sup>104</sup> Dietrich, Legal and Judicial Reform in Central Europe and the Former Soviet Union, p. 23

*f. Client Orientation*

Singapore's courts have adopted a wide range of measures, all focusing on making the courts more accessible to their users. For instance, some courts have introduced evening opening hours once a week in order to allow the working population to come to court without having to take off from work. Courts are also open to the public on Saturday mornings, and cases can be filed electronically at any day or night time. In the criminal division, there is a night court ensuring the swift hearing of criminal cases and the issuing of bail. This is particularly relevant in cases of regulatory and traffic offences.

Courts are aware of their responsibility to serve the public well. Countless measures have been adopted that go far beyond the simplistic adjudication of cases, but rather provide holistic problem solutions. This is particularly true for the Family and Juvenile Court, who, often in collaboration with other stakeholders, provides for a large variety of both, legal and non-legal services, in order to ensure a sustainable problem solution for their often distressed clientele.

**CASE STUDY #11: Holistic Problem Solution by the Family and Juvenile Courts**

Family and juvenile cases involve often far more than just legal problems. They contain a series of interlinked social and economic crisis, which, if not addressed in a concerted manner will eventually perpetuate and create new, even more complex problems. Therefore, the Singaporean Family and Juvenile Court, in collaboration with several other stakeholders, has created a net of services, able to address the most immediate and common problems faced in family cases. Besides court orders, which in urgent cases are being issued in less than 24 hours, the court works closely together with the legal aid clinic, in case a party requires legal counsel but is not able to afford such counsel. In collaboration with a number of medical doctors, it runs a medical aid clinic on its premises. These doctors are not stationed at the courts but will attend at the courts when needed. An Immediate Financial Needs Programme was created in order to help court users to address the most basic needs, e.g. buying food, etc. Also, the court works together with social institutions that over a longer period can help to provide for financial needs, shelter, children day care, and assists in the job search.

g. *Managing public trust*

In order to strengthen the link between judiciary and society, in many countries efforts were made to emphasize the role of the judge as a service provider.<sup>105</sup> In addition to their traditional functions (studying cases and issuing judgment), judges have become social actors and critical member of the local community.<sup>106</sup>

In some countries the implementation of social control boards as part of judicial reform programme has shown positive results. The so-called “Complaint Panel or Board” can enjoy a high level of popular-based legitimacy.<sup>107</sup> While some of these boards serve mainly the purpose of providing alternative means of dispute resolution to citizens (mostly family and commercial related case types), others have also been mandated to monitor the functioning of pilot courts during judicial reforms. As such they may be involved in the monitoring of the impact of reform and, at a more advanced stage; they may be mandated to provide external monitoring of court performance in general. Finally, they may also receive, review and eventually channel citizens' complaints to the appropriate authorities and assist in following-up.

In Singapore, judges as part of their public oath are made aware of their accountability to the public. Public trust is among the six overall goals pursued by the Singaporean Judiciary. This is reflected also in the strong client-orientation of many features of the Singaporean courts, such as the Court Charter, the strict time limits, the responsiveness to inquiries, and the conviction that each court user must leave the court with the conviction that justice has been done. Courts see their function as part of a broader effort of nation-building. They are constantly requested to redefine themselves in view of the overall goal of providing access to justice and instilling public trust and confidence.

### **C. UN Principles on the Independence of the Judiciary**

Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6

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<sup>105</sup> (Pilot Project Itagüí, Columbia) Maria Dakolias, Javier Said, Judicial Reform. A process of Change Through Pilot Courts, WB 1999 (p.7)

<sup>106</sup> Javier Said, David F. Varela, Columbia, Modernization of the Itagüí Court System. A Management and Leadership Case Study. P.24

<sup>107</sup> Langseth/ Buscaglia, Empowering the Victims of corruption through social control mechanism, p. 18

September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985

*Whereas* in the Charter of the United Nations the peoples of the world affirm, inter *alia*, their determination to establish conditions under which justice can be maintained to achieve international co-operation in promoting and encouraging respect for human rights and fundamental freedoms without any discrimination,

*Whereas* the Universal Declaration of Human Rights enshrines in particular the principles of equality before the law, of the presumption of innocence and of the right to a fair and public hearing by a competent, independent and impartial tribunal established by law,

*Whereas* the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights both guarantee the exercise of those rights, and in addition, the Covenant on Civil and Political Rights further guarantees the right to be tried without undue delay,

*Whereas* frequently there still exists a gap between the vision underlying those principles and the actual situation,

*Whereas* the organization and administration of justice in every country should be inspired by those principles, and efforts should be undertaken to translate them fully into reality,

*Whereas* rules concerning the exercise of judicial office should aim at enabling judges to act in accordance with those principles,

*Whereas* judges are charged with the ultimate decision over life, freedoms, rights, duties and property of citizens,

*Whereas* the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, by its resolution 16, called upon the Committee on Crime Prevention and Control to include among its priorities the elaboration of guidelines relating to the independence of judges and the selection, professional training and status of judges and prosecutors,

*Whereas* it is, therefore, appropriate that consideration be first given to the role of judges in relation to the system of justice and to the importance of their selection, training and conduct,



The following basic principles, formulated to assist Member States in their task of securing and promoting the independence of the judiciary should be taken into account and respected by Governments within the framework of their national legislation and practice and be brought to the attention of judges, lawyers, members of the executive and the legislature and the public in general. The principles have been formulated principally with professional judges in mind, but they apply equally, as appropriate, to lay judges, where they exist.

### **Independence of the judiciary**

1. The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.
2. The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.
3. The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law.
4. There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law.
5. Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.
6. The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.
7. It is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions.

### **Freedom of expression and association**

8. In accordance with the Universal Declaration of Human Rights, members of the judiciary are like other citizens entitled to freedom of expression, belief, association and assembly; provided, however, that in

exercising such rights, judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary.

9. Judges shall be free to form and join associations of judges or other organizations to represent their interests, to promote their professional training and to protect their judicial independence.

### **Qualifications, selection and training**

10. Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall safeguard against judicial appointments for improper motives. In the selection of judges, there shall be no discrimination against a person on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status, except that a requirement, that a candidate for judicial office must be a national of the country concerned, shall not be considered discriminatory.

### **Conditions of service and tenure**

11. The term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law.

12. Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists.

13. Promotion of judges, wherever such a system exists, should be based on objective factors, in particular ability, integrity and experience.

14. The assignment of cases to judges within the court to which they belong is an internal matter of judicial administration. Professional secrecy and immunity

15. The judiciary shall be bound by professional secrecy with regard to their deliberations and to confidential information acquired in the course of their duties other than in public proceedings, and shall not be compelled to testify on such matters.

16. Without prejudice to any disciplinary procedure or to any right of appeal or to compensation from the State, in accordance with national law, judges should enjoy personal immunity from civil suits for monetary damages for improper acts or omissions in the exercise of their judicial functions.

### **Discipline, suspension and removal**

17. A charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure. The judge shall have the right to a fair hearing. The examination of the matter at its initial stage shall be kept confidential, unless otherwise requested by the judge.

18. Judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties.

19. All disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct.

20. Decisions in disciplinary, suspension or removal proceedings should be subject to an independent review. This principle may not apply to the decisions of the highest court and those of the legislature in impeachment or similar proceedings

### **D. Bangalore Principles of Judicial Conduct**

WHEREAS the *Universal Declaration of Human Rights* recognizes as fundamental the principle that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of rights and obligations and of any criminal charge.

WHEREAS the *International Covenant on Civil and Political Rights* guarantees that all persons shall be equal before the courts, and that in the determination of any criminal charge or of rights and obligations in a suit at law, everyone shall be entitled, without undue delay, to a fair and public hearing by a competent, independent and impartial tribunal established by law.

WHEREAS the foregoing fundamental principles and rights are also recognized or reflected in regional human rights instruments, in domestic constitutional, statutory and common law, and in judicial conventions and traditions.

WHEREAS the importance of a competent, independent and impartial judiciary to the protection of human rights is given emphasis by the fact that the implementation of all the other rights ultimately depends upon the proper administration of justice.

WHEREAS a competent, independent and impartial judiciary is likewise essential if the courts are to fulfil their role in upholding

constitutionalism and the rule of law.

WHEREAS public confidence in the judicial system and in the moral authority and integrity of the judiciary is of the utmost importance in a modern democratic society.

WHEREAS it is essential that judges, individually and collectively, respect and honour judicial office as a public trust and strive to enhance and maintain confidence in the judicial system.

WHEREAS the primary responsibility for the promotion and maintenance of high standards of judicial conduct lies with the judiciary in each country.

AND WHEREAS the *United Nations Basic Principles on the Independence of the Judiciary* are designed to secure and promote the independence of the judiciary, and are addressed primarily to States.

THE FOLLOWING PRINCIPLES are intended to establish standards for ethical conduct of judges. They are designed to provide guidance to judges and to afford the judiciary a framework for regulating judicial conduct. They are also intended to assist members of the executive and the legislature, and lawyers and the public in general, to better understand and support the judiciary. These principles presuppose that judges are accountable for their conduct to appropriate institutions established to maintain judicial standards, which are themselves independent and impartial, and are intended to supplement and not to derogate from existing rules of law and conduct which bind the judge.

**Value 1:  
INDEPENDENCE**

**Principle:**

Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.

**Application:**

1.1 A judge shall exercise the judicial function independently on the basis of the judge's assessment of the facts and in accordance with a

conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason.

1.2 A judge shall be independent in relation to society in general and in relation to the particular parties to a dispute which the judge has to adjudicate.

1.3 A judge shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to a reasonable observer to be free there from.

1.4 In performing judicial duties, a judge shall be independent of judicial colleagues in respect of decisions which the judge is obliged to make independently.

1.5 A judge shall encourage and uphold safeguards for the discharge of judicial duties in order to maintain and enhance the institutional and operational independence of the judiciary.

1.6 A judge shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the judiciary which is fundamental to the maintenance of judicial independence.

## **Value 2: IMPARTIALITY**

### **Principle:**

Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made.

### **Application:**

2.1 A judge shall perform his or her judicial duties without favour, bias or prejudice.

2.2 A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.

2.3 A judge shall, so far as is reasonable, so conduct himself or herself as to minimise the occasions on which it will be necessary for the judge to be disqualified from hearing or deciding cases.

2.4 A judge shall not knowingly, while a proceeding is before, or could come before, the judge, make any comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the process. Nor shall the judge make any comment in public or otherwise that might affect the fair trial of any person or issue.

2.5 A judge shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide the matter impartially. Such proceedings include, but are not limited to, instances where

2.5.1 the judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;

2.5.2 the judge previously served as a lawyer or was a material witness in the matter in controversy; or

2.5.3 the judge, or a member of the judge's family, has an economic interest in the outcome of the matter in controversy:

Provided that disqualification of a judge shall not be required if no other tribunal can be constituted to deal with the case or, because of urgent circumstances, failure to act could lead to a serious miscarriage of justice.

### **Value 3: INTEGRITY**

#### **Principle:**

Integrity is essential to the proper discharge of the judicial office.

#### **Application:**

3.1 A judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer.

3.2 The behaviour and conduct of a judge must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but

must also be seen to be done.

**Value 4:  
PROPRIETY**

**Principle:**

Propriety, and the appearance of propriety, are essential to the performance of all of the activities of a judge.

**Application:**

4.1 A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.

4.2. As a subject of constant public scrutiny, a judge must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, a judge shall conduct himself or herself in a way that is consistent with the dignity of the judicial office.

4.3. A judge shall, in his or her personal relations with individual members of the legal profession who practise regularly in the judge's court, avoid situations which might reasonably give rise to the suspicion or appearance of favouritism or partiality.

4.4 A judge shall not participate in the determination of a case in which any member of the judge's family represents a litigant or is associated in any manner with the case.

4.5 A judge shall not allow the use of the judge's residence by a member of the legal profession to receive clients or other members of the legal profession.

4.6 A judge, like any other citizen, is entitled to freedom of expression, belief, association and assembly, but in exercising such rights, a judge shall always conduct himself or herself in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary.

4.7 A judge shall inform himself or herself about the judge's personal and fiduciary financial interests and shall make reasonable efforts to be informed about the financial interests of members of the judge's family.

4.8 A judge shall not allow the judge's family, social or other relationships improperly to influence the judge's judicial conduct and judgment as a judge.

4.9 A judge shall not use or lend the prestige of the judicial office to advance the private interests of the judge, a member of the judge's family or of anyone else, nor shall a judge convey or permit others to convey the impression that anyone is in a special position improperly to influence the judge in the performance of judicial duties.

4.10 Confidential information acquired by a judge in the judge's judicial capacity shall not be used or disclosed by the judge for any other purpose not related to the judge's judicial duties.

4.11 Subject to the proper performance of judicial duties, a judge may:

4.11.1 write, lecture, teach and participate in activities concerning the law, the legal system, the administration of justice or related matters;

4.11.2 appear at a public hearing before an official body concerned with matters relating to the law, the legal system, the administration of justice or related matters;

4.11.3 serve as a member of an official body, or other government commission, committee or advisory body, if such membership is not inconsistent with the perceived impartiality and political neutrality of a judge; or

4.11.4 engage in other activities if such activities do not detract from the dignity of the judicial office or otherwise interfere with the performance of judicial duties.

4.12 A judge shall not practise law whilst the holder of judicial office.

4.13 A judge may form or join associations of judges or participate in other organisations representing the interests of judges.

4.14 A judge and members of the judge's family, shall neither ask for, nor accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done by the judge in connection with the performance of judicial duties.

4.15 A judge shall not knowingly permit court staff or others subject to the judge's influence, direction or authority, to ask for, or accept, any gift,



bequest, loan or favour in relation to anything done or to be done or omitted to be done in connection with his or her duties or functions.

4.16 Subject to law and to any legal requirements of public disclosure, a judge may receive a token gift, award or benefit as appropriate to the occasion on which it is made provided that such gift, award or benefit might not reasonably be perceived as intended to influence the judge in the performance of judicial duties or otherwise give rise to an appearance of partiality.

## **Value 5: EQUALITY**

### **Principle:**

Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.

### **Application:**

5.1 A judge shall be aware of, and understand, diversity in society and differences arising from various sources, including but not limited to race, colour, sex, religion, national origin, caste, disability, age, marital status, sexual orientation, social and economic status and other like causes ("irrelevant grounds").

5.2 A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice towards any person or group on irrelevant grounds.

5.3 A judge shall carry out judicial duties with appropriate consideration for all persons, such as the parties, witnesses, lawyers, court staff and judicial colleagues, without differentiation on any irrelevant ground, immaterial to the proper performance of such duties.

5.4 A judge shall not knowingly permit court staff or others subject to the judge's influence, direction or control to differentiate between persons concerned, in a matter before the judge, on any irrelevant ground.

5.5 A judge shall require lawyers in proceedings before the court to refrain from manifesting, by words or conduct, bias or prejudice based on irrelevant grounds, except such as are legally relevant to an issue in proceedings and may be the subject of legitimate advocacy.

**Value 6:  
COMPETENCE AND DILIGENCE**

**Principle:**

Competence and diligence are prerequisites to the due performance of judicial office.

**Application:**

6.1 The judicial duties of a judge take precedence over all other activities.

6.2 A judge shall devote the judge's professional activity to judicial duties, which include not only the performance of judicial functions and responsibilities in court and the making of decisions, but also other tasks relevant to the judicial office or the court's operations.

6.3 A judge shall take reasonable steps to maintain and enhance the judge's knowledge, skills and personal qualities necessary for the proper performance of judicial duties, taking advantage for this purpose of the training and other facilities which should be made available, under judicial control, to judges.

6.4 A judge shall keep himself or herself informed about relevant developments of international law, including international conventions and other instruments establishing human rights norms.

6.5 A judge shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.

6.6 A judge shall maintain order and decorum in all proceedings before the court and be patient, dignified and courteous in relation to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity. The judge shall require similar conduct of legal representatives, court staff and others subject to the judge's influence, direction or control.

6.7 A judge shall not engage in conduct incompatible with the diligent discharge of judicial duties.

## **IMPLEMENTATION**

By reason of the nature of judicial office, effective measures shall be adopted by national judiciaries to provide mechanisms to implement these principles if such mechanisms are not already in existence in their jurisdictions.

## **DEFINITIONS**

In this statement of principles, unless the context otherwise permits or requires, the following meanings shall be attributed to the words used:

*"Court staff"* includes the personal staff of the judge including law clerks.

*"Judge"* means any person exercising judicial power, however designated.

*"Judge's family"* includes a judge's spouse, son, daughter, son-in-law, daughter-in-law, and any other close relative or person who is a companion or employee of the judge and who lives in the judge's household.

*"Judge's spouse"* includes a domestic partner of the judge or any other person of either sex in a close personal relationship with the judge.

## E. Agenda

### **First Day** *Monday, 11 October 2004*

- 08:00 Registration  
08:30 Report of the Committee  
08:45 Speech and opening from Governor of South Sumatera (or representative)  
09:00 Coffee break  
09:30 Presentation: Finding of survey on the integrity and capacity of justice sector in South Sumatera, presented by PT Moores and Rowland Indonesia.  
10:00 Discussion  
10:30 Presentation by Chief of Justice, Chief of High Prosecutor, Head of Local Office of Dept. of Justice and Human Rights, Head of District Police, and Advocate Association.  
11:30 Discussion  
12:00 *Lunch and Sholat*  
13:00 Guidelines by Chief Justice Prof Kamaruddin saleh, S.H., M.H. (representing Supreme Court) and discussion.  
13:30 Establishing 5 working groups and explanation about the problems and context of discussion.  
13:45 Group Discussion : Problem Identification  
15:15 *Break and Sholat*  
15:45 **Presentation on the finding of 5 working groups and recommendation of 5 working groups.**  
16:30 Discussion  
17:00 Discussion of working groups about the solution alternative from identified problems.  
18:00 Closing

### **Second Day** *Tuesday, 12 October 2004*

- 08:30 Presentation form UNODC by Dr. Petter Langseth  
09:00 **Working Group discussion**  
11:00 *Coffee Break*  
11.30 Plenary Report about action plans of working group  
13:00 *Lunch and Sholat,*  
14:00 Final Action Plan.  
Establishing Implementation Board.  
15.30 Closing by Acting Head of The National Law Reform Agency, Department of Justice and Human Rights Republic of Indonesia  
Photo Sessions

## F. List of participants

No	Name	Organization	Email
1	L. Sumartini	Acting Head of The National Law Reform Agency, Department of Justice and Human Rights Republic of Indonesia	
2	Letkol H. Manao, S.H.	Military Court Palembang	
3	Zainal Abidin, S.H., M.H.	High Court Palembang	
4	Drs. M. Sopi, S.H.	High Court Palembang	
5	Gosen Butarbutar, S.H.	District Court Palembang	
6	Agus Windana	District Court Kayu Agung	
7	Bambang Riyanto, S.H.	District Court Batu raja	
8	Nini Haryani	District Court Sekayu	
9	Taufik Rahman, S.H	District Court Muara Enim	
10	Sahlan Efendi, S.H	District Court Lahat	
11	Wendra Rais, S.H.	District Court Lubuk Linggau	
12	Soufnir Chibro, S.H	High Attorney Palembang	
13	H. Ali Abdullah, S.H.	District Attorney Palembang	
14	Abdul Aziz, S.H.	District Attorney Batu Raja	
15	Indawan K. H.	District Attorney Lahat	
16	Kadarsyah, S.H., M.H.	District Attorney Sekayu	
17	Purwanto Putra, S.H., M.M	District Attorney Lubuk Linggau	
18	Indra Bangsawan, S.H.	District Attorney Kayu Agung	
19	AKBP Rahadi M	District Police Office of South Sumatera	
20	IPTU Rizki A.P.	City Police of	

		Palembang	
21	John Sahibi	RESORT POLICE OFFICE Kabupaten Musi Banyuasin	
22	AKP. Wisdon A	RESORT POLICE OFFICE Kabupaten Banyuasin	
23	IPDA Budiyusfandi, S.H.	RESORT POLICE OFFICE Kabupaten Pagar Alam	
24	IPDA M. Idram Suhairi	RESORT POLICE OFFICE Kabupaten OKU	
25	IPDA Imam Wijayanto	RESORT POLICE OFFICE Kabupaten Musi Rawas	
26	IPDA Ahmad Yani	RESORT POLICE OFFICE Muara Enim	
27	IPTU Indra Jaya	RESORT POLICE OFFICE Lahat	
28	Iskandar Harun, S.H.	Kantor Hukum Abadi B. Darmo, S.H	
29	A. Rahman Gofar	Advokat	
30	Antoni Yuzar	POSBAKUM Palembang	
31	Yopie Bharata	POSBAKUM Palembang	
32	Nurmala, S.H	POSBAKUM Palembang	
33	Nurbaidi, S.H.	POSBAKUM Palembang	
34	April Firdaus	LBH Palembang	
35	Aida Farhayanti, S.H.	WCC Palembang	
36	Bowo	Dailiy Sriwijaya Post	
37	Syafir Gani	Dailiy Sumatera Ekspres	
38	Halsirafasari, P, S.H.,	TVRI SUMSEL	
39	Ade Krisna	Radio Sonora	
40	Edy K	FACULTY OF LAW Universitas Muhammadiyah Palembang	
41	Hambali Yusuf	FACULTY OF LAW	

		Universitas Muhammadiyah Palembang	
42	Alexander Abdullah, S.H.	FACULTY OF LAW Universitas Palembang	
43	Yully Anwar, S.H., M. Hum	FACULTY OF LAW Universitas Palembang	
44	Suryani Yusi	FACULTY OF LAW Universitas IBA	
45	Sutinah Agustina	FACULTY OF LAW Universitas IBA	
46	Zulrifli Nurham	FACULTY OF LAW Universitas Taman Siswa Palembang	
47	Ekawati	FACULTY OF LAW Universitas Taman Siswa Palembang	
48	Rusman Saleh	FACULTY OF LAW Universitas Syakhyakirti	
49	Haris	FACULTY OF LAW Universitas Syakhyakirti	
50	Ivan Damora	FACULTY OF LAW Universitas Kader Bangsa	
51	Rini Mutahar	FACULTY OF LAW Universitas kader Bangsa	
52	Faisal	STIH Sumpah Pemuda Palembang	
53	Haris Mudillah	STIH Sumpah Pemuda Palembang	
54	M. Dzulfikriddin	Faculty of Syariah IAIN Raden Fatah	
55	Drs. K. A . Bukhori, M.Hum	Faculty of Syariah IAIN Raden Fatah	
56	Amrullah Arpan, S.H., S.U	FACULTY OF LAW Universitas Sriwijaya	
57	Effendi	FACULTY OF LAW Universitas Sriwijaya	
58	Syafruddin P	FACULTY OF LAW Universitas Sriwijaya	
59	RM. Ikhsan	FACULTY OF LAW	

		Universitas Sriwijaya	
60	Heriyanto	IKADIN Palembang	
61	Yohanes S	IKADIN Palembang	
62	Suharyono, S.H.	IKADIN Palembang	
63	Zulheri	Advokat	
64	Edy Riwayanto, S.H.	KUMDAM	
65	Zulkifli, S.H.	Police Office	
66	Effendi	Private	
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69	Moh. H. Raga S. Ario Putra	PT Moores Rowland Indonesia	ario@moores- rowland.com
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71	Dr. Satya Arinanto	UNODC Jakarta and Faculty of Law University of Indonesia	arinanto@cbn.net.id
72	Dr. Chairijah	UNODC Jakarta and National Law Development Agency, Department of Justice and Human Rights	cikeb2000@yahoo.c om
	<b>UNODC</b>		
73	Dr Oliver Stolpe	UNODC Vienna	Oliver.Stolpe@unodc .org
74	Dr. Petter Langseth	UNODC Vienna	Petter.Langseth@un odc.org



## **G. Appointment of the Implementation and Coordination Committee**

- 1. Chair** : H. Sofjan Zen, S.H., M.H (Chief Justice of South Sumatera)
- 2. Vice Chair** : Soufnir Chibro, S.H (High Attorney of South Sumatera)
- 3. Secretary** : Alexander Abdullah, S.H., M.Hum (Dean of Faculty of Law Palembang University )

**Members :**

1. Soejoto, BCip, S.H. (Head of South Sumatera Regional Office of Dept. Justice and Human Right)
2. Amrullah Arpan, S.H., S.U (faculty of Law, UNSRI)
3. Amzulian Rifai, S.H., LL.M. Ph.D (Faculty of Law, UNSRI)
4. Johannes Suprijo, S.H., Adv (IKADIN)
5. April Firdaus (Legal Aid Institution Palembang)
6. Suryani Yusi (Faculty of Law- IBA University)
7. Nurbaiti, S.H. (POSBAKUM Palembang)
8. Zainal Abidin, S.H., M.H. (High Court South Sumatera)
9. AKBP Rahadi M (South Sumatera District Police)

## WORK PLAN FOR PROJECT ON STRENGTHENING JUDICIAL INTEGRITY AND CAPACITY (INS/03/R43)

	Global Programme against Corruption (GPAC), incl. NPC, responsible for implementation
	National Project Coordinator (NPC) responsible for implementation
	Research Institute (RI) is responsible for implementation
	Responsibility for the implementation will be determined by the Action Plan.

No.	List of Activities	2003			2004												2005												
		Oct	Nov	Dec	Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec	
1.	Hire NPC.																												
2.	Set up national project office																												
3.	Set up working group on assessment																												
4.	Conduct working group meeting(s)																												
5.	NPC to Prepare and publish proceedings document of working group meeting																												
6.	NPC to disseminate proceedings document to pilot Provinces																												
7.	Select Research Institute (RI) to conduct assessment of justice sector integrity and capacity																												
8.	NPC to draft 2 <sup>nd</sup> Progress Report for the review and completion by GPAC																												
9.	Hire research institute																												
10.	RI to conduct desk research and submit report																												
11.	Research Institute to conduct field research in 2 provinces.																												
12.	RI to conduct data analysis, draft and submit draft report																												
13.	GPAC to review draft report and provide comments.																												
14.	RI to complete report and submit copies in Bahasa and English																												
15.	NPC to prepare for Provincial Integrity Meetings (liaising with supreme court, MoJ and province judiciaries, Meeting venue, list of participants, background materials, invitations travel arrangements)																												

No.	List of Activities	2003			2004									2005															
		Oct	Nov	Dec	Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec	
16.	Conduct 2 Provincial Integrity Meetings, RI to present preliminary findings of desk and field research.																												
17.	Prepare, translate and publish proceedings document for the PIMs																												
18.	NPC to draft 3rd Progress Report for the review and completion by GPAC																												
19.	Action Plan implementation. Once activities have been determined by the PIMs they will into the Work plan.																												
20.	Conduct 2 progress review meetings in the pilot provinces																												
21.	Prepare and publish two generic progress updates																												
22.	NPC to prepare 4 <sup>th</sup> progress report																												
23.	NPC to prepare for Evaluation Meetings (liaising with supreme court, MoJ and province judiciaries, Meeting venue, list of participants, background materials, invitations travel arrangements)																												
24.	Conduct Action Plan Implementation Evaluation Meetings																												
25.	NPC to prepare for National Integrity Meeting (liaising with supreme court, MoJ and province judiciaries, Meeting venue, list of participants, background materials, invitations travel arrangements)																												
26.	Conduct National Integrity Meeting for the Judiciary to review Blueprint based on findings of the assessment and action plan implementation.																												
27.	Prepare, translate and publish proceedings document for the NIM																												
28.	Organize donor meeting to present project outcome and the revised Blue Print.																												
29.	Select an independent Evaluator																												
30.	independent consultant to conduct a project evaluation and prepare the Project Evaluation Report.																												
31.	Prepare project terminal report																												