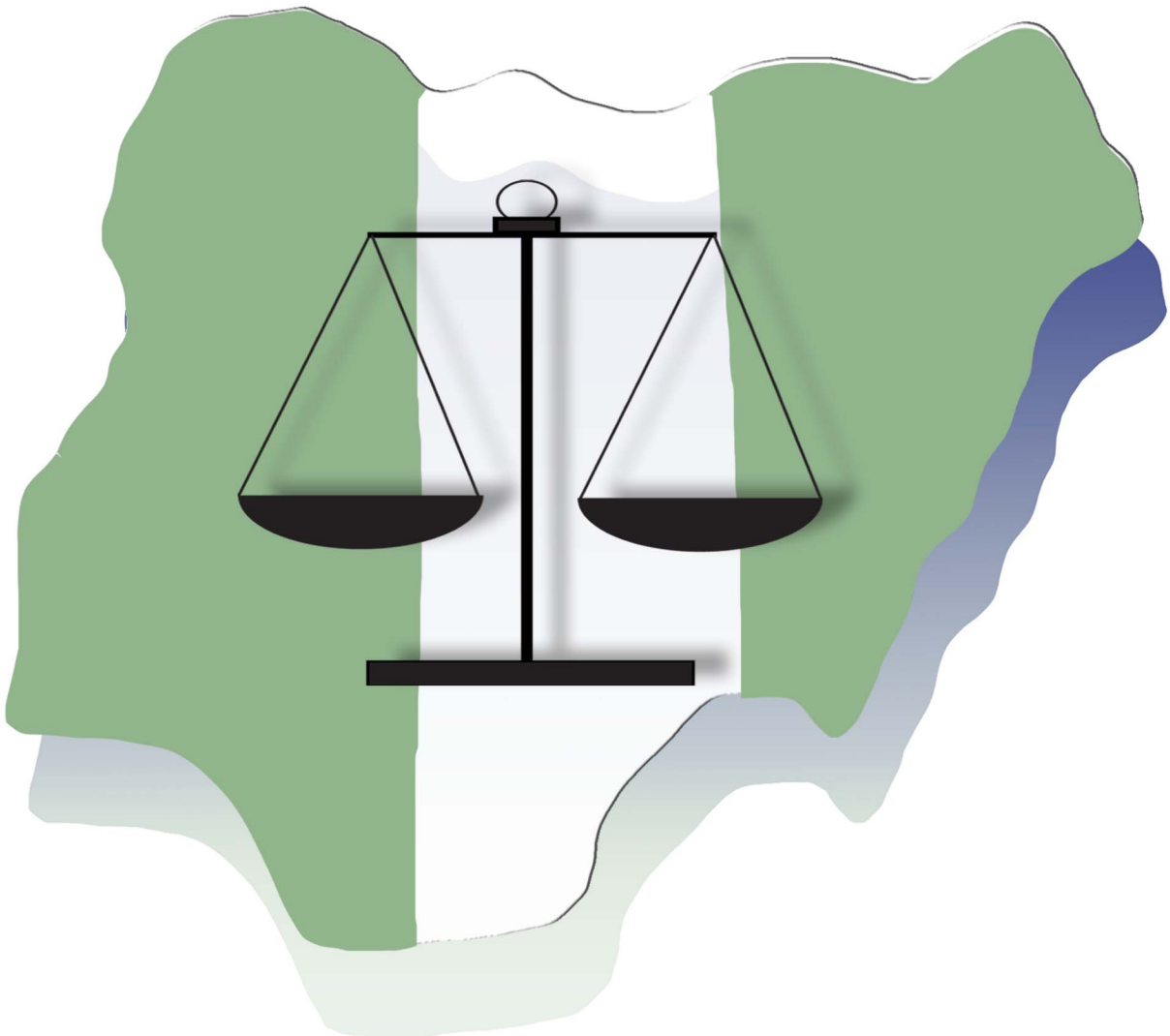
Strengthening Judicial Integrity and Capacity in Delta, Nigeria



Report of the First Integrity Meeting for the Delta State Judiciary

16 & 17 September 2002

UNITED NATIONS
Office on Drugs and Crime

Supreme Court of Nigeria &
Independent Corrupt Practices and
Other Related Offences Commission

STATE INTEGRITY MEETING IN DELTA

Strengthening Judicial Integrity and Capacity

in

Nigeria

edited by

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United Nations Office on Drug and Crime

Report of the First State Integrity Meeting

Delta, September 16-17, 2002

DISCLAIMER

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FOREWORD

It gives me very great pleasure to express my personal support for this major and important initiative being taken by the Chief Justice of the Federation.

The Rule of Law stands as a vital underpinning for our society. By upholding the Rule of Law, our judiciary acts in the interests of all Nigerians, securing their personal safety and freedoms and safeguarding the integrity of the nation.

At the head of our judiciary stands the Chief justice of the Federation. To discharge these heavy responsibilities, he and his judges must be – and are fully - independent of the executive. No one is more conscious of this than I am.

He and his judges will know that my administration strives to respect their independence and to comply with their judgments whenever this is called for.

I can assure the Chief justice and the Chief Judges of the States that I will do everything I can to support their endeavors to raise the quality of the justice afforded to our fellow citizens.

Olusegun Obasanjo

President and Commander-in-Chief

Federal Republic of Nigeria

December 2001

OVERVIEW

by
Hon. Chief Justice M. L. Uwais,
Chief Justice of Nigeria

1. Introduction

The First Federal Integrity meeting on Strengthening Judicial Integrity and Capacity in Nigeria was held in Abuja from 26-27 October, 2001[1]. The meeting was attended by Chief Judges[2] from each of the 36 States, and the debate and application shown by all the participants was of the highest order.

Knowing each of the Judges personally as I do, it came as no surprise to me that they should have been so assiduous in their duties and so diligent in their dedication to improving the access and quality of the judicial services provided to Nigerians throughout our land, and to those who come to live with us or to participate in our economic life. At the same time, it would be remiss of me not to record this for the benefit of those unable to be present.

Nor was I surprised at the high level of concern participants demonstrated, particularly for those consigned to prison for no other reason than being unable to pay a modest fine and for those unfortunate casualties of system that does not always perform as it should, prisoners awaiting trial but held in prison.

It offends our individual and collective sense of justice that the poor should be penalised in this way, and the overwhelming conviction of the meeting was that a power to impose suspended prison sentences must be introduced by the National and State Assemblies. This will empower the courts, in circumstances where a convicted person is unable to pay a fine, to impose a penalty, which is appropriate but not tantamount to punishment for experiencing poverty.

Those not with us should learn, too, of the efforts Chief Judges are making to visit prisons with human rights NGOs and others to expedite the hearings for cases where prisoners are awaiting trial, and to facilitate the granting of bail where this is appropriate.

2. Origins of the initiative

As my fellow justices can confirm, I have long been deeply concerned about the state of our judiciary and anxious to do whatever I can to improve the quality of legal services we offer the public. Against this background, the inspiration for our meeting came from my involvement, as Chief Justice of Nigeria, in a small Judicial Leadership Group on Judicial Integrity, that has met twice to date, initially in Vienna, Austria on April 9-10 200O, and again in Bangalore, India, on February 20-22, 2001. At Bangalore three of us, I and my brother Chief Justices from Uganda and Sri Lanka, expressed our wish to proceed along the lines suggested by our deliberations there. In this way, initiatives are now starting in all three countries, in the source of which we will share both our experiences and the lessons we learnt with each other and, more widely, with the other members of the Leadership Group.

I am looking forward to welcoming members of the Leadership Group to Abuja during the second quarter of year 2002, when we will all review the progress being made to date.

In Bangalore as well, we worked over a period of three days to produce a draft Global Code of Conduct for the Judiciary. This is a document which has been extremely well received as it continues to be circulated around the Commonwealth and the wider world, and it is one from which, I believe, we ourselves in Nigeria can benefit by reviewing our own Code of Conduct against its provisions.

3. The way forward in Nigeria

In carrying out our project in Nigeria, I envisaged this gathering as marking the start of a process that will develop survey instruments that will be applied to three courts in each of three pilot states (Lagos, Delta and Borno). Comprehensive Assessment and Integrity Action Planning Workshops will take place in each of these courts during the first quarter of year 2002, involving a full range of stakeholders (i.e. those who are involved with the courts in one way or another, including police, prisons, the Bar, human rights NGOs, etc.). These Integrity and Action Planning Workshops will consider and interpret the results of the comprehensive assessments for their court and develop action programmes informed by the findings. These programmes will be implemented over the succeeding twelve months or so, after which further surveys will be conducted to measure the impact of the reforms.

Further national workshops will be held to assess the progress being made and to ensure that all the states are in a position to share in the lessons being learned. I also expect the Chief judges, both in the designated pilot states and of other states not to await the results of the full programme, but to press ahead with their own reform programmes as lessons are learned as we progress through the project's cycle. Indeed, there were clear messages identifying needed actions that came out of our first gathering, and I have attempted to draw these together at the conclusion of this introduction.

4. The First Judicial Integrity Meeting

Our meeting addressed the challenges we face as the leaders of judicial administrations in ensuring that standards of performance are raised to a level where the public has total confidence in the judiciary as an institution and in judges in particular.

We identified four broad headings under which we must address our tasks –
Improving Access to Justice;
Improving the Quality of Justice;
Raising the Level of Public Confidence in the Judicial Process; and
Improving our efficiency and effectiveness in responding to public complaints about the judicial process
Having done so we then identified the ways in which we, ourselves, would wish to be

[1] The proceedings had the benefit of contributions from the Hon. Attorney General and Minister of Justice Chief Bola Ige and the Hon. Justice M.M.A. Akanbi, Chairman of the Independent Corrupt Practices and Other Related Offences Commission
We were also grateful for the participation and support of UN's Centre for International Crime Prevention (CICP) in Vienna represented by Petter Langseth, Edgardo Buscaglia and Oliver Stolpe, ODCCP's Lagos Office represented by Paul Salay and Transparency International (TI) represented by Jeremy Pope. Both have been involved in facilitating the work of the Judicial Leadership Group.

[2] See attachment I, Participant List

judged or "measured" as a technician would say.

This involved our brainstorming intensively about what the "indicators" should be that we would like to see applied to measure the impact of our work, bearing in mind that these had to be matters over which we had a measure of control, and they also had to be actions which could impact favourably on the judicial process.

We are also grateful for the participation and support of UN's Centre for International Crime Prevention (CICP) in Vienna represented by Petter Langseth, Edgardo Buscaglia and Oliver Stolpe, ODCCP's Lagos Office represented by Paul Salay and Transparency International (TI) represented by Jeremy Pope. Both have been involved in facilitating the work of the Judicial Leadership Group as well as the project on Strengthening Judicial Integrity in Nigeria.

5. Follow-up action identified in the course of the Workshop

a. Access to justice

Code of conduct reviewed and, where necessary revised, in ways that will impact on the indicators agreed at the Workshop. This includes comparing it with other more recent Codes, including the Bangalore Code. It would also include an amendment to give guidance to Judges about the propriety of certain forms of conduct in their relations with the executive (e.g. attending airports to farewell or welcome Governors). Ensure that anonymous complaints are received and investigated appropriately.

Consider how the *Judicial Code of Conduct* can be made more widely available to the public.
Consider how best Chief Judges can become involved in enhancing the *public's understandings* of basic rights and freedoms, particularly through the media.

Court fees to be reviewed to ensure that they are both appropriate and affordable
Review the adequacy of *waiting rooms* etc. for witnesses etc. and where these are lacking establish whether there are any unused rooms etc. that might be used for this purpose.

Review the number of *itinerant Judges* with the capacity to adjudge cases away from the court centre
Review arrangements in their courts to ensure that they offer basic information to the public on bail-related matters.

Press for empowerment of the court to impose suspended sentences and updated fine levels

b. Quality of Justice

Ensure high levels of *cooperation between the various agencies* responsible for court matters (police; prosecutors; prisons).

Criminal Justice and other court user committees to be reviewed for effectiveness and established where not present, including participation by relevant non-governmental organisations.

Old outstanding cases to be given priority and regular decongestion exercises undertaken.
Adjournment requests to be dealt with as more serious matters and granted less frequently.
Review of procedural rules to be undertaken to eliminate provisions with potential for abuse.
Courts at all levels to commence *sittings on time*. *Increased consultations* between judiciary and the bar to eliminate delay and increase efficiency.

Review and if necessary increase the number of Judges practising *case management*.
Ensure *regular prison visits* undertaken together with human rights NGOs and other stakeholders
Clarify jurisdiction of lower courts to grant bail (e.g. in capital cases).

Review and ensure the adequacy of the number of *court inspections*.
Review and ensure the adequacy of the number of *files called up under powers of review*.
Examine ways in which the availability of *accurate criminal records* can be made available at the time of sentencing
Develop Sentencing Guidelines (based on the United States' model).

Monitor cases where ex parte injunctions are granted, where judgments are delivered in chambers, and where proceedings are conducted improperly in the absence of the parties to check against abuse.

Ensure that *vacation Judges only hear urgent cases* by reviewing the lists and files.

c. Public Confidence in the Courts

Introduce *random inspections* of courts by the ICPC.,
Conduct periodic independent surveys to assess level of confidence among lawyers, judges, litigants, court administrators, police, general public, prisoners and court users
Strengthen the policies and initiatives to improve the contact between the judiciary and the executive
Increase the involvement of civil society in Court User Committees

d. Improving our efficiency and effectiveness in responding to public complaints about the judicial process

Systematic registration of complaints at the federal, state and court level;
Increase public awareness regarding public complaints mechanisms;
Strengthening the efficiency and effectiveness of the public complaints.

I

EXECUTIVE SUMMARY

A. Background

The Workshop which is a follow-up to the First Integrity Meeting for Nigerian Chief Judges in October 2001 with the theme: "Strengthening Judicial Integrity and Capacity" took place in Delta from 16–17 September, 2002.

Delta State, as it will be recalled is one of the three pilot states where the judicial integrity and capacity project is now going on. Borno and Lagos are the two other states.

B. Plenary Session

The First State Integrity Meeting on Strengthening Judicial Integrity and Capacity in Delta State was well attended by Judges, Magistrates, Prosecutors, Lawyers and other stakeholders in the Administration of Justice. The workshop process, described in the annex, was based on plenary presentation and discussions in five Working Groups.

After her own welcome address, the Hon. Justice M.A. Okungbowa, Chief Judge of Delta State delivered the opening remarks on behalf of the Chief Justice of Nigeria, Hon. Justice M.L. Uwais, GCON. Other papers presented included those of the Honourable Attorney General of Delta State, Prof. A. Utuama, Prof I. A. Ayua, SAN, Director General of the Nigerian Institute of Advanced Legal Studies, Prof. Malik Saheed, Commissioner of the Independent Corrupt Practices and Related Offences Commission (ICPC), and Dr. Petter Langseth, Project Manager, United Nations Center for International Crime Prevention (CICP).

Thereafter, the general plenary discussion began. Participants were invited to comment on the preliminary analysis of the main findings of survey of more than 5500 judges, lawyers, retired and active court staff, prisoners awaiting trial and members of the business community. Particularly, the plenary discussion raised issues on the correlation between frequency of "inspections" and corruption. Initially there was some confusion as to the word inspection, the Judges claiming that they had no knowledge of such inspection of their courts. The explanations given by NIALS was that inspections should be understood as all instantive, procedural and disciplinary measures taken within the exercise of supervisory control. Even though some participants doubted that inspection in the above sense was correlated primarily to corruption and not to the quality, timeliness and access to justice, it was agreed that inspection of courts should take place periodically.

The participants concurred further that such supervisory measures should in particular monitor returns of cases from the courts and use them as a yard stick for assessing the performance of judges and magistrates. The Chief Judge informed the plenary session that such a system was now in place and that she had instructed the Registrars to keep track of the returns from the various courts in the state.

It was agreed that one of the major problems faced by the Delta State Judiciary was the lack of timely access to legal information, including law books and law reports which resulted in delays and poor quality judgements. This problem is currently being looked into by the state judiciary.An assessment is being carried out presently to establish a legal information network that will provide all courts in Delta with the required legal

information in a timely manner. Further, co-ordination within the criminal justice system was seen to be vital, since the inefficiency of one institution could potentially sabotage the efforts undertaken by all others. The role of the police was seen as most critical in this context. At the same workshop, the leadership of the police did not participate. Several of the complaints were extensively discussed by the other criminal justice institutions within the various working groups. It became obvious that any sucessful attempt to strengthen judical integrity and capacity would likely fail if some of the basic problems concerning the smooth cooperation in particular, between the judiciary, the Attorney-General's Office and the police were not addressed.

The CJ informed the participants that the Criminal Justice Committee has commenced its activities in Delta State and that the Commissioner of Police was either personally participating or represented through another high-ranking police officer. Also, the police was participating in the monthly prison visits of the Chief Judge.

As far as the problem of corruption within the courts was concerned, the participants identified the following as the causes:

- Lack of personal integrity of those appointed to the bench
- Inadequate salary and allowances of all cadres of judicial officers
- Allowances of Magistrates and administrative staff were too low;
- Judicial officers and administrative staff were inefficient due to lack of exposure to necessary training and development opportunities;
- Grossly inadequate infrastructure and facilities are available to the courts.
- Procedural rules were very complex, often giving rise to unnecessary administrative bottlenecks;
- There were too many cases in court relative to the number of available judicial and administrative personnel.
- Weak process of assessing candidates for judicial appointment and even weaker process of suspension of serving judges.

Further, the meeting addressed the weaknesses of the Corrupt Practices and Other Related Offences Act. Prof. Malik of the Corrupt Practices Commission emphazised the importance of the judiciary in interpreting and applying the Act. Also, the poor knowledge regarding the Act, even amongst lawyers and judges, was touched upon and it became clear that the Commission still has a long way to go in terms of raising the consciousness of the various stakeholders as well as civil society at large. In this regard, it was pointed out that the Act did not foresee any reporting obligation of the Commission. An annual report to the National Assembly, which would be widely disseminated by the Media would not only enhance transparency and accountability but also the credibility of the Commission, and public's confidence in ICPC. Moreover, participants criticised the lack of protection of witnesses and whistleblowers under the Act. Section 64 of the Act provides some protection to informers, however, the meeting agreed that this was not sufficient.

There was a general agreement among participants that in order to strengthen judicial integrity and capacity in Nigeria, "all hands must be on deck". A well functioning legal and judicial system could potentially have tremendous effect on economic development. If Nigeria is to attract investors, then the battle against corruption must be fought and won.

After the tea break, Professor I. A. Ayua, SAN, Director-General of the Nigerian Institute of Advanced Legal Studies (NIALS) addressed the workshop. Professor Ayua started out by emphazising that there were few empirical studies on Nigerian Judicial system. He stated that the assessment conducted by his institute in collaboration with the United Nations Centre for International Crime Prevention was ground breaking in this regard. Prof. Ayua explained the methodology adopted in suveying a total of 5,776 judges, magistrates, lawyers, retired and active court staff, members of the buseness community and prisoners awaiting trial.

Pilot States	Court Users	Judges	Lawyers/ Prosecutors	Bussiness	Awaiting Trial	Retird Court Staff	Servig Court Staff	Retired Court Staff	Total
Lagos	561	43	395	156	1206	0	561	0	2922
Delta	541	40	109	80	591	6	268	6	1635
Borno	573	31	44	43	353	11	154	11	1209
Total	1675	114	548	279	2150	17	983	17	5766

Table 1: Comprehensive Assessment, Survey Sample Across the three Pilot States

After Prof. Ayua's introductory remarks, both Mr. Peter Akper and Prof. Epiphany Azinge of NIALS gave a detailed explanation of the preliminary findings from the survey. Mr. Akper focused his presentation on some of the main problems faced by the Judiciary in Delta State with regard to access to justice, the timeliness and quality of the trial process, the public's confidence in the judiciary and corruption as perceived by the various segments of the society that were interviewed.

Prof. Azinge's presentation was based on an analysis of the existing legal framework to fight corruption and tabled some proposals for possible ammendments. He pointed out that the Official Secrets Act potentially resulted in serious obstacles to effective investigations on corruption, in particular in the context of military procurement contracts. Also, he critically reviewed the current legal framework as it relates to the compensation of victims of corruption. Further, it was pointed out that the term "judicial officers" was not adequately defined in the Anti-Corruption Act. It is therefore a moot point whether or not judicial officers could be prosecuted under the Act.

C. Group Discussions and Action Plans

After lunch, the participants were divided into groups to examine and report on the following key areas:

- Access to Justice
- Quality and Timeliness of Justice
- Public Confidence in the Courts
- Effectiveness, efficiency and credibility of the Public Complaints Systems, and
- Coordination Across the Criminal Justice System

Each working group had a set of terms of references, a chairperson and a facilitator both appointed by the Workshop Management Group and a presenter appointed by the group itself.

Group 1 (Access to justice) emphasized the importance of the Nigerian public understanding of their basic rights and obligations. They agreed that the ignorance of majority of Nigerians of their basic rights was among the biggest obstacles to access to justice. The Group, therefore, recommended that an integrated public relations strategy based on the principle of full transparency be developed and implemented. The Group agreed that the justice system needed to be made more affordable through the establishment of a functioning legal aid scheme, involving advocacy NGO's and the NBA. Participants agreed that judges should award realistic costs stemming from adjournments and similar costs should be awarded to the respective parties causing the delay. The Group agreed further that as far as infrastructure was concerned, there was an urgent need for improved court room and installation of recording and transcribing devices. The Executive arm of the government has to be made aware of its obligation to assign sufficient resources for this purpose to the judiciary. With regard to the creation of a friendlier environment for witnesses, litigants and defendants, the group agreed that it was mainly up to the respective judicial officer to make witnesses, litigants and defendants feel at ease, without at the same time undermining the due respect for the court. Also, the group recommended that judges, in order not to keep witnesses and litigants waiting unnecessarily, should be more effective in the management of trial before them. As far as the expeditious granting of bail in all appropriate cases was concerned, the group acknowledged that at this point in time most of the delays were being caused by the Police. The Police is largely ignorant of existing laws or unwilling to comply with them. It was recommended that judges should remind Police Officers whenever possible to comply with their own procedures and use the powers under the law to remedy human rights abuses by the Police. As far as the enforcement of court decisions were concerned, the Group agreed that the option of suspended sentences should be introduced, where a convicted person was unable to immediately pay a court fine. It was agreed that in order to sort out day-to-day problems and conflicting views on the administration of justice, it would be beneficial to broaden and invigorate the Bar-Bench Forum. Also the Group recommended the re-launch of the Monthly Court Returns, including all statistical information about caseload, backlog, cases filed, cases disposed of, court staff etc.

Group 2 (Timeliness and Quality of the Trial Process) focused on increasing the timelines and quality of the trial process through (i) reducing delays in trial process, (ii) increasing the consistency in sentencing, (iii) establishing and monitoring of performance standards, and (iv) preventing the abuse of civil process. Among the problems militating against the effective performance of the Judiciary the group identified (i) Frivolous applications/requests for adjournments, (ii) the non-production of witnesses in court, in particular by the prosecution, (iii) the non application of timesaving measures combined with permissive provisions of the rules of court, (iv) the ineffective investigation of cases, (v) the inadequacy of infrastructures and funding, (vi) stiff bail conditions and improper use of discretion in bail applications, (vii) inadequate training on sentencing methods, (viii) obsolete laws and unrealistic penalties, (ix) the absence of performance/time standards, (x) poor supervision and the (xi) abuse of discretion in ex-parte applications. In order to address these problems, the group suggested the application of restraint and better coordination of the frequent transfer of judicial officers/court officials. It was also agreed that the quality of justice delivery could be improved through monitoring of performance and integrity standards for judges and court officiasl and the training and retraining of judges and judicial staff. In particular, there was need for more efficient use of case-management techniques and an increased focus on dispute resolution, includ-

ing the establishment of an ADR mechanism in Delta State. Furthermore the group agreed that some improvements of the basic infrastructure of the courts was essential to the success of the project especially the provision of electronic recording of court proceedings. Another problem which need urgent attention was lack of coordination amongst the various criminal justice institutions.

Group 3 (Public Confidence): The participants in the group agreed that low public confidence in the courts was a major problem in Delta State. People believe that justice is for sale and that corrupt practices among the court officials, including police prosecutors and investigating police officers were wide spread. In order to improve this situation also group 3 recommended that a public enlightenment campaign be designed and launched which should actively involve the NBA. It was agreed that members of the public should have unlimited access to Chief Judges in cases of allegations of corruption. At the same time, it was the CJ's responsibility to put in place a mechanism which would allow for the prompt and effective treatment of allegations of corruption. Furthermore the group concurred that a transparent and merit-based appointment process was key to the objective of enhancing the public's confidence in the justice system. For this purpose Judicial officers should be properly screened before appointment and the appointment process should be open to the public to comment on the suitability of candidates. The current practice of informal alternative dispute resolution needed to be reviewed and community leaders should be made aware of the limits to such ADR services. As far as criminal law was concerned, the group recommended amendment of the legislation to incorporate adequate restitution for victims of crime. In general the crucial role of lawyers was confirmed with regard to building the confidence of the public. The group also insisted that there should be a Code of Conduct for lawyers which had to be monitored by the NBA. It was further agreed that public confidence was severely damaged by excessive delays in the justice system. Therefore, adjournment should be granted only on merit, case flow management system should be practiced and computers should be installed in all courts in Delta State.

Group 4 (Effective, Efficient and credible Complaints System): The group started out by analyzing the current procedure of handling complaints from court users against the judicial officers and court staff. From this it became clear that currently there was little awareness even amongst the judiciary itself on how exactly complaints should be received, assessed for their merit, investigated and how the follow-up is organized. The group also agreed that there was little awareness amongst court users on how to file a petition and that most of the court users would not trust the system anyhow. Equally discouraging,was the fact that participants portrayed lack of awareness of the Code of Conduct for judicial officers. Participants also agreed that the interface between the courts and the public was insufficient, since judges has continued to shy away from dealing with the media. Finally the Group also assessed the level of awareness of judicial staff with regards to the Anti-Corruption Act. They agreed that judges had little or no knowledge of the law and its application. The group agreed that in order to develop an effective, efficient and credible complaints system, it was necessary that the following issues be dealt with. There is need to enhance Nigerian citizens' awareness on how, where and in what form to file a complaint. An effective complaints management system needs to be put into place whichwill ensure that all complaints are recorded in electronic form, reflecting the type of petition, the judicial officer or court staff whom the complaint is filed against, the date of receipt, the actions taken, the outcome of the action, the

feedback to the complainant. Complaints should regularly be analyzed and the findings reported back to the court as well as the general public. Also, there should be regular assessment of the trust level between court users and the judiciary in general as well as the complaints system in particular. As far as the Code of Conduct is concerned, the group agreed that there was need to raise the level of awareness and acceptance of the code amongst judical officers. Also, the Code of Conduct needs to be made known to the general public especially the as it pertains to the basic rights of the citizen. Further, the group concurred that the implementation of the Code of Condut should be enhanced through enforcemnt measures and ethics training for judicial officers.

Group 5 (Coordination among the Criminal Justice Institutions): The group agreed that regardless of all the coordination efforts, several problems continue to exist. In particular the group identified the bail process as one of the areas where unnecessary delays continue to hamper the efficiency of the system. This is mainly due to the lack of knowledge in particular within the police regarding the criteria for the granting or refusal of bail. At the same time there are many cases in which the DPP is unable to effectively oppose urgent bail applications, since they are not provided with the necessary information on time. Furthermore, the inability of the DPP to deal with its case load was identified as problem linked also to the inefficiency of the police. This is partially due to the under-utilization of police prosecution powers in section 23 of Police Act. Another problem often encountered is that prisoners are not able to come to court for the hearing of their cases. Even though, the Delta prison service has recently been provided with Black Maria vehicles, there continues to be transportation problems as well as the necessary funding to maintain existing vehicles. Delays are also caused by witnesses not attending court as and when due. The group attributed this problem to witnesses not being paid either because funds are lacking or, if funds are available, there is currently no clear established responsibility as to who is supposed to pay the witness fees. Adjournments of cases are also caused by lawyers not appearing in court for trial. While the criminal justice institutions have begun to treat custody cases as priority, lawyers prioritize their cases according to different considerations. The group agreed that all stakeholders should be given 3 months deadline to conclude such cases. Also, the uncoordinated transfer of key stakeholders such as police witnesses, magistrates, prosecutors and judges contribute to delay in the trial process. The decision to transfer staff working on a case are often made without taking into account the impact of the transfer on other justice sector institutions or notifying them in advance so they can take appropriate action to finalize outstanding casework. Most of of these cases are struck out for want of prosecution after 3 years. The federal DPP in Enugu State who also covers Delta State is heavily understaffed and cannot handle the case load under him. However, regardless of the delays, the federal DPP often may refuse to issue fiat to State A-G to prosecute Federal cases.

After in depth discussion, the groups, with the help of a decision making matrix, prioritized, the following measures taking into account the expected impact, the time frame, the cost, the importance to the judiciary, the level of control with regard to the implementation, eventual risks involved and the complexity of implementation.

Measure	Priority[1]	Responsible	Starting Date	Cost[2]
1. Committees to be established to implement proposed measures				
Implementation Committee (IC)	9.4	CJ	Sep 02	Nil
Public Complaints and Training Committee (PCTC)	9.0	CJ	Sep 02	Nil
Establish Court User Committees (CUC)	9.6	CJ	Sep 02	Nil
Rules and Amendment Committee (RAC)	9.8	CJ	Oct 02	Nil
Strengthen the Criminal Justice Committee (CJC)	6.2	CJ	Nov 02	Nil
2. Access to Justice (Group 1)				
Judges should award realistic cost to litigants	6	CJ, PCTC	Oct 02	Budget
Judge to maintain judicial decorum/protocol in his/her courtroom	6	CJ, Judges	Ongoing	Nil
Issuing of the Annual Law Report (ALR)	9	CJ	Dec. 2002	Budget
Conduct of a Press Conference for the release of the ALR	9	CJ	Hereafter	Nil
Commissioner of Police to attend al meetings of the CJC	8	IG Police	ASAP	Nil
Install complaints and suggestion boxes in all courts in Lagos State	9	CJ, PCTC	Oct 02	Budget
Judges to be involved in providing basic legal training to police	9	PCTA	2003	Budget
Simplifying the Procedures for Granting Bail	10	CJ,RAC	2003	Nil
Enforcement of rule that any responsible person can stand surety	10	CJ	Ongoing	Nil
Strengthen the maintenance culture among technical court staff	10	PCTC	2003	Budget
3. Quality and Timeliness of the Court Process (Group 2)				
Efficient Use of case management and ADR Process	8.7	IC	Nov 02	Nil
Amendment of Rules in Court to eliminate trial delays	9.8	RAC	Nov 02	Nil
Use of electronic recording in court proceedings	10.2	IC	Dec 02	Budget
Set and monitor performance standards for judges and court officials	10.7	IC	Jan 03	Nil
Improve coordination between police and DPP's office	11.6	CJC	Jan 03	Nil
4. Strengthening Public Confidence in the Courts (Group 3)				
Appointment of public relation officers of State Judiciary		CJ	Nov 02	Budget
Increase public access to the Chief Judge and Complaints System		PCTC	Nov 02	Budget
Transparency of judges and court staff to be monitored by ICPC		ICPC	Nov 02	Nil
5. Strenathening Public Complaints System (Group 4)				
Conduct Ethics & Re-orientation Training for judges and court staff	9.6	PCTC	Oct 02	$ 10000
Establish an Independent Complaint System	11.0	CJ, PCTC	Nov 02	TBD[3]

[1] Each of the five Working Groups prioritized the measures they had indentified on a scale from 6 (indicating top priority) to 23 (indicating low priority). Only those measures which have been rated by each group as among the 6-10 most urgent ones are reflected in the action plan.

[2] As far as within this column reference is made to "budget", it indicates that the measures will be financed out of the current budget of the Lagos State Judiciary.

[3] To be determined

Conduct a public awareness campaign	8.5	PCTC	Nov 02	$ 10000
Enforce the implementation of Code of Judicial Conduct	11.0	CJ, PCTC	Nov 02	Budget
Define and establish Partnership with ICPC	10.	CJ, ICPC	Oct 02	Nil
6. Coordination within the Criminal Justice System (Group 5)				
Conduct Criminal Justice Round Tables	8.8	Quarterly		N 500'
Monitoring and Evaluation by the ICPC	11.3	AG		
Strengthen Bar/Bench Fora		CJ, PCTC	Nov 02	
Provide Black Marias to all prisons	9.8	CJC	Nov 02	
Allocate sufficient funding for logistics requirements for CJS institutions	11.0	Fed.Gov	Nov 02	
Provision of allowances for witnesses	10.6	Judiciary	2003	Budget
Stop frequent transfers of investigating Police Officers	10.0	IG Police	2003	Nil
Review the Criminal Procedures and the Criminal Justice Acts	9.9	State and Federal Gov	2003	Nil

II

OPENING SESSION OF FIRST INTEGRITY MEETING IN DELTA

A. Welcome Remarks by

Hon. Justice M.A. Okungbowa,

Chief Judge of Delta State

It is my pleasure to welcome you to Asaba, Delta State, on the occasion of this workshop on 'strengthening judicial integrity and capacity'. Most of the participants may not be familiar with the project of which this workshop is a part. In that case, it would not be out of place to give a background of the project and why it has become necessary in our present circumstance.

Nigeria has been consistently rated amongst the four most corrupt counties in the world. It appears to have taken a turn for the worse, going by the report released recently by Transparency International, which placed it in the second position, after Bangladesh. It is no longer news that the Federal Government is poised to fight corruption in its entire ramification. Successive administrations have made efforts to tackle this problem with little or no success, due to what some attribute to lake of political will and lack of co-operation on the part of those who stood to gain by it. This administration started out with a pledge to stamp out corruption. In pursuance of this objective, the Federal Government promulgated the Independent Corruption Practices and other related Offences Act 2000. That corruption has done a lot of damage to the socio-economic life of this country cannot be contested. It is equally not in dispute that the fight against corruption cannot be fought on only one front or left to an individual or body. The entire nation must be mobilized to fight it if it is to succeed. This is where the judiciary and all those involved in the administration of justice come in. One may ask, why the judiciary? The answer would be because of the vital role it plays in every society, which role invariably affects every aspect of the life of every individual. The role of the judiciary in the life of a nation is well articulated by Oputa, C.J. (as he then was), in some of his essays and papers presented at various fora.

The papers and essays are compiled into a book titled: *The Law and the Twin Pillars of Justice*. To paraphrase his Lordship, the Courts occupy a unique position in a free and democratic society. They are watchdogs of both the Constitution itself and the rights of citizens entrenched in the Constitution. The democratic nature of any Constitution is, therefore, measured by the amount of independence it gives its judiciary. A strong, competent, fearless, independent and impartial judiciary is the citizen's bulwark against oppression, a force of stability, peace and progress in any society. It is therefore absolutely essential that vital line of defence is kept impregnable. When that line is overrun by menacingly advancing avalanche of moral delay, corruption, interference or pressure, then all hope is lost and then also the warning shots are being audibly fired for the inauguration of a reign of terror or else for an era of disorder and disrepair. Allegation of bribery and corruption corrodes public confidence and justice denigrates into a fraud or at best, a mockery if the public has no confidence in its judiciary.

His Lordship cannot be faulted. If the judiciary is to have a good image, therefore, then it is imperative that the machinery for good, speedy and effective justice should be strengthened and put in good order. It is against this backdrop that a project aimed at

strengthening judicial integrity and capacity was signed by the executive director of the office of drug control and crime prevention and the Attorney-General of the Federal Republic of Nigeria in September, 2001. According to the project document, this project is aimed at strengthening the rule of law, both at national and sub national levels and the objective is to assist the Federal Government of Nigeria in increasing the capacity and integrity of the justice system, particularly, the judiciary. It must be observed by lawyers, who should preserve the independence of their profession, assist and defend the right of the citizen under the law and ensure that any citizen accused of a crime is given a fair hearing. It must be observed by the law enforcement agents who are the first in contact with anyone suspected of committing an offence, from the time of arrest until that suspect is charged to court. The administrative and non judicial staff are part and parcel of the judiciary, and most not be overlooked if this project is to succeed. These officers can be described as the powerhouse that fires the engine of the judiciary. They are the first people who come in contact with the litigants. Going by reports made by legal practitioners and members of the public, who have cause to deal with them, the level of corruption at this level is unimaginable. That the level of corruption in this sector does not make the news as often as that of judicial officers does not mean that all is well in that sector. It is so because the officers are not as visible as judicial officers. Without addressing the issue of corruption at that level, I am afraid to say, the battle against corruption will hardly make any impact in the judiciary.

At the first integrity workshop for Chief Judges, 3 pilot States were identified and a methodology on mode of assessment, types, levels, causes, costs and remedies for corruption was agreed upon for testing in the 3 pilot States. Delta State is one of the pilot States. Some of you may be aware that earlier in the year a mission consisting of representatives from the center for International Crime Prevention, (the executing agency) and the Nigerian Institute of Advanced Legal Studies, (the research institute chosen for the project), visited Delta State. The three pilot courts are: High Court 3, Asaba, Magistrate Court 4, Asaba and Area Customary Court Asaba. The mission met with the Chief Judge, her key staff and all those involved with the project. The purpose of the pilot scheme was addressed at the meeting, as well as the nature and purpose of the comprehensive assessment. Questionnaires were distributed to some Judges, Magistrates, Lawyers Staff of the judiciary and members of the public. The research institute is to monitor these courts, asses and collate their findings.

There is no doubt that with the co-operation of every one involved in the administration of justice, the impediments militating against the entrenchment of the rule of law in our society can be identified. This workshop is a part of this project and it is aimed at taking stock of the progress made so far. Have the impediments in the way of effective administration of justice been sufficiently identified? Is there need to reassess the strategy adopted towards achieving this aims? I leave these questions to you to ponder. I hope that by the time we come to the end of this workshop, every one of us would be in a position to answer them frankly and also be better equipped to make meaningful contributions to the success of this project.

As can be seen, tremendous efforts is being made in Nigeria to inter alia help us fight judicial corruption. On our part, the only way to show our appreciation, is to imbibe whatever we are taught and advised to undertake so that our judiciary will be a model not only in Africa but the world over.

I am aware that we are here for serious business and that the schedule may not allow time for much else. However, it is often said that all work and no play makes Jack a dull boy. Asaba, the capital of Delta State has many places of interest, which you may wish to visit. There is the Lander Brother's anchorage, a historical site, which is highly recommended.

Welcome once again and may God guide us in our deliberations.

Thank you.

B. Challenges facing the ICPC and the Role of the Judicial Integrity Project

by

Hon. Justice M.M.A. Akanbi

Chairman of the Independent Corrupt Practices and Other Related Offences Commission[4]

I consider it a great privilege to be invited to participate in this workshop being organized for the top echelon and cream of the Nigerian Judiciary. I thank the Chief Justice of Nigeria who has always been quite supportive of the Independent Corrupt Practices and Other Related Offences Commission since its inception. I also thank the authorities of the United Nations Office for Drug Control and Crime Prevention, who in collaboration with the Chief Justice have organized this workshop. I am delighted to be a part of the programme.

I am given to understand that the Workshop aims at "strengthening the institutional mechanism for enhancing judicial integrity, fostering greater access to the Courts and improvements in the quality of justice delivered in Nigeria". This is certainly a move in the right direction. Indeed, there can be no better time than now for those of us who believe in a healthy, stable, economically buoyant and corrupt free Nigeria to discuss the challenges which have been confronting the Commission as a result of the massive and pervasive corruption which in the last two decades or so, made the international community to treat or look down on Nigeria as a pariah nation – lacking in honour and self respect.

Such was the situation at the time that Transparency International in their Corruption Perception Index, early this year, pronounced Nigeria as the most corrupt nation in the world. Even as at today, Nigeria occupies the last but one position down the ladder among the nations adjudged to be corrupt.

This indeed is a sad reflection of the level to which we have descended over the years. The situation therefore calls for a re-thinking and a change of heart especially on the part of purveyors and harbingers of corruption who have led this country to the brink of economic collapse and societal degeneration through corrupt practices.

The change of attitude being advocated must be brought about by the concerted efforts of all of us – the high and the low, the ruler and the ruled, and all who are in a position to take decision or have power or authority over others.

I cannot but re-iterate that the task of eradicating corruption and building a cleaner and transparent society rest squarely on the shoulders of each and all. For it must be clear even to the uninitiated that corruption has done a lot of damage to the socio-economic life of the nation. It has stunted growth and development and made even distribution of wealth impossible. It has succeeded in putting money into the pocket of plunderers of the nation's wealth and denied the government legitimate tax earning and revenue from other legitimate sources, which could have been used in building a vibrant and self-sustaining economy.

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[4] Presented by Prof. Sayed H.A. Malik, Commissioner ICPC.

Dr. N. Linton of Transparency International once said –

> "Corruption undermines democracy by contributing to social disintegration and distorting economic system."

And the President, Chief Olusegun Obasanjo also stated in clear and unmistakable terms that corruption is anthithesis to development and progress.

Indeed, crime analysts and criminologists have postulated that corruption is the *fons et origo* of all modern day crimes. Put differently, some say it is the illegitimate parent of all economic crimes, cheating, fraud, embezzlement, looting of public funds and '419' offences etc. The irony of it all however is that many have come to accept corruption as a way of life, especially the cynics who opine that corruption can never be reduced let alone wiped out in this country and say with some air of authority that our present effort at building a transparent society is sure to come to nought/not. They argue that this canker worm called corruption is so endemic and has eaten so deep into the fabric of the nation that like the Aids virus; it is highly infectious and not amenable to treatment. Their contention is that every department of Government institution has been affected and it is a waste of time to even attempt a cure. The only remedy, they maintain, is to learn to live with it.

That certainly, is a most dangerous proposition – a position that if taken is sure to spell total ruin for the nation and further destroy what is left of our battered image. The better view is for all and sundry to join the clarion call to fight corruption and help build and maintain the nation's integrity by instilling transparency and accountability in the public life of the nation and the citizenry. Indeed, efforts must be geared towards ensuring that the anti-corruption programmes of the present administration succeed. Now is the time for us to change and follow the worthy examples of Hong Kong and Singapore who have both "shifted reasonably quickly from being very corrupt to relatively clean" and have become quotable examples for other nations.

My Lords, I have so far not attempted a definition of the word 'corruption' for very obvious reasons. I have only deliberately tried to identify the ills of corruption and their ravaging and destructive effect on our economy and the society. For I think it will be impudent of me to attempt making an elaborate or copious definition of the word 'corruption'. It suffices it to say however that corruption is a manifestation of lack of transparency and accountability in governance and in the exercise of the discretionary powers of a person invested with power or authority to take decision relating to some other person or body. The want of transparency may be due to several factors such as inherent negative characteristics, his life style and perception of human values. It may be due to the weakness of the system itself or the operative law or rules from which the power is derived. It may be the result of the cultural values of society or an unstable political and social environment and even poverty. A high rate of corruption is also bound to manifest itself in an environment where the leaders are glaringly corrupt or where society generally condone or encouraged the acquisition of ill-gotten wealth and where the laws or rules are so weak and ineffective that offenders are either not apprehended or are allowed to go unpunished.

I believe that all of you distinguished Judges and Jurists are very familiar with the Penal Code Law and the Criminal Code, which before the promulgation of the Independent

Corrupt Practices and Other Related Offences Act 2000, were the two penal laws applicable in all cases of corruption and related offences. What however I am unable to say, in the absence of statistical data, is how many cases of corruption have in the last 10 to 15 years been tried or handled by your courts. The indices, however, show that while corruption, as a heinous offence, continue to thrive, reported cases of corruption in the modern law, reports are hard to come by.

At a recent workshop organized for designated Judges who have been recommended to handle corruption cases, not one of the Judges assembled, had ever handled or tried an accused person on a corruption charge. Evidently, Judges can only try cases brought before them and where no corruption charge is laid before a court, there can be no trial. Perhaps, this may well be the reason why the perpetrators of the crime have been having a field day. Several reasons have been given for this sorry state of affairs. Some attribute it to the lack of political will on the part of the rulers or the inadequacies of the afore-mentioned legislations or an unwillingness of the law enforcement agencies who themselves are part of the problem to prosecute reported cases. It is perhaps well to also observe that several ad hoc or fire brigade measures put in place to deal with corruption cases by the various military regimes were seen as mere cosmetics since the political will so vital for the success of anti-corruption programme was lacking.

No doubt it is this kind of reasoning and the realization that unless some positive steps are taken to arrest the deteriorating situation, the crime of corruption will continue to escalate, and Nigeria may economically totter to its fall. Besides, apart from anything else, there was the need to assure the international community that under the new democratic dispensation, Nigeria intends to make a clean break with the past, and was determined to fight corruption and all other related offences to a standstill.

This then was what informed and necessitated the promulgation of the Independent Corrupt Practices and Other Related Offences Act 2000 and indeed the establishment of the Commission, which was inaugurated on 29th September 2000. The Commission is made up of a Chairman and twelve (12) other Members drawn from the six geo-political zones. The duties of the Commission are clearly defined in Section 6 (a) – (f) as follows:

"6. It shall be the duty of the Commission: –

Where reasonable grounds exists for suspecting that any person has conspired to commit or has attempted to commit or has committed an offence under this Act or any other law prohibiting corruption to receive and investigate any report of the conspiracy to commit, attempt to commit or the commission of such offence and, in appropriate cases to prosecute the offenders;

- To examine the practices, systems and procedures of public bodies and where, in the opinion of the Commission, such practices, systems or procedures aid or facilitate fraud or corruption, to direct and supervise a review of them;
- To instruct, advise and assist any officer, agency or parastatals on ways by which fraud or corruption may be eliminated or minimized by such officer, agency or parastatals;
- To advise heads of public bodies of changes in practices, systems or procedures compatible with the effective discharge of the duties of the public bodies as the Commission thinks fit to reduce the likelihood or incidence of bribery, corruption, and related offences;

- To educate the public on and against bribery, corruption and related offences; and
- To enlist and foster public support in combating corruption."

Broadly speaking, these duties can be classified as follows:-

- Enforcement (Investigation and Prosecution) – Section 6(a).
- Prevention – Section 6(b), (c) and (d).
- Education, Public Awareness and Enlightenment – Section 6(e) and (f).

Items (b) and (c) are being vigorously tackled by the Commission which since its inception have been engaged in series of activities to sensitize, educate and enlighten the public on the evils of corruption. Workshops, seminars, conferences, retreats and symposia have been organized at different places and different levels of operations either alone or in collaboration with other institutions that are committed to the eradication of corruption. The objective is to purge the generality of our people of the corruption mentality, appraise them of the risks involved in corrupt practices and the consequences that may be suffered by the perpetrators of the crime of corruption.

Programmes have also been organized on ethics and morality, and Ministries and Government departments and parastatals have been encouraged to set up ANTI CORRUPTION MONITORING UNITS and broad based coalition have been formed with some institutions who have chosen to be partners in this war against corruption.

1. The Challenges

It has not by any means been easy to face up to the challenges confronting the Commission in promoting the objectives for which it was set up. It takes time to change old habits. The corruption level has been quite high and it would require a lot of strategies and planning to transit from high-level corruption to lower level corruption equilibrium. So apart from a self-sustaining and self actualizing political will on the part of the political authority, the Commission had to have on ground sound, solid and resilient infrastructural facilities and capacity building institutions which could stand the test of times and the onslaught of the hydra head monster of corruption with which it has to do battle.

The Act establishing the Commission empowers the Commission to operate as an independent body; and Section 3(14) specifically states that it shall not be subject to the control or authority of anybody. Unfortunately, for now, the Commission as of today has no independent source of financing its activities. And although it has political and operational independence to investigate even to the highest level of government, it has to depend on whatever government is able to allocate to it in the budget. Experience so far has shown that only about 25% of its budget proposal is often approved. This has made it impossible for the Commission for now to either create branch or zonal offices in the States. Operating from the headquarters in Abuja could be cost effective and a draw back on the activities of the Commission.

For any anti-corruption programme to succeed and make quick impact, it has to be well funded. Experience has shown that investigation, and even educating and sensitizing the populace on the evils of corruption could be quite an expensive venture. And this is a fact that must be recognized and addressed.

The staff of the Commission must be well catered for and paid adequate remuneration thus preventing them from succumbing to the temptation of looking elsewhere for illegal earnings.

2. Staff Strength

The staffing of the Commission has not been what it should be. Again, because of initial problem of funding and logistics, the Commission had to fall back on the Police, the Ministry of Justice and the Office of the Head of Service to provide pilot staff to help it take off. Some of them had to be sent back because they were considered not good enough for the nature of work the Commission has to be carrying out. The challenges posed by discernable weaknesses in staff position, would perhaps be less serious as soon as the current recruitment exercise is over and steps to train them is taken.

3. Housing/Accommodation

Efforts are being intensified to solve the challenges posed by lack of residential accommodation for staff and Members of the Commission. Some houses have been rented but still the paucity of funds made available in the budget, especially the capital budget has not made it possible for the Commission to purchase houses it could call its own. Members and staff are living in rented quarters. This is not a very happy situation but it is no doubt part of teething problem with which any pioneer institution has to grapple with.

4. Reforming Institutions of State and their Practices

On the long term, this is perhaps the most important target of the Commission. See section 6 (b), (c) and (d).

5. Public Enlightenment and Education

It is essential for the success of the Commission that it wins the support of the larger public. It will be the aim of the Commission to 'excite public outrage' on the evil effects of corruption and thereby win public acclaim.

6. Information Technology

A major vehicle of global collaboration is information technology. The sharing of information across borders is essential to anti-corruption battle. South Korea has developed a system where the information superhighway plays an important role in ensuring transparency in government dealings.

7. Global Collaboration

The war against corruption is a global war and Nigeria must enlist in it. We cannot fight it in isolation. Corruption is a 'borderless crime' and we need the collaboration of other countries and multinational agencies.

8. The Role of Judicial Integrity Project

I have deliberately not spoken of the challenges posed by the Judiciary in the anti-corruption project. This is because I realize that the judiciary has the capacity and the ability of making nonsense of any anti-corruption law and/or thwart the effort of the Commission. This is why judicial integrity is of paramount importance in any discussion relating to anti-corruption. The judiciary has the final say in these matters.

The Act, which created the Commission, confers on the judiciary extensive powers. It gives you the Chief Judges power to appoint designated Judges to hear and determine cases relating to offences committed under the Act. If the Judges appointed are men of honour and integrity, you share the credit with the Judges you have appointed. If they

are corrupt or lacking in integrity, whether they are found out or not, you share in the blame. I hope none of the ones given to us is corrupt. As I stated to the designated Judges, the Commission has no means of knowing who amongst them is corrupt but I am prepared to presume that all the recommended Judges are men of integrity and honour.

Secondly, the Act gives the right of appeal from the decision of designated Judges to the Court of Appeal and from there to the Supreme Court. I believe this is as it should be. It is in keeping with the rule of law. The important thing to note is that from the general tenor of the Act, and by appointing designated Judges to deal with cases under the Act, it is evident that the under-pinning philosophy of the Act is to encourage Judges to give expeditious hearing to anti-corruption cases. This also I believe is in line with the maxim "justice delayed is justice denied." That apart, speedy hearing of corruption cases is also dictated by experiences of the past where delay has resulted in accused person getting off the hook through default, as for example, witnesses suddenly disappearing and trials of cases are stultified.

Significantly, at the appellate Court level, there is no time frame for hearing appeals or applications, and as such there is the fear that at that level, hearing may be delayed and the purpose of having designated Judges to speed up hearing may be defeated.

My Lords, you all know our lawyers, they can always file "frivolous and fanciful appeals" to delay and frustrate the hearing of cases; and unless care is taken, the purpose of promulgating the Act will be defeated. This is not to say that where there are reasonable grounds for appealing, that should be done. The point being made here is that both the courts of first instance and at the appellate court level, corruption cases should be given priority of attention. There is the need to assure Nigerians that with corruption, it is no longer going to be business as usual.

I do not think hearing corruption case expeditiously detracts from judicial independence. Delay in hearing such cases or frequent adjournments or shying away from taking decision, or passing the buck from one court to the other may send wrong signals, which will not augur well for the image of the judiciary.

The Judiciary is a crucial player in anti-corruption war and Judges must act well their part. The Commission has a stake in the preservation of the integrity of the Judiciary and thus judicial integrity project is most welcome as it would have the effect of promoting the integrity of its members.

My Lords, I know for a fact stories have been told of corrupt Judges, and reported cases went before Justice Eso's Panel and indeed before A.J.C. and now the NJC, have handled a few complaints of corruption. This is why this project is necessary. Let me however assure my Lords that allegations of corruption against Judges are not limited to Nigeria. A Judge was not long ago sentenced to prison in Sierra Leone. Judges have been sentenced to prison for corruption in Chicago and some States in America. The war against corruption is global and we cannot pretend not to know this. So, let us come out openly to discuss these matters, so that the bad egg even in the Judiciary or those who are not prepared to maintain a high standard of integrity can be flushed out and the good Judges who I believe are in the majority can continue to do the judiciary and their nation proud.

Finally, let me end by referring to this Statement from Transparency International wherein I suppose Jeremy Pope stated under the heading "RISK MANAGING."

"The Judiciary: There is a clear risk in any situation where a new body is being established under a new legal framework that a Judge may not appreciate the relevant jurisprudence and may declare the enabling Act to be unconstitutional. Obviously, such a decision (even if reversed on appeal) would cause severe disruption in the Commission's work and call into question its likelihood of success in the public mind. Therefore the approach of having a workshop with the Judges could be developed. The Chief Justice could also be invited to expedite the hearing of corruption cases to ensure that the Commission gets quick returns on its first rounds of prosecutions."

I believe that it is this kind of thinking that informed the gathering of distinguished Chief Judges of our land to attend this Workshop. Once more, I commend the CJN for making this possible. I believe that at the end of the day we shall all to a man rededicate ourselves to the promotion of integrity and the spread of the gospel of transparency, probity and accountability throughout the land.

God bless you all. Thanks for listening.

C. Global Dynamics of Corruption: The Role of the UN

by
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UN-Centre for International Crime Prevention

1. The Issues

a. What is Corruption ?

1. In examining corruption, it quickly becomes apparent that corruption is a general phenomenon – or perhaps collection of phenomena – which are related in various ways, but that there is no single, clinical definition which encapsulates corruption.

2. Attempts to define or classify corruption for various purposes have been based on many different perspectives and criteria, including: moral criteria; descriptions of the conduct or behavior involved; models involving conflicts of interest, breaches of trust or abuses of principal/agent/client relationships; economic, political and administrative models; distinctions based on whether the corruption involved public or private-sector actors or interests; and on factors such as whether the actors were engaged in organized crime or more ad hoc forms of corruption. Corruption may involve cash or economic benefits, power or influence, or even less-tangible interests, and occurs in both government and the private sectors, in free-market and closed economies and in democratic and non-democratic governments and societies.

3. Within the scope of these general definitions, there is also no universal consensus about what specific sorts of conduct should be included or excluded, particularly in developing criminal laws or other politically sensitive concepts of corruption. For example, the proposition that corruption ...is an abuse of public power for private gain that hampers the public interest... raises issues about whether definitions of corruption should be limited to abuses of "public" power or harm to "public" interests, and if not, what sorts of private elements should also be included.

4. Definitions applied to corruption vary from country to country in accordance with cultural, legal or other factors and the nature of the problem as it appears in each country. Concepts may also vary from one time period to another, particularly in recent decades, which have seen much thinking and theorizing about corruption. Definitions also vary depending on the background and perspective of the definer and the purpose for which a definition was constructed. Economic or commercial models may focus on trade issues or harm to economic stability. Legal models tend to focus on criminal offences or areas such as breach of trust. Political models tend to focus on the allocation and abuses of power or influence. All of these are useful definitions, but each describes only a portion of the overall problem of corruption.

b. Forms of Corruption

5. Legal definitions differ from those applied by sociologists, aid agencies and international organizations. This is particularly true for criminal law definitions, for which the highest standard of clarity and certainty is generally required. Most legislatures have chosen not to attempt to criminalise the general phenomenon, but to focus instead on specific types of conduct such as bribery, theft, fraud or unfair/ insider trading which can be more clearly defined. This approach achieves the necessary degree of certainty for drafting offences and prosecuting offenders, but is too narrow and creates gaps, which can be problematic for non-legal purposes. There is also uncertainty about whether some activities, such as money-laundering, constitute "corruption" per se or merely activities which support it.

6. If corruption is understood as a collection of phenomena, it then follows that understanding corruption requires an understanding not only of the individual phenomena, but also how they are related, and that such a general understanding is critical to developing effective control strategies. Corrupt actions such as the bribery of officials do not usually occur in isolation but as part of a pattern. At the simplest level, a bribe paid usually entails the illicit reception of the bribe, and the carrying out of some act or omission by the bribed official, for example, but the pervasive corruption which confronts many societies is far more extensive and complex than this. Elements of UN's involvement are therefore intended to foster understanding how various elements within the general ambit of corruption are related to one another and to the surrounding context of legitimate social, cultural, legal and economic structures.

7 The purpose of UN's anti corruption work, is among other things, to advise policy-makers, some of whom will be called upon to decide what conduct should be considered as "corruption" in their respective societies and whether such conduct should be discouraged, prevented, or made subject to criminal sanctions or other controls. Rather than attempt to specifically define corruption or seek out a legal or

clinical definition which is valid for all of the discussion it contains and the social, legal, cultural and economic contexts in which it will be used, the approach taken is to avoid narrow legal definitions and seek out broader, more inclusive concepts which may assist in understanding the fundamental problem of corruption, bridge gaps in the way it is understood in different societies, and form the basis of national anti-corruption strategies which are effective in context, and at the same time share common elements with those of other countries in support of a general international strategy. Not everyone will agree that all types of questionable relationships and misconduct described constitute "corruption" in either the general or criminal senses. The point is to take into account as many voices and perspectives as possible. This approach will help nations to reassess what it is that they define as corrupt acts that should be prevented and sanctioned.

8. To provide a broad range of views, the approach taken in this paper is empirical, examining the various contributing factors, elements and consequences of corruption as they have been experienced in as many different countries and cultures as possible. It is also inclusive, canvassing activities that may be considered corruption by some experts or governments but not others, and conduct which may be seen as corrupt even if it is not necessarily illegal. The purpose is not necessarily to propose that specific elements be criminalised, although this may often be the conclusion of governments, but to identify acts which fall within the range of conduct described as "corrupt", and which are intrinsically harmful to individuals or societies to the extent that efforts to prevent, combat or control them using criminal justice policies or other measures may be called for.

c. Consequences of Corruption

9. The idea that corruption can be defined without recourse to context or consequences (to the extent that it can be defined at all) does not mean that these are unimportant, however. Consideration of the context or circumstances in which various forms of corruption tend to occur is vital to the development of effective anti-corruption strategies. Indeed, a key lesson learned in recent years has been that simply criminalising corruption and punishing offenders does not work without some broader understanding of the social, cultural and economic factors which contribute to corruption and additional measures based on that understanding. This has led to measures such as efforts to improve the living-standards of public servants, which removes some of the incentives for them to solicit or accept bribes, while at the same time increasing deterrence by ensuring that they have more to lose if convicted of a corruption offence.

10. An understanding of the full consequences of corruption is also critical to rebutting the all-too-common belief that it is a victimless crime and mobilising public support for anti-corruption measures. It is important that corruption be understood not just as an economic crime, affecting those directly involved in individual cases, but in terms of the other harm it causes. Corruption is subversive of stable economic structures, good governance, just and predictable legal systems and other critical social structures because it replaces the normal rules which determine the outcomes of dealings between individuals, between individuals and the state and various commercial entities with less formal, less predictable ad hoc rules which may well change from case to case. Legal disputes are no longer resolved in accordance with pre-established laws and open proceedings, but by bribes paid – or threats made –

to judges or other officials. The allocation of State resources or services is determined not in accordance with the needs of applicants, but by their ability and willingness to bribe the officials involved, and the employment of the officials who render the services may be contingent on factors other than their competence to do so. Commercial dealings are no longer conducted in the best interests of the companies involved and their employees and shareholders, but in the individual interests of key decision-makers.

11. The complex nature of corruption and the many ways in which it operates in practice make assessing the harm caused a complicated task. Some forms of corruption may be seen as more harmful than others, but this is unlikely to be an absolute determination. The forms seen as most serious are likely to vary depending on the strengths and weaknesses of the society involved. For example, the corrupt use of substandard building materials may do more harm in a developing country than in a developed one, because the latter can afford greater redundancy and internal safeguards in its inspection and decision-making processes. The harm caused to both individuals and society as a whole must be considered. An act of bribery will usually directly affect a few people, such as unsuccessful bidders for a contract, but also has an effect on the general integrity of the bidding system and hence on many future contracts, for example. It is at this stage that distinctions between public-sector and private-sector corruption often come into play: bribing public officials is almost always seen as more serious than private commercial misconduct. The seniority of those involved in corruption is also a factor, as is an assessment of whether corruption has become widespread and institutionalised or whether it occurs only in occasional cases.

12. In developing countries, corruption has hampered national, social, economic and political progress. Public resources are allocated inefficiently, competent and honest citizens feel frustrated, and the general population's level of distrust rises. As a consequence, productivity is lower, administrative efficiency is reduced and the legitimacy of political and economic order is undermined. The effectiveness of efforts on the part of developed countries to redress imbalances and foster development is also eroded: foreign aid disappears, projects are left incomplete, and ultimately donors lose enthusiasm. Corruption in developing countries also impairs economic development by transferring large sums of money in precisely the opposite direction to what is needed. Funds intended for aid and investment instead flow quickly back to the accounts of corrupt officials, which tend to be in banks in stable and developed countries, beyond the reach of official seizure and the random effects of the economic chaos generated by corruption at home. The reverse flow of capital leads in turn to political and economic instability, poor infrastructure, education, health and other services, and a general tendency to create or perpetuate low standards of living. Some of these effects can be found in industrialized countries, although here the ability of various infrastructures to withstand, and in some cases combat, corruption is greater.

13. As legitimate economic activities have globalised, the corruption imbedded in many such activities has done the same, making transnational corruption a serious problem. A key problem associated with transnational commerce and corruption is the speed with which corrupt values and practices can be spread, and the problem is so

pervasive that it can be difficult – and also pointless – to determine who has corrupted whom. Companies seeking to do business in corrupt regions learn that undue influence is needed and how to exert it. Previously uncorrupt regions easily fall into corrupt practices when offered corrupt inducements by foreign companies. The pressure of competition operates on all of the actors: companies which do not offer bribes lose business to those which do, and officials who are not corrupt see those around them being enriched.

14. Some forms of otherwise-domestic corruption are also driven in part by transnational competition. Many countries have seen basic minimums in areas such as employment or labour standards, occupational safety, anti-pollution and other environmental standards compromised, either as a result of corruption on the part of legislators or administrators at home, or as a result of the need to compete with other jurisdictions where this has occurred. National budgets have also been eroded by the concession of excessive tax advantages and incentives to corporations or industries offered in competition with other regions.

15. The amounts of money involved in various forms of transnational corruption are so large that they affect not only the integrity of domestic economies but international financial systems as well. It was recently estimated that the amounts corruptly exported from Nigeria alone exceeded $100 billion between the mid-1980s and 1999. According to a United States Senate Investigation, more than $1 Trillion in total illicit funds flows through the international financial system annually, about half of it through U.S. banks, although this includes proceeds from drug-trafficking and other crimes that might not be considered as corruption, depending on how it is defined.

16. The enormous amounts involved also form a further incentive to adopt practices which are corrupt or which further corruption in order to attract deposits and investments. Money-laundering and related practices become very lucrative, and the economies involved quickly become dependent on the substantial revenues generated. This tends to produce an atmosphere which has been described as "competitive deregulation", in which jurisdictions which closely monitor transactions and which have relatively low thresholds of bank secrecy and other anti-money laundering measures find themselves unable to compete with jurisdictions which have lower standards.

17. Corruption is both created by and attractive to organized crime, both at the domestic and international levels. Apart from the obvious incentives for organised criminal groups to launder and conceal their assets, various forms of corruption allow such groups to minimise the risks and maximise the benefits of their various criminal enterprises. In the case of organized crime, corruption is even more dangerous because of the organization involved. Officials can be bribed to overlook the smuggling of commodities ranging from narcotics to weapons to human beings, for example, and in cases where one element of a criminal justice system is not corrupt it can either be corrupted using more coercive means or another element can be corrupted in its place. Junior officials who will not accept bribes often find themselves threatened, and if a junior official takes action, such as seizing contraband or arresting smugglers, the attention of organized crime simply shifts to attempts to

corrupt prosecutors, judges, jurors or others in a position to influence the case. The next chapter will critically assess the impact of national and international anti corruption and present some of the recent experience from international anti corruption efforts over the last decade including the lessons learned from United Nations Centre for International Crime Prevention (CICP) who's Global Programme against Corruption (GPAC) is currently working in 8 Pilot Countries.

2. Impact of Current Anti-Corruption Initiatives

a. Lessons learned

19. Reducing corruption requires a broad range of integrated, long-term, national international and sustainable efforts and reforms. In partnership, the government, the private sector and the public need to define, maintain and promote performance standards that includes decency, transparency, accountability, and ethical practice in addition to the timeliness, cost, coverage and quality of general service delivery.

20. Education and awareness raising that foster law-abiding conduct and reduce public tolerance for corruption are central to reducing the breeding ground for corruption. The criminal justice system and its professionals must themselves be free of corruption and must play a major role in defining, criminalizing, deterring and punishing corruption.

21. In the course of the last decade a series of crucial lessons have emerged from the fight against corruption. Unfortunately, it must be said that far too often, these derive from failures rather than success. These include:

a. Economic growth is not enough to reduce poverty: Unless the levels of corruption in the developing world are reduced significantly, there is little hope for sustainable economical, political and social development. There is an increasing consensus that if left unchecked, corruption will increase poverty and hamper the access by the poor to public services such as education, health and justice. Corruption also tends to increase the gap between rich and poor, a factor in destabilising societies and contributing to political unrest, terrorism and other problems. Besides recognising the crucial role of good governance for development, the efforts undertaken so far to actually remedy the situation have been too limited in scope. Curbing systemic corruption will take stronger operational measures; more resources and a longer time horizon than most politicians will admit or can afford. The few success stories, such as Hong Kong, Botswana or Singapore, demonstrate that the development and maintaining of a functioning integrity system needs both human and financial resources exceeding by far what is currently being spent on anti-corruption efforts in most developing countries.

b. Need to balance awareness raising and enforcement: The past decade has been characterised by a substantial increase of awareness of the problem. Today the world is confronted with a situation where in most countries not a day passes without a political leader claiming to be eradicating corruption. However, it emerges that this increase in the awareness of the general public all too often is not accompanied by adequate and visible enforcement. In various countries this situation has led to growing cynicism and frustration among the general public. At the same time it has become clear that public trust in the government anti-corruption policies is key.

c. It takes integrity to curb corruption: Countless initiatives have failed in the past because of the main players not being sufficiently "clean to withstand the backlash that serious anti-corruption initiatives tend to cause. Successful anti-corruption efforts must be based on integrity, credibility and trusted by the general public. Where there is no integrity in the very system designed to detect and combat corruption, the risk of detection and punishment to a corrupt regime will not be meaningfully increased. Complainants may not come forward if they perceive that reporting corrupt activity exposes them to personal risk. Corrupt activity flourishes in an environment where intimidating tactics are used to quell, or silence, the public. When the public perceives that its anti-corruption force can not be trusted, the most valuable and efficient detection tool will cease to function. Without the necessary (real and perceived) integrity, national and international "corruption fighters" will be seriously handicapped. One could argue that most international agencies have not demonstrated sufficient integrity or determination to curb corruption. These agencies have not accepted that integrity and credibility must be earned based upon "walk rather than talk". The true judges of whether or not an agency has integrity and credibility are not the international agencies themselves but rather the public in the recipient country.

d. Curbing Corruption is time-consuming and expensive: Building integrity to curb corruption is a major undertaking, which cannot be accomplished quickly or cheaply. Hong Kong has been at it since 1974 allocating "serious money" from the regular budget mounting to US$ 90 Million or US$ 12 per capita per year in 1999.

e. Importance of involving the public as the victims of corruption: Most donor-supported anti-corruption initiatives primarily involve the people who are paid to curb corruption. Very few initiatives involve the people suffering from the effects of corruption. There is a need for more local initiatives involving victims, empower them, encourage them to play an active role in curbing corruption and to resist further attempts to victimise them. Victims also help to educate other social groups about the true cost of corruption.

f. Managing Public Trust is critical: While Hong Kong has monitored the public's confidence in national anti-corruption agencies annually since 1974,few development agencies or anti corruption agencies of Member States have access to similar data. The larger question is whether the development agencies, even with access to such data, would know how to improve the trust level with the public they are to serve. Another question is whether they would be willing to take the necessary and probably often painful actions necessary to improve the situation.

g. Money laundering supports corruption and vice versa: The media frequently links 'money laundering' to illicit drug sales, tax evasion, gambling and other criminal activity. While it is hard to know the percentage of illegally gained laundered money derived from corruption, it is certainly sizeable enough to deserve prominent mention. At the same time, it is clear that corruption itself affords opportunities for money laundering to move and hide the proceeds of every type of crime.

h. Identifying and recovering stolen assets is a major challenge: According to the New York Times as much as $1trillion in criminal proceeds is laundered through banks world wide each year with about half of that moved through American banks. In developing

countries such as Nigeria, this can be translated into US$ 100 Billion stolen by corrupt regimes over the last 15 years between 1983-1998. Even when corruption is brought to an end, new governments and officials face numerous hurdles recovering proceeds, not the least of which is the establishing of their own legitimacy and credibility in the eyes of the international community.

i. Need for international measures: To curb national and international corruption there is a need to promote and strengthen measures to prevent and combat more effectively corruption and to promote, facilitate and support international cooperation to curb corruption. Quality in government demands that anti corruption measures be implemented world wide to identify and deter corruption and all that flows from it. This and similar issues are expected to be addressed by a new UN Convention against Corruption expected to be ready for ratification by 2003. It is crucial to recognise the dire need for an integrated international approach in preventing corruption, money laundering and to facilitate asset recovery. When one accept the idea that lack of opportunity and deterrence are major factors helping to reduce corruption, it follows that when ill-gotten gains are difficult to hide, the level of deterrence is raised and the risk of corruption is reduced.

There is a need for a global and integrated approach that is evidence based, inclusive, transparent, comprehensive, non-partisan and impact oriented approach, negotiated and accepted by the international community. It has emerged clearly that national institutions cannot operate successfully in isolation but there is a need to create new strategic partnerships across all sectors and levels of government and civil society in the effort to build integrity to cub corruption. Abuse of power for private gain can only be fought successfully with an international, dynamic, integrated and holistic approach introducing changes both in developed and developing countries alike.

d. How Successful are we in Curbing Corruption?

22. Both Hong Kong and Botswana seen as the most successful countries fighting corruption, put in a serious effort both when it comes to the political commitment, resources allocated and the approach they selected. In both countries an integrated approach was selected and implemented by a strong and independent anti corruption agency. An integrated approach has to be evidence based non-partisan, transparent, inclusive, comprehensive and impact oriented. The good news is that, in these two countries, substantial progress has been made. The bad news is that such success stories are few and far between.

23. A broad assessment of on-going donor supported anti corruption initiatives around the developing world against these six characteristics suggest the following:

- Regarding the need to assess the impact of anti-corruption efforts with measurable facts, there seems to be a lack of hard evidence regarding the causes, types, levels and cost of corruption. Few donors have good data regarding leakage due to corruption on their own projects and when discussing money laundering or illicit transfer of illicit funds as global problem nobody seems to have solid facts about the amounts diverted due to corruption and/or other crimes? Regarding the inclusion of a broad based group of stakeholders in the process (inclusiveness), the general situation seems to be better. As a result of good awareness raising

efforts done by NGOs such as Transparency International (TI), most donors advocate an approach that would involve the civil society in the effort to build integrity to curb corruption. However, this does not guarantee the involvement of the victims of corruption who are often much more difficult to involve. Donors tend to prefer high tech, international consultants and lately internet/ video conferencing when addressing corruption. Victims of corruption are often ignored. The empowerment of the victims of corruption is critical for the success of any anti corruption strategy and they are better reached through "low tech," e.g. local languages, local institutions using face to face meetings or local radio.

- Regarding non-partisanship of the process the picture seems to be less clear. Until 7 years ago corruption was a taboo word in the World Bank and if anything, its legal department would categorise anti corruption projects as political interference in the recipient country. Many donors would still avoid getting into politically sensitive issues and as a result reluctantly support non-partisan anti-corruption strategies such as: (i) involving the opposition in overseeing the effort to build integrity to curb corruption (National Integrity Steering Committee) and/or (ii) allow independent anti-corruption watchdog agencies investigate any corrupt officials even if they happen to be ministers in a sitting government.

- Regarding comprehensiveness many donors seem to have, in principle, accepted the comprehensive country framework introduced by the World Bank in the late 90s. This, however, does not guarantee an integrated, multi-disciplinary approach when it comes to helping countries build integrity to curb corruption. One example is the role of international financial institutions when it comes to making it harder for corrupt leaders to transfer illicit funds. A truly integrated anti corruption strategy would have to deal with such things as the role of banks accepting the transfer of US$ 300 million from corrupt leaders into their own accounts abroad and large multi-national companies bribing underpaid civil servants.

- Regarding the transparency of the aid process, the situation is improving. However, there is still inadequate sharing of information among donor agencies and insufficient transparency when it comes to sharing of realistic assessments of leakage in the organisations' own projects. Another key to increased accountability of the aid process, is to give the potential beneficiary of the aid process more timely access to project information and to involve them in the monitoring of the projects.

- Regarding the impact orientation of the aid process, there is much more work to be done. To measure the impact of an anti corruption initiative there is a need to identify key impact indicators based on a combination of facts and perceptions such as: (i) public trust in the anti-corruption institutions; (ii) % leakage from donor projects (iii) levels of corruption within ministries, and (iv) levels of corruption in the criminal justice system. These impact indicators needs to be assessed in order to establish base line data, and then the impact of the anti corruption program needs to be measured against the same baseline. Very few Member States have so far identified these measurable impact indicators,

established a baseline or have measured their performance against the same base line.

24. The next chapter presents the progress made so far to negotiate a new United Nations convention against corruption. The draft purpose of the new convention is to: (i) promote and strengthen measures to prevent and combat more effectively corruption or acts related specifically to corruption, (ii) promote, facilitate and support international cooperation in the fight against corruption, including the return of proceeds of corruption.

25. The dead line for completion of negotiations is end of 2003 and so far Ad Hoc Committee meetings were held in Jan/Feb and June and the third meeting is scheduled for 30 Sep-11 Oct 2002. Another three more sessions are planned for 2003 and a high level signing conference is planned for 2003 in Mexico.

3. UN Convention against Corruption

a. Draft Preamble

26. The General Assembly and the State Parties to this Convention are:

Concerned about the seriousness of problems posed by corruption, which may endanger the stability and security of societies, undermine the values of democracy and morality and jeopardize social, economic and political development,

Concerned also about the links between corruption and other forms of crime, in particular organized crime and economic crime, including money-laundering,

Concerned further that cases of corruption, especially on a large scale, tend to involve vast quantities of funds, which constitute a substantial proportion of the resources of the countries affected, and that their diversion causes great damage to the political stability and economic and social development of those countries,

Concerned that the illicit acquisition of personal wealth by senior public officials, their families and their associates can be particularly damaging to democratic institutions, national economies and the rule of law, as well as to international efforts to promote economic development worldwide.

Convinced that corruption undermines the legitimacy of public institutions and strikes at society, moral order and justice, as well as at the comprehensive development of peoples,

Convinced also that, since corruption is a phenomenon that currently crosses national borders and affects all societies and economies, international cooperation to prevent and control it is essential,

Convinced further of the need to provide, upon request, technical assistance designed to improve public management systems and to enhance accountability and transparency,

Considering that globalization of the world's economies has led to a situation where corruption is no longer a local matter but a transnational phenomenon,

Recognizing that international cooperation is essential in the fight against corruption

Determined to prevent, deter and detect in a more effective manner international

transfers of assets illicitly acquired by , through or on behalf of public officials and to recover such assets on behalf of victims of crime and legitimate owners

Bearing in mind that the eradication of corruption is a responsibility of States and that they must cooperate with one another if their efforts in this area are to be effective,

Bearing also in mind ethical principles, such as, inter alia, the general objective of good governance, the principles of fairness and equality before the law, the need for transparency in the management of public affairs and the need to safeguard integrity,

Acknowledging the fundamental principles of due process of law in criminal proceedings and proceedings to adjudicate property rights

Commending the work of the Commission on Crime Prevention and Criminal Justice and the Centre for International Crime Prevention of the Office for Drug Control and Crime Prevention of the Secretariat in combating corruption and bribery,

Recalling the work carried out by other international and regional organizations in this field, including the activities of the Council of Europe, the European Union, the Organisation for Economic Cooperation and Development and the Organization of American States.

b. The Mandate

27. In its resolution 55/61, the General Assembly established an ad hoc committee to negotiate a convention against corruption. That resolution also outlined a preparatory process designed to ensure the widest possible involvement of Governments through intergovernmental policy-making bodies. At the time that the General Assembly was considering resolution 55/61, Nigeria, on behalf of the Group of 77 and China, proposed to the Second Committee of the General Assembly a draft resolution on "the illegal transfer of funds and the repatriation of such funds to their countries of origin". As originally proposed, the draft resolution was calling for the negotiation of a separate instrument on this subject. Through negotiations at the General Assembly, the two resolutions were brought in line and the issue of asset recovery was placed squarely within the framework of the new convention.

28. In resolution 56/260 of 31 January 2002, recommended by an Intergovernmental Expert Group, which was convened in Vienna in July 2001, the General Assembly decided that the ad hoc committee established pursuant to resolution 55/61 should negotiate a broad and effective convention, which, subject to the final determination of its title, should be referred to as the "United Nations Convention against Corruption". The General Assembly requested the Ad Hoc Committee, in developing the draft convention, to adopt a comprehensive and multidisciplinary approach. It also decided that the Ad Hoc Committee should be convened in Vienna in 2002 and 2003, as required, holding no fewer than three sessions of two weeks each per year, and requested it to complete its work by the end of 2003. This deadline was confirmed by a draft resolution that the General Assembly will consider next fall, on the recommendation of the Commission on Crime Prevention and Criminal Justice. According to this resolution, the Assembly will accept the offer of Mexico to host a high-level signing conference for the Convention before the end of 2003.

29. The idea for the UN Convention against Corruption emerged during the negotiations of the United Nations Convention against Transnational Organised Crime (TOC Convention). Because of the focused nature and scope of the TOC Convention, States agreed that the multifaceted phenomenon of corruption could more appropriately be dealt with in a self-standing instrument. The draft text, which is the basis for the negotiations, is the consolidation of proposals received from 26 countries and covers the following issues, in accordance with the terms of reference provided by the General Assembly: (1) definitions; (2) scope; (3) protection of sovereignty; (4) preventive measures; (5) criminalization; (6) sanctions and remedies; (7) confiscation and seizure; (8) jurisdiction; (9) liability of legal persons; (10) protection of witnesses and victims; (11) promoting and strengthening international cooperation; (12) preventing and combating the transfer of funds of illicit origin derived from acts of corruption, including the laundering of funds, and returning such funds;(13) technical assistance; (14) collection, exchange and analysis of information; (15) and mechanisms for monitoring implementation.

30. The Ad Hoc Committee held its first session from 21 January to 1 February 2002 and its second session from 17 to 28 June 2002. It completed the first reading of the draft Convention, revising the original text and consolidating options put forward by different countries.

c. The Negotiation Process for the UN Convention against Corruption

31. The Ad Hoc Committee that carried out the negotiations of the United Nations Convention against Transnational Organized Crime debated whether corruption should be covered by that Convention. The Ad Hoc Committee agreed on the inclusion of limited provisions on corruption in the United Nations Convention against Transnational Organized Crime on the understanding that a separate instrument would be envisaged to cover corruption in an appropriate manner. The Convention against Transnational Organized Crime contains an article criminalizing corruption and an article with a number of measures against this criminal activity. The article criminalizing corruption includes also a basic definition of public officials, essentially deferring to national law.

32. During this first reading, the following key issues emerged.

i. *The definition of "public official."* The debate revolved around how broad this definition would be and whether the Convention would contain an "autonomous" definition or whether the matter would be left to national law. It was pointed out that a third option might be to have a definition in the Convention setting the standard, and allow countries to expand it if they wish.

ii. *The definition of "corruption."* Also on this issue the debate was about how broad this definition would be. An interesting proposal made during the first session of the Ad Hoc Committee was not to include a specific definition in the Convention but approach the issue through the criminalization provisions, i.e., have the Convention establish certain acts of corruption as criminal offences. An equally interesting discussion related to whether agreement

should be sought first on the definition of corruption or on the offences to be established. This discussion provided a hint of the more central question of what countries would wish the Convention to be and to accomplish. Criminalization would be more important to a Convention that would be intended as an international cooperation tool, while a Convention negotiated for the purpose of setting standards might not give the same weight to criminal law.

iii. *The question of private sector corruption:* Most countries expressed a strong preference for a Convention that would cover private sector corruption. For some other countries the matter was very complex, creating many conceptual, legal and procedural problems, which might not lend themselves to globally acceptable solutions.

iv. The question of how extensive and how binding the provisions on prevention would be. The current draft includes substantial provisions on prevention. The debate appears to be related to the expected nature and intended accomplishments of the Convention, as indicated above.

v. *The question of asset recovery*: During the second session of the Ad Hoc Committee, CICP organized a one-day technical workshop on that subject. The purpose of the workshop was to provide interested participants with technical information and specialized knowledge on the complex issues involved in the question of asset recovery. CICP is also preparing a study for the Ad Hoc Committee, pursuant to ECOSOC resolution 2001/13. The workshop and CICP's work in the past two years (including with the submission of substantive documents to the General Assembly) have demonstrated the complexity of the matter. However, the issue remains highly political, with developing countries wishing to establish through the Convention the principle of exclusive ownership of the State over illicit funds and assets, which in turn would lead to a right of return of those assets

vi. *The issue of the monitoring mechanism for the implementation of the Convention:* It appears that, at a minimum, the Convention will foresee an implementation mechanism modeled after the United Nations Convention against Transnational Organized Crime (a Conference of the Parties with considerable monitoring functions and the discretion to set up subsidiary monitoring bodies). However, the proposals currently under consideration would go farther, towards a more detailed "peer review" regime, including through the establishment of a body of independent experts.

33. The Ad Hoc Committee has set a very good pace, which is reason for optimism about the final outcome of its work, including meeting its deadline. The principal strengths of the Ad Hoc Committee are: (a) the very good spirit prevailing among delegations; (b) the experience those delegations have gained by negotiating the United Nations Convention against Transnational Organized Crime; (c) a strong expanded bureau; and (d) a fully participatory process, manifested by high levels of attendance and a good mix of negotiators and practitioners making up delegations.

34. There are two main approaches taken by Member States in the context of negotiating the Convention. The first considers the agreements reached under the Convention against Transnational Organised Crime as the latest state of the art instrument and therefore as a point of reference also for all the provisions of a future Convention against Corruption. The second see the TOC Convention rather as a point of departure on which a future Convention should be build, however, at the same time going beyond it. Currently, the first view seems to be shared by most delegations, in particular regarding the Chapters on adjudication, sanctions, jurisdiction and international cooperation.

d. Key Aspects of the new Convention as discussed in the second meeting

35. The most controversial aspects of the negotiations are the chapters on asset recovery and the monitoring of the future Convention's implementation. As far as the first is concerned, specific efforts have been made to enhance a common understanding of the various issues involved through the organisation of a technical workshop. Such issue include the terminology used; the methods of recovery (criminal/ civil); to whom the assets should be returned to; who should be deciding the compensation of eventual victims; and, who is to be considered the victim

36. As far as the Chapter on monitoring of the implementation is concerned, various proposals are being discussed. Austria and the Netherlands in their proposal elaborated further on the concept of a conference of the state parties, already applied in the TOC Convention, by adding an operational secretariat consisting of personalities renown for their integrity. In contrast, the proposal of Norway suggests a system of peer review, including sanctions for non-compliance.

37. Other issues which will need further in depth discussion include the definition of corruption, the term "public servant" as well as the question if and to what extent private sector corruption should be covered under the Convention. In addition, defining the concepts of whistleblower, informant and witness will present a challenge to the Ad hoc Committee.

38. In conclusion, to date the negotiations had been conducted in an extremely positive climate stemming from the mutual trust built during the two year negotiations of the Convention against Transnational Organized Crime. In order to maintain this productive environment the secretariat will continue to try and avoid any politicisation of the most controversial subject matter.

39. In chapter IV the paper presents other anti corruption initiatives currently being implemented by the UN. As a result of the newly established interagency anti corruption coordination mechanism, all key UN agencies involved in helping member states in building integrity to curb corruption, filled in a "data-sheet" describing who was doing what where and when. As result of this data base, which is currently on the Web (http//www.odcp.org/corruption.html) it was possible for CICP to present the other key anti corruption initiatives.

4. Other United Nations Initiatives

a. United Nations Development Programme (UNDP)

40. Overview: UNDP's approach to integrity improvement focus on: (i) prioritize capacity development of national and local actors/institutions, (ii) ensure efficient, responsive and accountable public sector, (iii) facilitate citizen's participation in decision making and governance and, (iv) build partnerships and encourage closer co-operation.

41. UNDP's Programme for Accountability and Transparency (PACT) is focusing on: (i) strengthening financial management and accountability (initial entry point), (ii) improving accountability, transparency & integrity in democratic governance, (iii) strengthening national capacity to prevent & control corruption (policies/institutions), (iv) facilitating local co-ordination, consensus and coalition-building, (v) knowledge networking, and (vi) on forging communities of practice and external partnerships.

42. UNDP is currently also helping member states strengthening their national capacities as follows:

(i) In Asia, UNDP is working in China to reform administrative structures to improve performance and create clean government, while in Mongolia the development of national anti-corruption programme & legislation is being supported. In East Timor the Office of the Inspector General is being strengthen through training and in Bangladesh the capacity of Office of Controller and Accountant General for oversight is being enhanced and CSO/ government coalition for monitoring is currently being facilitated. In Pakistan learning guide on anti-corruption is being developed and in the Philippines media is being strengthened via investigative journalism.

(ii) In Africa, UNDP is working in Nigeria supporting the independent anti-corruption commission and UNDP is also facilitating donor co-ordination in the anti corruption field
In Mozambique UNDP is targeting municipal accountability and civic awareness and these two issues are also linked with Public Sector Reform. In Tanzania the Prevention of Corruption Bureau is being assisted and public awareness is raised to improve impact monitoring of anti corruption programmes.

(ii) In Latin America, UNDP is helping Bolivia -elaborate the Plan National Integridad, while in Panama they are helping promote national dialogue and civic education, In Ecuador – helping is being given to improve accountability in decentralisation and local governance

43. Another key anti-corruption initiatives supported by the UNDP is Knowledge Networking where UNDP has been involved in: (i) facilitating preparatory regional electronic discussion forum and workshops at the 10th IACC and (ii) establishing UNDP Communities of Practice in Democratic Governance.

44. A second key UNDP anti-corruption initiative is focusing on building partnerships. These partnerships are supported through the Partnership for Transparency Fund and among other things ensures independent civil society voice in the fight against corruption. Such partnerships are currently being facilitated through small grants to: Bulgaria, Pakistan, India, Latvia, Brazil, Cambodia

45. Future Directions UNDP's anti-corruption programme is to: (i) move from rhetoric to focused actions and follow-up (e.g. capacity building of key sectors), (ii) facilitate mobilization and political commitment at all levels, and (iii) strengthen collaboration and partnerships (e.g. donors, governments, CSOs & private sector) Codify & share knowledge

b. Department of Economic Social Affairs (DESA)

46. DESA's corruption prevention activities and other capacity-building activities are mandated by General Assembly Resolution 50/225 on Public Administration and Development, which underlines the importance of transparent and accountable governance and administration in all public and private national and international institutions. Meetings of the Group of Experts on the United Nations Programme on Public Administration and Finance have made specific recommendations to continue activities to promote professionalism, ethics, accountability and transparency in the public sector.

47. DESA's Division for Public Economics and Public Administration (DPEPA) has responded to these challenges through strengthening public sector institutions. The idea is to remove those opportunities, set up a system to detect corrupt public officials and preserve honest ones, and enlist private sector and civil society organisations in a vigilant watch against corruption.

48. DESA'S Mandate is to promote a multi-dimensional and integrated approach to development and Department of Public Administration's (DPEPA) mandate is to: (i) assisting in intergovernmental policy deliberations, (ii) assisting Member States in improving public administration and finance systems and (iii) supporting capacity building, including institutional reinforcement and human resources development.

49. DESA's past anti corruption activities includes: (i) inter-regional, regional and national policy for anti corruption initiatives, (ii) publications , (iii) training material, (iv) Charter for the Public Service in Africa, (v) support to policy and programme research, (vi) policy advisory services, and (vii) facilitate partnerships with international, national, and non-governmental organizations

50. Policy fora themes addressed by DESA includes (i) corruption in government , (ii) professionalism and ethics in the public service, (iii) enhancing transparency and accountability, (iv) foreign aid accountability, (v) accounting and audit standards, (vi) professionalism and ethics in the public service (Overview - 2000), (vii) promoting ethics in the public service in Brazil (2000), (viii) public service in transition: ethical values and standards for Central & Eastern Europe –(1999), (ix) the civil service in Africa: new challenges, professionalism and ethics (2000), and finally (x) Public Service in Africa (2 volumes - 2001/2)

51. DESA has developed three Charters for Public Service in Africa and is currently offering policy advise in Namibia, Thailand, Yemen and Brazil.

52. DESA is working in partnerships at the international level with UNDP, OAU, OECD, CAFRAD and at the national level in Brazil, Canada, Greece, Morocco, United States, Republic of Korea, others (long history of technical cooperation) and at the non-governmental/Professional level with TI, AAPAM, APSA, GCA, IAD, IIAS, IIPE, INTOSAI

53. DESA's Future Activities include: (i) finalizing work plan for biennium 2002/3 and other current projects, (ii) conclude SPPD study on transparency and accountability in the Arab Region involving 8 countries, (iii) finalize a major conceptual paper on the theme of integrity or ethics infrastructure and (iv) initiate an on-line chat room on transparency and accountability (in discussion)

c. ODCCP's Global Programme Against Corruption

54. Through its Global Programme against Corruption (GPAC), the Centre for International Crime Prevention (CICP) is, on request only, active in providing assistance to countries in their efforts to build integrity to curb corruption, advocating an integrated approach on the premise that anti-corruption strategies need to be evidence based, transparent, inclusive, non-partisan, comprehensive and impact oriented.

55. CICP's approach is to help Member States with: (i) assessing corruption with special focus on the judiciary; (ii) promoting integrity, efficiency and effectiveness of the judciary; and (iii) facilitating a comprehensive, evidence based and integrated approach, in collaboration and partnership with other donors and key stakeholders.

56. More specifically, priority activities identified to achieve these outcomes are:

i) *Technical Cooperation:* Developing pilot projects in Member States across the five regions of the world. Projects are currently being implemented in Colombia, Nigeria, South Africa, Hungary, Romania and Lebanon. Projects are being prepared in Afghanistan, Iran and Indonesia;

(ii) *Research*: Preparation and dissemination of Global Trends analyses of corruption, especially focusing on benchmarking, and proposing policies regarding remedies to be followed by anti-corruption agencies;

(iii) *Dissemination of Best Practices* through (a) Revision, expansion and dissemination of the UN Manual on Anti-Corruption Policy; (b) development and dissemination of a UN Anti-Corruption Tool Kit; (c) development and dissemination of Handbooks for Prosecutors, Investigators and Judges; and (d) development and updating a Web Page with CICP Publication Series.

(iv) *Reinforcing Judicial Integrity*: CICP is, since 2000 facilitating the work of a Chief Justice Group comprised of 8 Chief Justices from Common Law countries in Asia and Africa. The Judicial Group meets once a year and has

developed an agenda for strengthening judicial integrity and capacity which is currently being pilot-tested in Nigeria, Uganda and Sri Lanka. In order to share the findings from the pilots across all legal systems, a meeting to establish a similar Judicial Group for Civil Law countries is planned, in partnership with DFID (United Kingdom) and Transparency International for the third quarter of 2002. Key outcomes of the Judicial Group's work so far has been a Policy Paper on "Judicial Integrity" and an international Code of Conduct for Judges.

(v) *Interagency Coordination regarding anti corruption activities*
Pursuant to an initiative of the Deputy Secretary-General, CICP began organizing interagency coordination meetings in the anti corruption field in Vienna, linked with the sessions of the Ad Hoc Committee negotiating a new UN Convention against Corruption. The first such meeting was held in February 2002 and the second in July 2002. (See section IV D for more information)

57. The Global Programme against Corruption is implemented in cooperation with UNICRI , UNDCP , GTZ , DFID , USAID, Dutch Government, Transparency International, Gallup International and in close consultation with UNDP and DESA.

58. The Global Programme relies almost exclusively on voluntary contributions from Member States. Since its establishment in 1999, it has received approximately $3.5 million from the donor community. So far CICP has received no additional resources for the support of the negotiation process of the new Convention. Voluntary contributions have enabled CICP to cover the cost of participation of the Least Developed Countries in the negotiations.

d. Interagency Coordination to increase the Impact of Anti-corruption Programmes

59. While it was agreed that the United Nations Office for Drug Control and Crime Prevention (ODCCP) held the United Nations global legislative mandate on anti-corruption, it had become clear that there were a variety of anti-corruption initiatives by various United Nations agencies that needed to be coordinated. As a result it was agreed that to foster co-ordination of these efforts it would be useful for ODCCP to organise a broader interagency co-ordination mechanism in the anti corruption field.

60. During the first meeting the following issues were discussed: (i) involvement in anti-corruption activity and its evaluation; (ii) ways and means for enhanced coordination of anti-corruption activity; joint, collaborative and singular initiatives; (iii) the emerging new binding instrument—the UN convention against corruption—which will provide a normative framework for anti-corruption activity across agencies; (iv) challenges and common framework with respect to follow-up action for the coordination meeting(s).

61. In the second meeting the fact sheets developed as results of the first meeting on past, present and future anti-corruption activities had been filled in to serve as a basis for future coordination. Based on the findings from the fact sheets and the

discussion, the second meeting reached the following key conclusions and recommendations:

(a) The UN and its agencies, in co-operation with other international organizations, should be at the forefront of the battle against fraud and corruption because of the negative impact that corruption has on many aspects of their missions;

(b) Corruption has also to be tackled both externally and internally, as it presents financial, operational and reputational risks;

(c) Interagency co-ordination needs to be made a high priority to eliminate duplication and increase impact and visibility in the effort to help member states build integrity to curb corruption;

(d) Organizations should take a pro-active role, "mainstreaming integrity" into all their activities, as a core concern of all staff, implementing Ethics Programmes (they must "walk the talk" and role model the conduct they advocate for governments).

62. To serve all of these ends, the Interagency Coordination Mechanism in the anti corruption field should be strengthened and cooperation developed with other international organizations, also at the regional level, to maximize joint efforts, including the elaboration of a UN system-wide anti-corruption strategy and anti-corruption action plan, with measurable performance indicators.

e. Recommendations from the Interagency Coordination Process

63. The second Interagency Coordination meeting in Vienna (Jul 02) made the following recommendations :

- Increased investment in donor coordination. One institution has to be made responsible for donor coordination and sufficient resources have to be allocated for: all key organizations involved in anti corruption work to participate in two coordination meetings per year. Fact sheets recording who is doing or planning to do what, where and when have to be collected, verified and disseminated on the Web.

- Increase the search for best practice by launching a systematic action learning process across a representative sample of pilot countries. Different donors can conduct different pilots in different parts of world, The key is that the learning process has to be evidence based and impact oriented, requiring that base lines have to be established and measurable performance indicators have to be monitored. The outcome of this action learning process should be discussed at interagency anti corruption co-ordination meetings and made available on the internet.

- Broaden the donor coordination process to include all key organizations involved in supporting member states in anti corruption initiatives. A decision has to be made whether this coordination process should be a central/global one or whether it should be based on regional initiatives already in place.

5. Conclusion

64. The conclusion of this paper is that corruption is not going to be curbed neither nationally nor internationally unless a broad agreement is reached towards a more dynamic, integrated and global approach against corruption. For this global approach to be accepted and implemented globally, there is a need for a strong UN Convention against Corruption establishing efficient international anti corruption measures and implemented through strong international collaboration and coordination.

65. A number of factors can be identified not the least of which are the extreme difficulty of implementing a truly integrated approach and the lack of commitment of both donors and officials in recipient countries.

67. It often seems that donors are pretending to help curb corruption while the recipient countries are pretending to follow their guidance. The fact that most donors does not seem to be willing to "take the medicine they are prescribing for their clients", does not help the situation.

68. There is the fear that the situation may be worsening, but in truth the problem is so widespread and pervasive that one cannot really assess its full extent or whether it is expanding or not because of lack of evidence.

69. As a result the number of victims of corruption seems to be increasing and their situation seems to be worsening. At the same time the consequences for the responsible parties, the international and national civil servants seems, if anything, to be insignificant. The number of international civil servants who have been fired because of corruption on their development projects, is insignificant and certainly not matching the damage due to corruption.

70. What seems to be missing are:

(i) *a global, integrated, dynamic and holistic approach:* Apart from being evidence based, comprehensive, inclusive, non-partisan and impact oriented, this approach needs to address issues both in the North and the South. As an example the incentive structure and accountability of national and international civil servants needs to be addressed in a more realistic manner. Since there is still uncertainty on how to best build integrity to curb corruption, it might be necessary to initiate a global action learning process that allows us to pilot test different approaches and find out what works and what does not work.

(ii) *increased donor coordination and cooperation*: United Nations and its counterparts in the anti-corruption field could be much more effective and efficient in helping member states build integrity to curb corruption if their advise was more coordinated, consistent, evidence based, transparent, non-partisan, comprehensive and impact oriented.

(iii) *increased investment in the building of integrity to curb corruption*: It might be necessary to introduce a "Governance Premium Mechanism" where a

certain percentage (1 %) of all projects is set aside to be used by an independent anti-corruption body to protect the project funds to be diverted.

(iv) *increase real deterrence*: Corruption needs to be criminalized to increase the risk, cost and uncertainty for both national and international civil servants and businesses.

(v) *increased accountability*: National and international anti corruption policies and measures needs to be monitored using measurable impact indicators to help the public and other victims of corruption hold national and international civil servants accountable.

71. Building integrity to curb corruption at the national level is an extensive and on-going task. As an example Hong Kong has a regular budget that allocates US$ 12 per capita per year to curb corruption. In other words it is not an undertaking that can be accomplished quickly or inexpensively. It requires real, not merely expressed political will and the dedication of social and financial resources, which in turn only tend to materialise when the true nature and extent of the problem and the harm it causes to societies and populations are made apparent. Progress is difficult to achieve; if achieved, it is difficult to measure. The creation of popular expectations about standards of public service and the right to be free of corruption are important elements of an anti-corruption strategy. Yet the difficulties inherent in effecting progress involve careful management of and living up to public expectations. Winning public trust is key and it has to be earned.

72. When it comes building integrity to curb international corruption, the challenge might be even greater. A critical first step to curb global and tran-national corruption is to reach a broad international consensus regarding a UN conventiona against corruption that will establish better international anti corruption policies and measures and also strengthen coordination and collaboration.

73. As soon as the UN Convention against Corruption has been ratified it is critical that the necessary international and national political will and resources are being mobilised in a coordinated manner to secure a realistic implementation of a global evidence based, transparent, comprehensive, inclusive, non partisan and impact oriented approach.

6 Bibliographical References

Anderson, Neil. 1996. Evidenced-based Planning: The Philosophy and Methods of Sentinel Community Surveillance. EDI.

Buscaglia, Edgardo. 2000. "Judicial Reform in Developing Countries: Its Causes and Economic Consequences" Esssays in Public Policies. Palo Alto, CA: Stanford University Press.

Buscaglia, Edgardo. 2001. "A Governance-based Analysis of Judicial Corruption: Perceptional vs. Objective indicators" International Review of Law and Economics. Elsevier Science.

Buscaglia, Edgardo and William Ratliff.2001. Law and Economics in Developing Countries. Palo Alto, CA: Stanford University Press

Bryson, J. 1996. Creating and implementing your strategic plan: a Workbook for Public and Nonprofit Organisations. San Francisco: Jossey-Bass Publishers.

Chong Alberto and César Calderón. 1998. "Institutional Efficiency and Income Inequality: Cross Country Empirical Evidence" Mimeograph, World Bank, Washington, D.C.

CIETinternational. 1998. Uganda National Integrity Survey 1998: Final Report, Washington, D.C.: EDI, World Bank.

CIETinternational. 1995. Performance and Perceptions of Health and Agricultural Services in Uganda.

Fillip, B. (1997). 'The World Bank and Governance: A Process Approach to Policy Analysis'. Unpublished PhD thesis, University of Pittsburgh, p. 70.

Fink, A. 1995. The Survey Kit (9 vols.) Thousand Oaks, Calif.: Sage Publications.

Goerzen, Jean (Ed.). 1996. Service Delivery Surveys: Applying the Sentinel Community Surveillance Methodology, Country Overviews. EDI.

Grey, C. 1998. Corruption and Development. Finance and Development. Volume 35.

Grindle, Merilee S. 1996. Challenging the State: Crisis and Innovation in Latin America and Africa. Cambridge University Press.

Heymann, P., "Democracy and corruption", [1997] 20 Fordham L. Rev. pp. 323-346 at 324-25.

IRIS. 1996. Governance and the Economy in Africa: Tools for Analysis and Reform of Corruption. University of Maryland at College Park.

Kaufmann, D. 1997. Corruption: The Facts. Foreign Policy. Summer.

Klitgaard, R. 1988. Controlling Corruption. Berkeley, CA: University of California Press. Kpundeh, S. Langseth, P. (eds.) 1997. Good Governance for Sustainable Development: Proceedings of a Workshop for Parliamentarians in Kampala, Uganda. Washington, The World Bank.

Lai A. 1999; Corruption Prevention: A Hong Kong Perspective, Proceedings from the 9th SPAC Conference in Milan, 19-20 November 1999.

Lai, A. 2001; Building Public Confidence; The Hong Kong Approach; in Forum on Crime and Society (forthcoming 2002)

Langseth. P. 2002. The United Nations' Approach to Helping Countries Help Themselves by Strengthening Judicial Integrity; Case Study from Nigeria"in: Corruption, Integrity and Law Enforcement, Edited by Cyrille Finjaut and Leo Huberts, Kluwer Law International, 2002

Langseth, P. Stolpe, O. 2001. Strengthen the Judiciary against Corruption. International Yearbook for Judges, Australia.

Langseth. P. 2000. Integrated vs Quantitative Methods, Lessons Learned, NORAD's Conference in Oslo, Oct. 2000.

Langseth, P. 2000. Prevention: An Effective Tool to Reduce Corruption, ISPAC 1999 Conference on Responding to the Challenge of Corruption, Milan, 19-20 November.

Langseth, P. et al. 1998. Building Integrity to Fight Corruption in Uganda; Fountain Publishing House, Kampala, Uganda.

Marquette, H. 2002, Politics & the World Bank's Anti-Corruption Programme, Paper prepared for the Workshop on Anti-Corruption and the Transfer of Standards in Central and Eastern Europe Prague, 21-23 March 2002

Mauro, P. 1995. Corruption and Growth. Quarterly Journal of Economics; 110:681-712. August.

Mauro, P. 1997. Why Worry about Corruption? Washington, D.C.: International Monetary Fund.

National Performance Review Office, 1994; Office of the Vice President of the United States. Putting Customers First: Standards for Serving the American People (Report of the National Performance Review). Washington, D.C.,

Pope; J.. 2000. Transparency International, The Tl Sourcebook, Berlin: Transparency International, October 2000.

Pope, J., (Ed). 1996. The TI Source Book. Berlin: Transparency International.

Pope, J. (Ed.). 1997. National Integrity Systems: The TI Source Book (second edition). EDI. Washington, D.C.: World Bank

Presidential Commission of Inquiry Against Corruption. 1996. Report on the Commission on Corruption. Dar-es-Salaam.

Presidential Commission of Inquiry Against Corruption. 1996. Service Delivery Survey: Corruption in the Police, Judiciary, Revenue, and Lands Services. Dar es Salaam.

Rose-Ackerman, S. 1997. Corruption and Development. Paper prepared for the Annual World Bank Conference on Development Economics. Washington, D.C., April 30 and May 1.

Selener, D. 1997. Participatory Action Research and Social Change. Ithaca, New York: Cornell Participatory Action Research Network, Cornell University.

Shihata, I.F.I.,1997, "Corruption, a general review with emphasis on the World Bank", [1997] 15 Dickinson J. of Int'l Law, pp.451-485 at 451-57.

Smith, S., D. Williams, and N. Johnson. 1997. Nurtured by Knowledge: Learning to Do Participatory Action-Research. New York: The Apex Press.

Stevens, Robert .1993. The Independence of the Judiciary: The View from the Lord Chancellor's Office. Oxford: Oxford University Press.

Stone, Andrew. 1992. Listening to Firms: How to Use Firm Level Surveys to Assess Constraints on Private Sector Development. World Bank Working Paper Series 923, World Bank.

Urban Institute. 1998. Selected Urban Institute Staff Reports and Publications on Performance Measurement and Program Evaluation. Washington, D.C.: Urban Institute Press.

United Nations, (2002), Revised draft United Nations Convention against Corruption, A/AC.261/3/Rev.

CICP, United Nations, Anti Corruption Tool Kit (forthcoming in 2002)

CICP, United Nations, Anti Corruption Manual for Policy Makers, (forthcoming in 2002)

Wei, S. 1997. How Taxing is International Corruption. NBER Working Papers. No 6030. May.

Williams, R., ed., Explaining Corruption, vol. 1 of The Politics of Corruption, Elgar Reference Collection, UK, 2000.

World Bank. 1997. Helping Countries Combat Corruption: The Role of the World Bank. Poverty Reduction and Economic Management Network. Washington, D.C.: World Bank.

D. Assessing Judicial Integrity and Capacity in Nigeria

by
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I am delighted to be invited to the workshop on Strengthening of Judicial Integrity and Capacity Assessment in Delta State. We are indeed happy to be back in Delta State again eight months after our first meeting with the Chief Judge and other stakeholders in which the modalities for researching into state judicial integrity in the Delta State Pilot Courts were extensively discussed.

The Nigerian Institute of Advanced Legal Studies have, over the years, gained international reputation for its capacity to conduct evidenced-based empirical research in law and related disciplines. Our research into the Rights of the Child and the latest one on the new Procedure Rules for Lagos State did not only earn public acclamation but charted a new course for law reformers to navigate in shifting the frontiers of Law in those areas.

It was, therefore, not surprising that the Institute was approached once again to collaborate with United Nations Centre for International Crime Prevention UNCICP in conducting research on judicial integrity and capacity assessment in 3 pilot States in Nigeria. I am happy to note that the Institute in its characteristic manner pursued this assignment with a vigour, total commitment and burning desire to play a major role in eradicating corruption and corrupt practices from our judicial system.

The data analysis result that will be presented this morning by the Institute is a culmination of the efforts of the last eight months which started with the visit of the team to Delta State in February and graduated to distribution of survey instruments to various stakeholders in the Justice system. In an attempt to have a comprehensive data that will make the research highly representative and comprehensive, we extended the scope of our research from 3 pilot courts to almost all courts in Asaba, Ughelli and Warri. This covers courts of superior and inferior records. The same extensive research was also conducted in Lagos and Borno States. Because our data analysis often compares the returns from the three pilot States, we have deemed it necessary to stipulate the number of survey instruments distributed to stakeholders in the three pilot States.

Apart from the data analysis, the Nigerian Institute of Advanced Legal Studies also engaged in a desk review of cases (10 cases on Land matters and 10 relating to application for bail for Armed Robbery trials in Delta States) with a view to determining likely abuse of judicial discretion arising from clear departure from existing principles of law or suggesting inexplicable inconsistencies or incoherencies which are likely to be attributed to abuse of discretion.

I must at this point never fail to acknowledge the wonderful support my team received from Delta State starting from the Chief Judge, to the learned Honourable Attorney-General and Commissioner of Justice, the Chief Registrar, the Comptroller of Prisons Delta State and of course Lawyers and the Police without whose support and assistance our task in Delta State would have proved an uphill one.

I make bold to state that this level of cooperation would have been better if only a good number of judges of Delta State who collected judges questionnaires completed and returned them to the research team. This was inspite of the fact that the Chief Judge caused a letter to this effect to be addressed to all stakeholders in the state including the judges.

These notwithstanding, we are quite satisfied with the integrity of the research conducted in Delta State and hope that participants in this workshop will listen attentively to the staff of the Institute as they present both the data analysis and the desk review of cases. The essence, I hope, is to distil relevant comments, which ultimately will contribute in enriching the final report from Delta State.

Once more, the Nigerian Institute of Advanced Legal Studies is grateful for the opportunity to participate in this research project and look forward to participating in many of such evidenced-based researches in the near future.

Thank you and God bless.

E. Summary of Findings in Delta State by NIALS

1. General Introduction

The first Federal Integrity meeting held from 26th – 27th October 2001 resolved that the following indicators be measured in the pilot States in order to access the level of judicial integrity and capacity of the pilot States. These are:

- Access to Courts
- Quality of Justice
- Timeliness
- Public confidence: fairness and political neutrality
- Corruption
- Inspection.

Sequel to the above, NIALS administered surveys on the following segments:

- Judges
- Lawyers/Prosecutors
- Court users
- Business people
- Serving court staff
- Retired court staff
- Awaiting trial persons.

The results from these surveys were then collated and analysed to come up with certain results for each of the pilot States. Efforts were also made to compare the results of pilot States: Lagos, Delta and Borno in order to show certain trends for purposes of beneficial assessment.

2. Access to Justice

Surveys were conducted to measure public perception of access to justice in Delta State from the point of view of affordability.

The results showed that 20% of the 541 court users surveyed, perceived the justice system to be 'never or seldom affordable.' However, 35% of the 40 Judges surveyed, agreed with this view.

Furthermore, 40% of the 80 business persons surveyed agreed to the fact that the justice system was 'never or seldom affordable' and 25% of them noted 'high official payments to court officials' as one of the three obstacles to using the Courts.

When compared to other pilot States, Judges and Court users perceived the justice system to be 'most unaffordable' in Lagos followed by Delta State and Borno State in that order.

3. Timeliness

Surveys were conducted to measure the length of trials from the time of filing to when judgement is delivered by the court (entire duration of a case). The results of the survey showed that 65% of the 541 court users surveyed thought that the length of legal proceedings

was one of the most important obstacles to having access to justice.
Similarly 51% and 52% of the business persons and judges surveyed respectively perceived the justice system to be 'never or seldom quick' or consider 'lengthy process' as one of the most important obstacles to using courts.

On comparative terms with other pilot States, Lagos courts were least perceived to be 'never or seldom quick' followed by Delta and Borno State courts from the perspective of business people.

When asked what stage of judicial proceedings were delays being experienced most, 40% of the judges surveyed agreed that delays were mostly experienced at the trial stage.

4. Quality of service rendered by the courts

The surveys were administered to elicit responses from the business community as regards the quality of service rendered by Judges, prosecutors and court clerks.

The results showed that 20% of the business persons surveyed agreed that the quality of justice dispensed by Judges was very good, 18% confirmed that the quality of service rendered by court clerks was very good while only 5% agreed that the service rendered by prosecutors was very good.

Conversely, about 27% of the business people perceived the services rendered by court clerks to be very poor, 10% regarded the services rendered by prosecutors as very poor while only 5% indicated that the services rendered by Judges were very poor.

5. Record keeping

Record keeping as an essential component of the services rendered by the Judiciary was also measured. The results indicated that 18% of the business people surveyed believed that record keeping practice was very effective. To 27% and 10% of business people, record keeping was somewhat ineffective and very ineffective respectively.

6. Public Confidence

Public confidence is considered very crucial for the integrity of the justice system. To this, surveys were conducted to measure perceptions about the fairness and impartiality of Judges, political neutrality and independence of the Judiciary.

The results showed that only 15% of the 541 court users surveyed perceived the judicial system to be unfair, 40% perceived that judicial decisions were politically influenced. It is significant to note that 50% of the 109 Lawyers surveyed agreed with this view.

With respect to the independence of the Judiciary, 35% of the business people surveyed completely or somewhat agreed on the sentence "political pressure completely dominated the justice system." Furthermore, 50% of Lawyers, 40% of court users and 35% of the judges respectively agreed with them.

When awaiting trial persons were surveyed as to how they were treated during their pre-trial detention, over 21% of 591 persons surveyed believed that they were unfairly treated during the period of their remand.

However, from the point of view of court users in Delta State, the justice system was seen as fairer and less impartial, compared to Borno and Lagos States because only 17% believed it to be 'never or seldom fair and impartial.' This is unlike the situation in Borno and Lagos where the percentage of those who agreed that the justice system was 'never or seldom fair and impartial' was as high as 30% and 40)% respectively.

7. Corruption

Although a comprehensive definition of corruption appears elusive, certain indicators of the incidence of corruption were identified as follows:

- Bribes to seek delays.
- Informal fees to expedite administrative steps
- Bribes to alter evidence materials
- Bribes to police
- Traffic of influence
- Political interference for private purposes.

The surveys also took cognisance of the fact that the justice system includes other agencies that are not necessarily within the former court system such as the police and prisons service.

The result of the surveys revealed that 82% of the 109 Lawyers surveyed attested to having paid bribes to court officials.

Similarly, 38% of 40 judges surveyed indicated having knowledge of corruption episodes within their courts. When asked which segment of court officials was most corrupt, the court clerks were fingered as the most culpable by about 30% of Lawyers surveyed. Closely following the court clerks were the police and the law enforcement officers with 13% and 16% respectively.

Its is interesting to note that only about 6% of lawyers surveyed agreed that judges were corrupt in Delta State.

From the responses given by the judges on this survey item, court clerks were most corrupt followed by the police, while from the point of view of court users the police and judges were corrupt in that order. Similarly, awaiting trial persons responded that court clerks, prosecutors and judges were corrupt on the same degree and were closely followed by the police.

When asked if they had paid for bail before or perceive that they have to pay for it, about 45% of the 591 awaiting trial persons replied in the affirmative.

It is therefore evident that the incidence of corruption in Delta State seem to be in line with the average of the other pilot States and the segments of court officials perceived as most corrupt were enforcement officers, police and court clerks.

8. Inspections

Surveys were conducted to measure the frequency of inspections for substantive, procedural or disciplinary measure. The surveys that were conducted showed that 35% of the

judges affirmed that their courts were inspected less than once every two years, which is within the national average.

Surveys were also carried out to test the relationship between frequency of inspection and quality of justice delivery. The survey showed that the lesser the frequency of inspections, the greater the variation in sentencing.

To also test the relationship between frequency of inspection and corruption, surveys were conducted on the frequency of inspections and average rate of corruption experienced by court users, Judges and lawyers.

The survey showed a remarkable trend that the less frequency of inspection, the higher the incidence of corruption experienced. Thus, **B**orno State, which experienced less inspection, recorded more incidences of corruption, than Delta and Lagos States in that order.

The survey also tested the relationship between training and court performance. The result showed that 29% of judges surveyed percieved better trained and competent staff as one important measure to improve the justice system while 19% of lawyers considered better training as one of the main factors to improve the quality of the justice system.

9. Conclusion

Statistics showed that the access to justice in Delta State from the point of view of affordability was better when compared to the other pilot States as courts in Delta State were not imposing excessive court fees and causing delays on users.

Although perception of corruption within the state justice system remains within the national average, however public confidence in the judiciary is still poor and a lot has to be done to improve on these perceptions.

III
OUTCOME OF FIRST INTEGRITY MEETING IN DELTA STATE

Group 1: Access to Justice

After in depth discussion of all of the above measures, the group, with the help of a decision making matrix, prioritized, the following measures taking into account the expected impact, the timeframe, the cost, the importance to the judiciary, the level of control with regard to the implementation, eventual risks involved and the complexity of implementationas. Hence the following measures were idenitfied as top priorities: (i) Publishing Case Lists on Notice Boards, (ii) Allow for Media coverage of court proceedings, (iii) Install suggestion and complaint boxes in all courts in Delta State, (iv) Improve the daily cause list management, (v) Judges to focus more intensely on dispute resolution. (Consider Judges and Magistrates training for this purpose), and (vi) Invigorate the Bar-Bench Forum (Organize for more frequent and broader meetings).

Measure to Enhance Access to Justice	Priority	Responsible	Starting Date	Cost
1. Publishing Case Lists on the Notice Board				
CJ to issue a directive to all courts in the state to publish their cause-lists of the next day by latest by 12 p.m. on the Notice Board of the respective Court		CJ	Sep 2002	Nil
Each court to assure that there are Notice Boards available and if not to arrange for visible Notice Boards to be in place by 1 Nov. 2002		CR	Oct. 2002	Minimal
2. Allow for Media Coverage of court proceedings				
The Chief Registrar will inform the representatives of the press attached to the courts about the availability of the cause list on the Notice Board		CR	Nov 1 02	Nil
The CR will be made responsible for informing the press on an ad-hoc basis of cases of potential interest		CR	Nov.1 02	Minimal
3. Install suggestions/complaints boxes in all courts in Delta State				
The Chief Registrar will assure that suggestions/complaints boxes are being constructed in the three pilot courts in Asaba. by end Oct		CR	Nov 1 02	Minimal
Establish Performance Monitoring Unit (PMU)		CJ, IC		Nil
The Suggestions/ complaints will be collected on a daily basis by a staff assigned to this task and forwarded to the Performance Monitoring Unit		ACR	Nov. 2002	Nil
The analysis of the suggestions and complaints will then be made available to the Judiciary (monthly) and the Media on a regular basis (quarterly).		PMU & CR	Nov. 2002	Minimal
4. Improve the daily cause- list management				
Review and eventually amend the guidelines for case prioritisation		CJ, RSC	Oct. 2002	Nil
disseminate guidelines to all courts by end of October 02			Nov 1,02	Minimal
Additional Measure: The implementation of the guide lines for case prioritisation will be monitored the Performance Monitoring Unit		IC, PMU	Nov 02	Nil
5. Judges to focus more intensely on dispute resolutions - ADR				
Consider and eventually establish guidelines for dispute resolution by judges		RSC	Nov. 2002	Nil
A detailed review of Alternative Dispute Resolution Mechanisms in other jurisdictions, including Lagos State		RSC	Nov.	Minimal
A detailed review of the current practice of informal dispute resolution mechanisms in place (e.g. community leaders)		RSC	2002	Minimal
Establish limits and guidelines for such dispute resolution mechanisms [4]		RSC	Nov. 2002	Minimal
Raise awareness of the public in general and community leaders in particular about limits of informal dispute resolution [5]		PATC	Dec. 2002	TBD
Develop a ADR Model for Delta State.		RSC		Nil

[3] This measure was proposed by Group 3

[4] This measure was prposed by Group 3

Raise necessary funding for its implementation Launch implementation		CJ, IC, UN, GTZ RSC, UN, GTZ	2003 Dec. 2002 2003 2003	TBD
6. Invigorate the Bar-Bench Forum				
The Chief Judge will invite members of the NBA Delta before the end of October for a meeting with the purpose of agreeing in a regular meeting schedule for the Bar-Bench Forum Bar-Bench Forum to take base on a regular basis. Minutes from the meetings will be shared across the bar and bench		CJ, IC CJ, NBA CJ, IC	Oct. 2002 2003 2003	Nil Minimal Minimal

Group 2: Quality and Timeliness of the Court Process

Based on its terms of reference the group had extensive discussions identifying the problems which are currently hampering the quality and timeliness of justice in Delta State and possible measures to remedy the situation. In particular, the group considered options to (i) reduce delays/ increase timeliness, (ii) increase the consistency in sentencing, (iii) establish and monitor performance standards, and (iv) prevent the abuse of civil process.

Amongst the problems militating against the effective performance of the Judiciary the group identified (i) Frivolous applications/requests for adjournments, (ii) the non-production of witnesse in court, in particular by the prosecution, (iii) the inadequat use of timesaving measures combined with permissive provisions of the rules of court, (iv) the ineffective investigation of cases, (v) the inadequacy of infrastructures and funding, (vi) stiff bail conditions and improper use of discretion in bail applications, (vii) inadequate training or sentencing methods, (viii) obsolete laws and unrealistic penalties, (ix) the absence of performance/time standards, (x) poor supervision and the (xi) abuse of discretion in ex-parte applications.

After in depth discussion of all of the above measures, the group, with the help of a decision making matrix, prioritized, the following measures taking into account the expected impact, the timeframe, the cost, the importance to the judiciary, the level of control with regard to the implementation, eventual risks involved and the complexity of implementationas. Hence the following measures were idenitfied as top priorities: (i) enhance case flow management and ADR, (ii) set and monitor performance standards, (iii) review and amend of rules of court, (iv) enhance co-ordination between stakeholders, (v) prioritise custody cases, (vi) train and retrain of judges, and (vii) maintane judicial integrity.

Measures to Enhance the Quality and Timeliness of the Court Process (Group 2)	Priority	Responsible	Starting Date	Cost
1. Improve Case Flow Management	8.8			
Establish Public Awareness and Training Committee (PATC)		CJ, IC	Nov.	Nil
Review current case flow management practices in the courts in Delta		IC, PATC, PMU	2002 Nov.	Minimal
Establish realistic guidelines/ standards for case management		IC, PATC,	2002	
Conduct training in case flow management according to new standards		PATC, GTZ, UN	Nov. 2002	Minimal TBD
2. Amend and monitor rules and performance standards	9,4			
Setting up a Rules and Standards Committee (RSC) including the CR, the DCR for Litigation, the DCR Admin.		IC,	Nov. 2002	Nil
Setting of time standards for all procedural steps		RSC		Nil
Review organisation of registry and record keeping		RSC	2003	Nil
Re-organise registry and record keeping		RSC	Nov.	TBD
Develop Training Curriculum for support staff on record keeping, manual and electronic filing systems		PATC	2002 2003	Minimal
Conduct Training on record keeping		PATC	Nov.	TBD
Establish Monitoring Criteria for the Use of Judicial Discretion		RSC	2002	Nil
Review lawyers' use of adjournments		RSC, NBA		Nil
Establish guidelines for the awarding of realistic costs to litigants for adjournments		RSC	2003	Nil
Monitoring of compliance of all categories of court staff with new standards		RSC PMU	2003 2003 2003 2003 2003	TBD
3. Improve coordination among all criminal justice system stakeholders	12.1			
Reinvigorate and eventually expand the Criminal Justice Committee		CJ, IC	Nov. 2002	Nil
Conduct monthly meetings		CJC		Minimal
Publish minutes of the meeting on the Notice Board		CJC		Minimal
4. Increase Public Awareness and Dialogue with other Criminal Justice Stakeholders and Court Users	12.1			
Bar-Bench Forum to encourage more active role of the NBA in training their members.		CJ		Nil
Monthly addresses by the CJ and AG of the Bench, Bar on the ongoing judicial reform		CJ & AG		Nil
Quarterly address by the CJ of the Media (Electronic and Print) to be prepared by the PATC.		CJ, PATC		Nil
5. Training and retraining of judges	13.4			
Identify training needs for judges, magistrates and court staff		PATC		Nil
Develop training curricula		PATC, NJI		Minimal
Conduct training		PATC, NJI		TBD

Group 3: Public Confidence in the Courts

Based on the presentation of the preliminary findings of the comprehensive assessment conducted by NIALS, the group agreed that low public confidence in the courts was a major problem in Delta State.

Further, it was agreed that fairness, impartiality, and neutrality in the administration of justice must at all times be given paramount consideration.The judge must at all times ensure that justice is not only done but seen to be done.

Measures to Strengthen Public Confidence in the Courts (Group 3)	Priority	Responsible	Starting Date	Cost
1. Strengthen Public Enlightenment and awareness				
Unlimited access by the public to the CJ in cases of corruption CJ to ensure that all cases of alleged corruption are directly reported to her.		CJ, CR CJ, IC	Oct. 2002	Nil
Develop a complaints mechanism, ensuring prompt and thorough treatment of complaints - Establish a Public Complaints Committee (PCC) [6]		PCC, NBA PATC,	Nov. 2002	Minimal
Ensure that lawyers desist from making malicious allegations against judicial officers.		NBA		Minimal
Inform court users about the court process			Nov. 2002	
2. Enhance transparency and fairness of appointment process				
Proper screening of candidates before appointment		CJ, PMU		Minimal
Merit based appointment process – Develop merit-based selection criteria		PMU		Nil
Ensure transparency of appointment process – involve the public		CJ, PMU, PATC		TBD
3. Strengthen Propriety of Conduct of Judges and Lawyers				
Develop behavioural guidelines based on the Code of Judicial Conduct		RSC	Dec. 2002	Nil
Monitoring of Judicial behaviour in accordance with Code of Judicial Conduct.		CJ, PMU, PCC	2003	TBD
Conduct comprehensive review of Codes of Conduct for Lawyers		NBA		Minimal
Develop Draft Code of Conduct for Lawyers in Delta State (including issues general behavioural standards, attitudes, adjournments,		NBA in collab. with IC Disciplinary C'ee of the	Nov. 2002 Dec. 2002	Minimal TBD
Adopt and Monitor Code of Conduct for Lawyers		NBA	2003	
4. Increase use of information technology and automatic court recording systems				
Assess current need and potential capacity for using IT hardware and software in courts.		IC, GTZ, IT specialist	Oct. 2002	TBD
Increase IT hard – and software in accordance with identified needs and within availability of resources.		IC, GTZ	Nov.	TBD
Conduct basic IT training seminars		IC, GTZ, IT specialist	2002	TBD
Assess needs and potential capacity for using Automatic Court Recording Devices in Delta		IC, GTZ, consultant	Nov./ Dec	TBD
Install Automatic Court Recording Devices in accordance with identified needs and within availability of resources.		IC, GTZ, consultant	2002 Nov.	TBD
Conduct training seminars for court staff on the use of Automatic Court Recording Devices		IC, GTZ, consultant	2002	TBD
			Nov/ Dec 2002 2003	

[6] For details see measures recommended by Group 4

5. Review and possibly amend legislation on restitution for victims of crime				
Conduct comprehensive review of legislation of the protection of and restitution for victims		RSC	2003	Minimal
Prepare proposal for legislative amendments		RSC	2003	Minimal
Review and amend proposal		AG	2003	Minimal
Submit as legislative proposal		AG	2003	Minimal

Group 4: Public Complaints Systems

The Group started out by analysing the current procedure of handling complaints in the judiciary. From the discussions, it became clear that currently there was little information even in the judiciary itself on how complaints were being received, assessed for their merit, investigated and how to handle follow-up actions. As far as the Code of Conduct is concerned,, the group agreed that there was need to raise the awareness and acceptance of the Code amongst judical officers. Also, the Code of Conduct needs to be made known to the general public, in particular as far as its enforcement are linked to the basic rights of the citizen. Further, the group concurred that the implementation of the Code of Condut should be enhanced in particular though enforcemnt measures and ethics training for judicial officers.

Measures to Strengthen the Public Complaints System (Group 4)	Priority	Responsible	Starting Date	Cost
1. Establish a Public Complaints Committee (PCC)				
Establish a Public Complaints Committee (PCC) as a sub committee of the Implementation Committee (IC), The chairperson of the PCC will be a member of the IC		CJ	Oct 02	Nil
Constitute Public Complaints Committee (PCC) Chairperson: PK Ogbimi, Secretary: A, Ojo, Members: Police, Attorney General, ICPC, UN NPC, NGOs, Media		CJ	Oct 02	Nil
Conduct an assessment of existing complaints: identifying (a) number and types of complaints received; (b) judicial officer involved; (c) Date complaint received, (d) how it was received, (e) action taken by PCC/CJ, (f) status in the process, (g) final action, (h) feedback to the complainant.		PCC, UN, ICPC	Oct 02	Nil
Install a computerised complaints system using existing equipment.		UN, PCC	Nov 02	Nil
Based on the assessment of the handling of last years complaints, PCC to come up with an action plan on how to strengthen the complaints system		PCC	Dec 02	Nil
Start implement the action plan		PCC	Dec 02	Nil
2. Strengthening Public Awareness				
CJ to invite the media to quarterly media briefings		PATC	Ongoing	Nil
Identify the concrete needs for information by the public on their basic rights, the Code of Judicial Conduct and how to file complaints as well as other relevant information. Develop information material (flyers, posters etc) to enlighten the citizens about their rights, the Code of judicial Conduct and how they can file a complaint as well as other relevant information		PATC, CUC [7], UN, GTZ PATC, UN, GTZ	Nov. 2002 Nov./Dec 2002	TBD
Install functional Bill Boards in all Court and Court Rooms, as appropriate for dissemination of the above material.		PATC	Dec 2002	Budget
Issue a quarterly Newsletter		PATC	2003	TBD
Organise a Mobile campaign in local language		PATC	2003	TBD
Organise for judges to have periodic meetings with schools		PATC	2003	TBD
CJ to conduct regular prison visits with the police		CJ	Ongoing	TBD
3. Implement and enforce code of judicial conduct				
Distribute the Code of Judicial Conduct to all judicial officers		PATC, GTZ		TBD
Develop a training curriculum for judicial ethics, including a component for all court staff. (Code of Conduct, Judicial Reform, Management of Change).		PATC, ICPC	Nov. 2002	Nil
Organise annual ethics training for all (new) staff.		PCTC, NJI	2003	Budget
4. Establish partnership with ICPC				
Develop proposal regarding the involvement of ICPC as a partner in the Judicial Integrity Project in Delta Chairman of PCC to draft proposal to the Chairman of the ICPC CJ to sign the letter		PCTC Ogibmi CJ	Oct 02 Oct 02 Oct 02	Nil Nil Nil
ICPC to assign staff who can work on; (a) public awareness		Chairman	Nov 02	Nil

[7] For Court User Committee see Group 5

raising, (b) design of complaints system, (c) Ethics curriculum development with federal and state training institutions.		ICPC, NJI		
ICPC will participate as members in the following committees: (a) PCTC, (b) Court User Committee, (c) Implementation Committee, (d) CJS Coordination Committee		Chairman ICPC	Nov 02	Nil
5. Enhance knowledge of Anti-Corruption legislation				
Develop training curriculum on the Anti-Corruption Act and other Anti-Corruption Legislation, its interpretation and any relevant jurisprudence.		ICPC & NJI	Nov. 02	Budget
Conduct training for judges and magistrates on the Anti-Corruption Act and other Anti-Corruption Legislation, its interpretation and any relevant jurisprudence appropriate.		ICPC & NJI	Dec. 02	Budget

Group 5. Coordination across the Criminal Justice System

After shortly assessing the efficiency of the currently existing criminal justice system coordination structures in Delta State, namely Criminal Justice Committee and the Delta Forum comprising of the A.G. and the Bar Association. The A.G. meets also on a regular basis with the heads of the Security Services for coordination purposes. Further, there are series of meetings going on within each of the criminal justice institutions aimed at coordinating the activities within the respective instiutions.

However, regardless of all these coordination efforts, several problems continue to subsist. In particular the group identified the bail process as one of the areas where unneccessary delay continue to hamper the efficiency of the system. It became clear in the course of discussion that a closer involvement of professional lawyers in the police casework would be beneficial, both to guide evidence gathering as well as to reduce delays due to slow communication channels The group did not agree with the suggestion of decentralising the DPP and the OC Legal. Additional delays where caused by the police not ensuring the availability of files and case diaries during prison visits.

Often postponements are also caused by lawyers not appearing in the court for the trial. While the criminal justice instituions have begun to treat custody cases as priority, lawyers prioritize their cases according to different considerations. The group agreed that all stakeholders should be given to 3 months deadline to conclude such cases. Another problem occur in cases that have been investigated in close collaboration with the military, because military witnesses are not permitted to appear in court and give testimony.

As far as the backlog reduction is concerned, the group agreed that there was no systematic coordinated strategy for reducing backlogs mainly due to sensitivities issue of separation of powers and the need to safeguard judicial independence.

Moreover, the group discussed the absence of a systematic coordinated strategy for dealing with complaints against the justice system instituions. This was mainly linked to the fact that most institutuions dealt with the complaints internally without involving other institutuions. This does not only raise the problem of the credibility of the follow-up to the complaint but also causes unnecessary duplication of investigations.

Measures to Strengthen Coordination in the Criminal Justice System (Group 5)	Priority	Responsible	Starting Date	Cost
1. Reduce Backlogs	8.6		Oct. 2002	TBD
Establish Back-Log and Delay Reduction Committee (BLDRC) composed of CJ, CR, OCL, DPP, NBA		CJ		
Inform minor offenders of the likely outcome and eventual plea options		CJ		
Reduce backlog through identification, separation and disposition of dormant cases		BLDRC		
Address Federal case backlog review small plea options, Sections 56 and 35 of CPA A-G fiat, Section 23 Police Act Establish Federal Courts in all States Security Committee to review and ensure that Military witnesses can give evidence, ensure (S/T safeguards)		 BLDRC BLDRC CJN, AGN		
2. Reduce Court Delays	9,9		Immediate	TBD
Launch joint Bar/Bench/Prosecutor action on unnecessary adjournments		BLDRC	Nov. 2002	
Decentralise OC/Legal and DPP Offices [8]		AG	Immediate	
Establish maximum time frames for various case types of the minor matters courts (3 months)		RSC	Nov. 2002	
Monitor the compliance with such timeframes		PMU	2003	
Ensure timely transfer of case files: Review current practice of transfer of files between various CJS institutions and identify major causes of delay. Develop, based on the review, recommendations for amendment of current practice.		 Courts, D.P.P & Police CJC	Nov. 2002	
Establish guidelines for the transfer of cases taking into account the impact on the case, the timing, the witnesses etc.		CJC	Nov. 2002	
3. Increase public awareness and participation	10.1			TBD
Set up a Court User Committee involving the CJ, the Media, NGO's, CR, DPP, OCL and the Bar. Establish mandate, function and meeting schedule Identify main weaknesses of the Justice System as a Service Provider Develop strategy for regular dialogue of the Justice System with its users including the organisation of broad based justice system roundtables and press conferences.		CJ CJ, CUC CUC CUC	Nov. 2002 Nov. 2002 Nov. 2002 Dec. 2003	
Public bulletins by DPP on DPP activities		DPP	2003	
4. Earliest possible bail in all appropriate cases	10.6			TBD
Develop joint guidelines/ checklist for the granting of police bail Develop a bail opposition checklist on police file for DPP use DPP and OCL to support Police in monitoring of police pipeline caselist in accordance with Section 10 Police Act		RSC, CJC RSC, DPP DPP, COP	Nov. 2002 Dec. 2002 2003	
Equipment/ funding to police to duplicate files for DPP		COP	2003	
5. Harmonise relevant laws and penalties	11.6			TBD
Review laws and penalties for their appropriateness Make recommendations for amendments Submit recommendations to AG		RSC RSC RSC	2003 2003 2003	

[8] This recommendation was also made in the specific context of the measures (No. 4) to enhance the speedy granting of bail in all appropriate cases.

KEY PROBLEM AREAS	Priority Rating	Very Low	Low	Medium	High	Very High
Judicial Training	1	-	-	11	11	77
Merit based judicial appointments	2	-	3	14	14	69
Public Confidence in the Judiciary	3	-	3	12	24	62
Court Records Management	3	-	3	9	43	46
Credible and effective Complaints System	5	-	9	17	20	54
Adequate and fair remuneration	6	3	11	14	11	60
Enforcement of Code of Conduct	7	-	11	17	20	51
Increased judicial control over delays created by litigants lawyers	8	-	-	15	50	35
Court Delays	9	-	15	12	24	50
Case Assignment System	10	3	3	24	21	48
Case Management	10	6	-	21	38	35
Abuses of procedural discretion	12	-	21	9	38	32
Generation of reliable court statistics	13	3	9	38	15	35
Case Load Management	14	6	6	25	31	31
Abuses of substantive discretion	15	9	9	19	28	34
Sentencing Guidelines	16	6	3	31	41	19
Communication with court users (e.g. court user committees	17	6	24	32	29	9

E. Conclusion

The Groups appreciate the laudable efforts of all the moderators, facilitators and rapporteurs. The highly supportive roles played by Dr. Petter Langseth, Mr. Andrew Wells, Mr. Oliver Stolpe and Mrs. Juliet Ume-Ezeoke of UNODCCP as well as Prof. Epiphany Azinge and Mr. Peter Akper were highly appreciated and commendable.

The Groups wish to thank the Chief Judge of Delta State and also to congratulate her for the success of this most useful inter-active workshop.

IV
OUTCOME OF THE FIRST FEDERAL INTEGRITY MEETING FOR CHIEF JUDGES

A. The General Plenary Discussion

The Workshop participants agreed that regardless of the constitutionally guaranteed independence of the Judiciary as the third arm of Government a series of factors continue to hamper the achievement of true independence of the Judiciary from the Executive and the Legislator.

Particularly mentioned was the fact that while all Judges are appointed and dismissed by the National Judicial Council, the power to dismiss the Chief Judges rests with the Legislator. Unlike in the case of all other judicial officers, who only can be dismissed because of proven misbehaviour, the parliamentary bodies are in the position to simply vote the Chief Judge out of office without being bound to give any reason. The participants agreed that this provision greatly reduces judicial independence and the balance of powers.

Furthermore, the participants identified the budgetary dependence on the executive as a serious obstacle to judicial independence. This has created some rather embarrassing situations as far as the propriety of judicial behaviour is concerned. As a matter of fact, some Chief Judges have been found "courting" their State Governors for providing the necessary budgetary resources to maintain the functionality of the judiciary. It was concluded that unless the Executive become more sensitive towards its obligation to avoid the perception of any direct or indirect control of the judiciary, public confidence in the judiciary
would continue to suffer.

The participants concluded that the judiciary's main strength lay within the moral authority of its decisions to instill public confidence. Unfortunately public confidence, has been eroded, due to a series of events often outside the control of the judiciary. Delays during all stages of the trial process were found to be damaging the image of the judiciary. Other contributing factors to delay in trial process include repeated adjournments, witnesses not attending trial, offenders not being produced by the police and/or prison services and bailiffs not enforcing court decisions. At the same time, and in most cases, such problems are rather linked to logistical problems within the other criminal justice institutions such as poor equipment, lack of resources, understaffing, etc. than to outright refusal to co-operate. Some of these problems, in particular the co-operation between the various criminal justice institutions are being addressed with some laudable results by the criminal justice committees at the state level.

However, the disrespect, perceived or real, which is given by the other institutions of the criminal justice system to the decisions taken by the judiciary, erodes the respect of the public towards the judiciary and as a consequence undermines public confidence. The decreasing trust results also in a general reluctance of the public to fulfil its own civic duties of appearing in court, giving evidence and complying with court orders.

The increasing congestion of the court system is also forcing people to search for alternatives and, in the absence of an effective alternative dispute system, take justice into their own hands.

Additionally, the trust in the judiciary is being undermined by sometimes inaccurate and exaggerated media reports. This problem, however, does not only seem to be caused by sensationalism but also by reluctance of judges to appear in the media to explain the rationale for certain decisions which *prima facie* create the perception of malpractice, political influence or corruption.

One participant also mentioned that the judiciary are unwilling to address malpractice within the judciary in a systematic way. Most Judges will only react upon specific complaints while there is a need for a more proactive and comprehensive approach towards eradicating judicial misconduct.

The meeting also addressed the issue of overcrowded prisons, a problem which is being partially caused by delays before and during the trial process, and by the absence of use of alternative dispute resolution system to dispose of cases.

Various efforts to remedy the above described situation are already being undertaken by some of the State judiciary. Some of them include the enforcement of Code of Conduct for Judicial Officers and its broad dissemination, as well as the establishment of the criminal justice co-ordination committees; these are being implemented by the judiciary itself whilst others are being carried out with the help of donors, such as USAID and DFID in various pilot courts across the country.

B. The Findings from the Participant Survey

During the workshop a survey consisting of six questions was handed out to the participants. Out of 55 workshop participants 35 filled out and submitted the questionnaire (annex 1). Out of the 38 Chief Judges, Grand Kadis and other senior Judges present, 33 participated in the survey.

Question 1

Out of the key problem areas identified by the international Chief Justices' Leadership Group, how does each rate as a priority for your State?

KEY PROBLEM AREAS	Priority Rating	Very Low	Low	Medium	High	Very High
Judicial Training	1	-	-	11	11	77
Merit based judicial appointments	2	-	3	14	14	69
Public Confidence in the Judiciary	3	-	3	12	24	62
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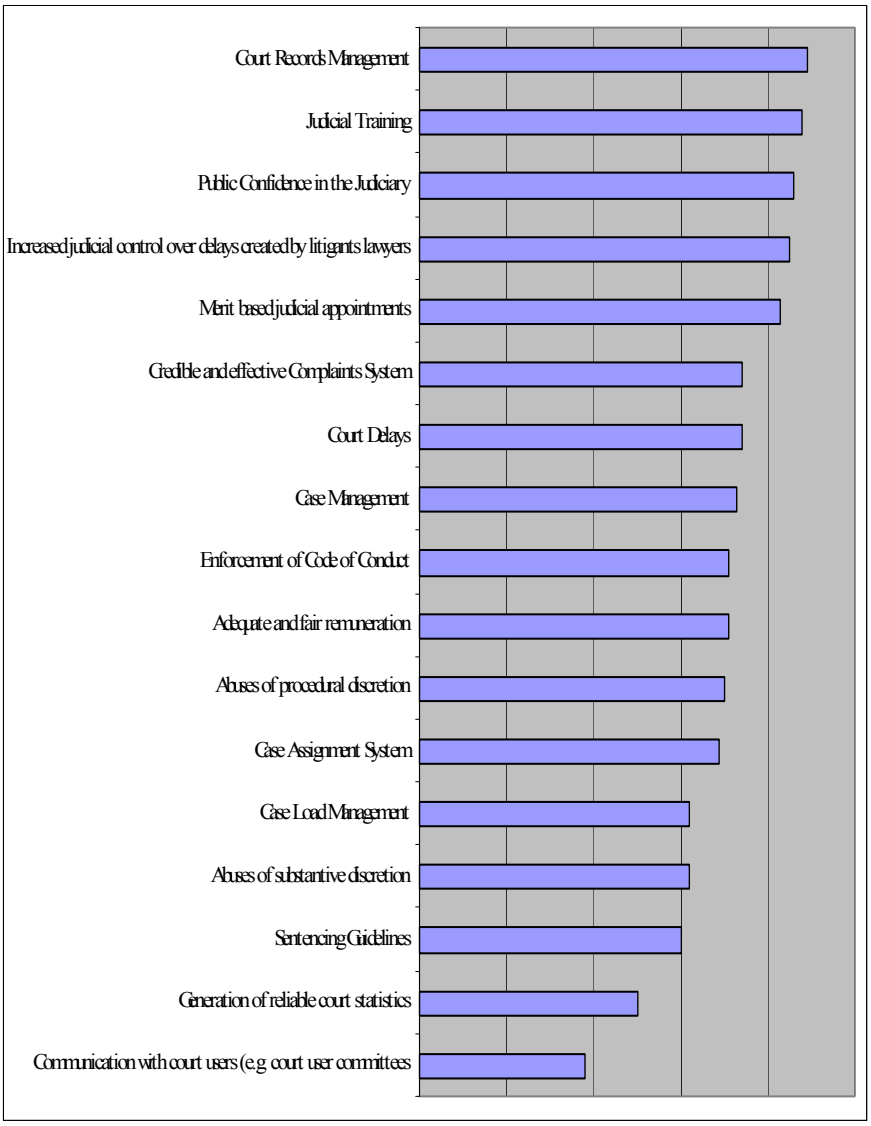
Communication with court users (e.g. court user committees	17	6	24	32	29	9

Out of the 17 areas the participants rated five as "top-priorities." These included court records management, judicial training, public confidence in the judiciary, judicial control over delays caused by litigant lawyers and a merit based system of judicial appointment.

Medium priority was given to the establishment of a credible and effective complaints system, the reduction of court delays in general, the enforcement of the Code of Conduct, the reduction of abuse of procedural discretion and an improved case assignment system. In this context it was interesting to observe that adequate and fair remuneration, one of the generally preferred reform recommendations of most judiciaries in developing countries and countries in transition was only given medium priority.

Relative low priority was given to improved case load management and the creation of reliable court statistics. Also the abuse of substantive discretion and consequentially the necessity of sentencing guidelines was not seen as a matter of urgency. Astonishingly, by far the lowest priority was given to an improved communication with the court users. There are some doubts whether the question was correctly understood by most of the respondents since at the same time increasing public confidence within the courts was seen as one of the top-priorities.

Areas considered by the participants as "high" or "very high" priorities



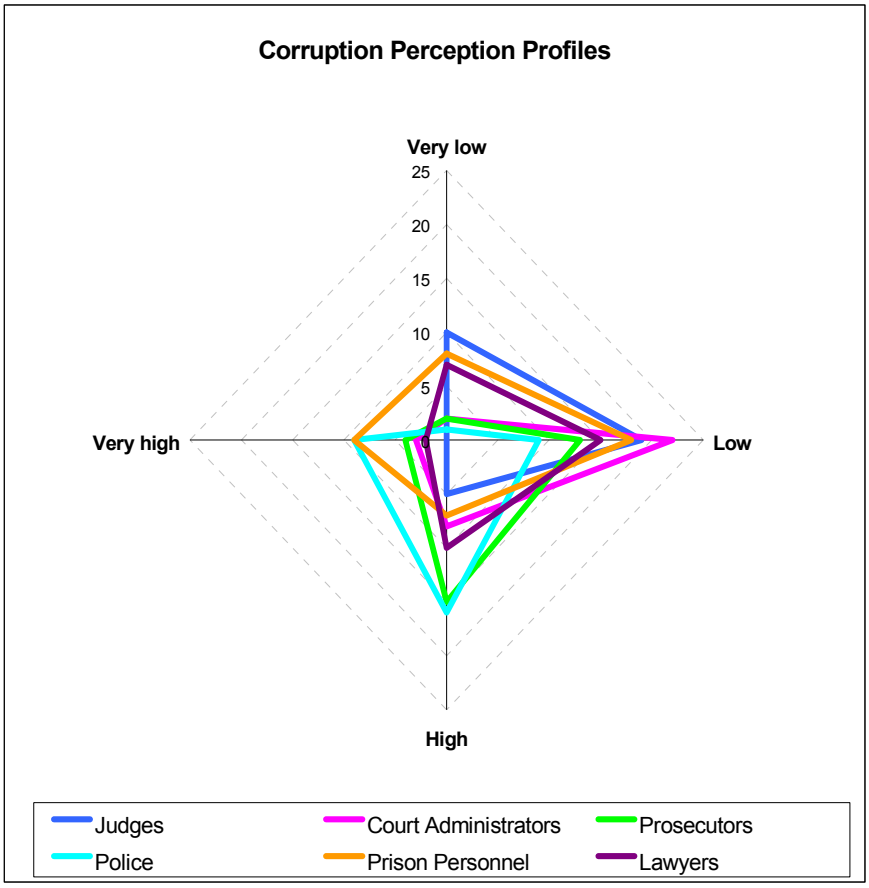
Question 2

In your opinion, rank the level of corrupt practices within the criminal justice system outside your own court among the following professional categories:

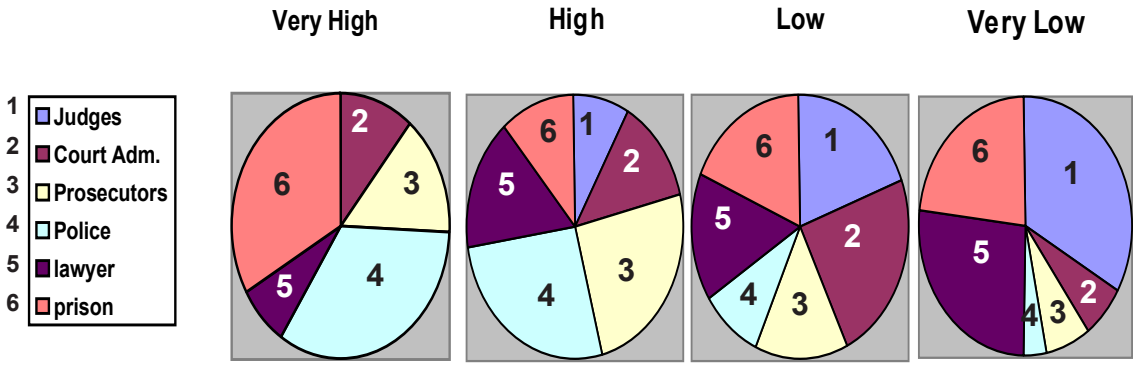
Professional categories	Corruption perception			
	Very low	Low	High	Very high
Judges	10	19	5	0
Court Administrators	2	22	8	3
Prosecutors	2	13	15	4
Police	1	9	16	9
Prison Personnel	8	18	7	9
Lawyers	7	15	10	2

It did not come as a surprise that the participants, coming mainly from the judiciary, would likely rank the judiciary as the least corrupt institution amongst those surveyed. This, however, may not only be due to an understandable urge to protect ones own profession from criticism, rather it could also be caused by the deeper understand of the judiciary. While the estimates regarding the other professions are more likely to be based on perceptions, those concerning the judiciary presumably represent a more realistic assessment of the situation.

Surprising was the relatively high perception of corruption among prosecutors, second only to the perceived levels of corruption inside the police. However, the plenary discussion revealed in this respect, that most respondents in this regard were referring to police prosecutors rather than to those working for the Office of the Attorney General.



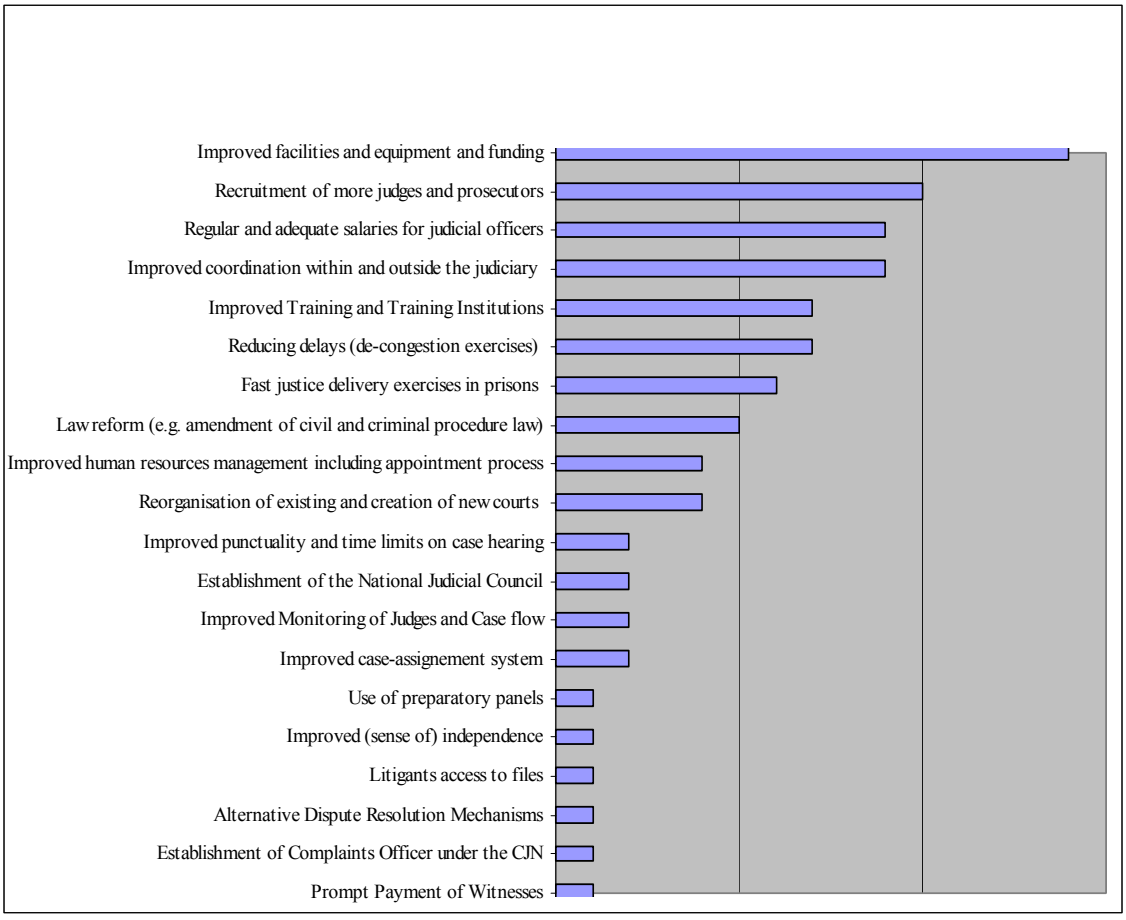
Corruption perception relative to professions
Levels of Corruption:



Question 3

Please state the three most successful measures in the last five years that have been implemented in your state to increase the quality and timeliness of the delivery of justice?

The responses were extremely comprehensive and exceeded the chosen categories. Also one has to bear in mind that the establishment of the categories directly influenced the number of counts. The ranking is therefore giving only as an indication of what measures produced the best results.



However, it emerged clearly that the most effective measures that have been implemented in the course of the past five years consisted in providing the criminal justice system with the very basics, such as funds, equipment, facilities and an adequate remuneration. Also rated as highly effective were those efforts that were made to increase the integration of the criminal justice system. These initiatives seem to have succeeded to some degree in bringing the judge out of his or her traditional isolation and contributed to a more effective use of resources and time within the criminal justice process.

Question 4:

Please state the three most important constraints you face in your State in the delivery of Justice.

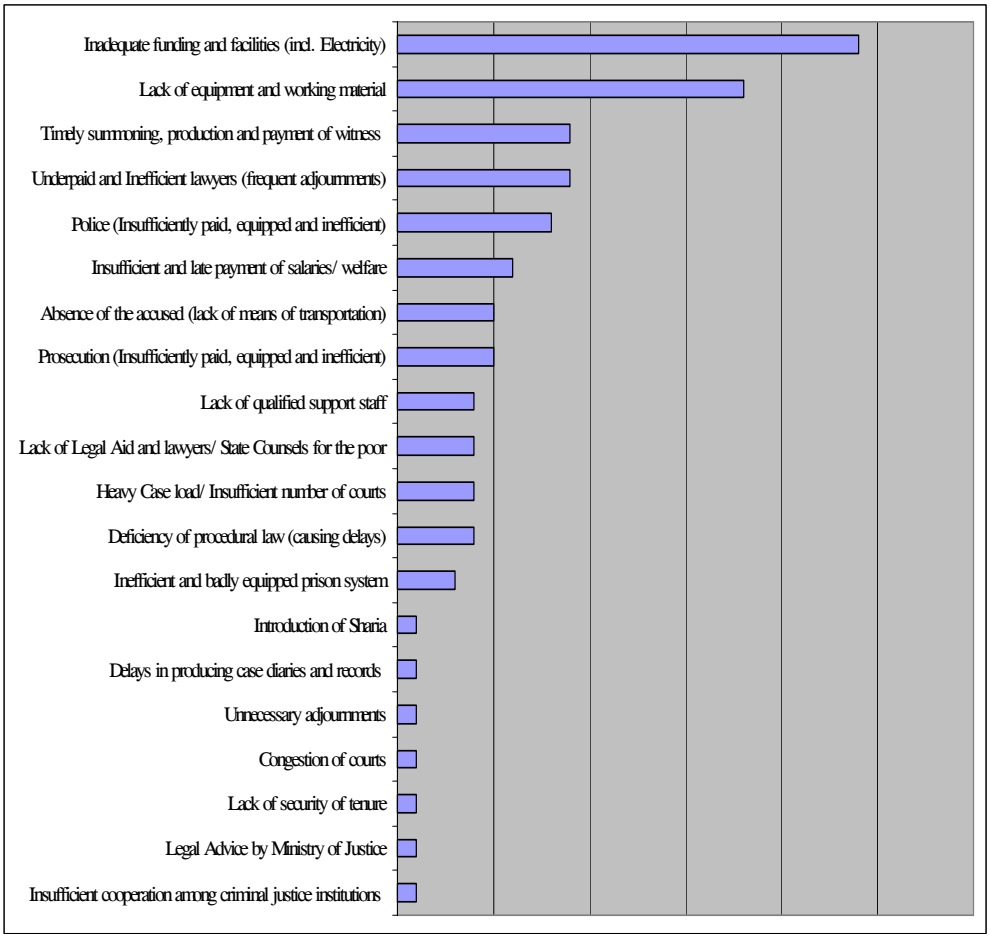
Constraints	Number of References made	Rank
Inadequate funding and facilities (incl. Electricity)	24	1
Lack of equipment and working material	18	2
Underpaid and Inefficient lawyers (frequent adjournments)	9	3
Timely summoning, production and payment of witness	9	3
Police (Insufficiently paid, equipped and inefficient)	8	5
Insufficient and late payment of salaries/ welfare	6	6
Prosecution (Insufficiently paid, equipped and inefficient)	5	7
Absence of the accused (lack of means of transportation)	5	7
Deficiency of procedural law (causing delays)	4	9
Heavy Case load/ Insufficient number of courts	4	9
Lack of Legal Aid, lawyers and State Counsel defending the poor	4	9
Lack of qualified support staff	4	9
Inefficient and badly equipped prison system	3	13
Insufficient cooperation/coordination among criminal justice institutions	1	14
Legal Advice by Ministry of Justice	1	14
Lack of security of tenure	1	14
Congestion of courts	1	14
Unnecessary adjournments	1	14
Delays in producing case diaries and records	1	14
Introduction of Sharia	1	14

Other constraints mentioned were the lack of legal aid and the difficulties that poor litigants faced in finding a lawyer. In a country like Nigeria, where according to recent UNDP human development report, at least one third of the population is living under the poverty level, such a situation must have a devastating effect on the equality of all citizens before the law.

Besides these problems which are related to scarce resources, many of the additional constraints find their root cause not within the judiciary itself but in the other criminal justice institutions. The lawyers, the police and to a certain degree, the prosecutors also create, according to the participants, a fair amount of obstacle to a smooth functioning of the criminal justice process.

In particular, the backlog of cases, are to a large extent caused by delays at all stages of the criminal justice process which has serious impact on the efficiency of the courts. Some of the more frequent problems encountered in criminal trials include - files not being produced on time, witnesses not turning up because they are not refunded transport costs, lawyers and prosecutors being badly prepared and the accused not being brought to court because of lack of transportation.

The main constraints in the delivery of justice

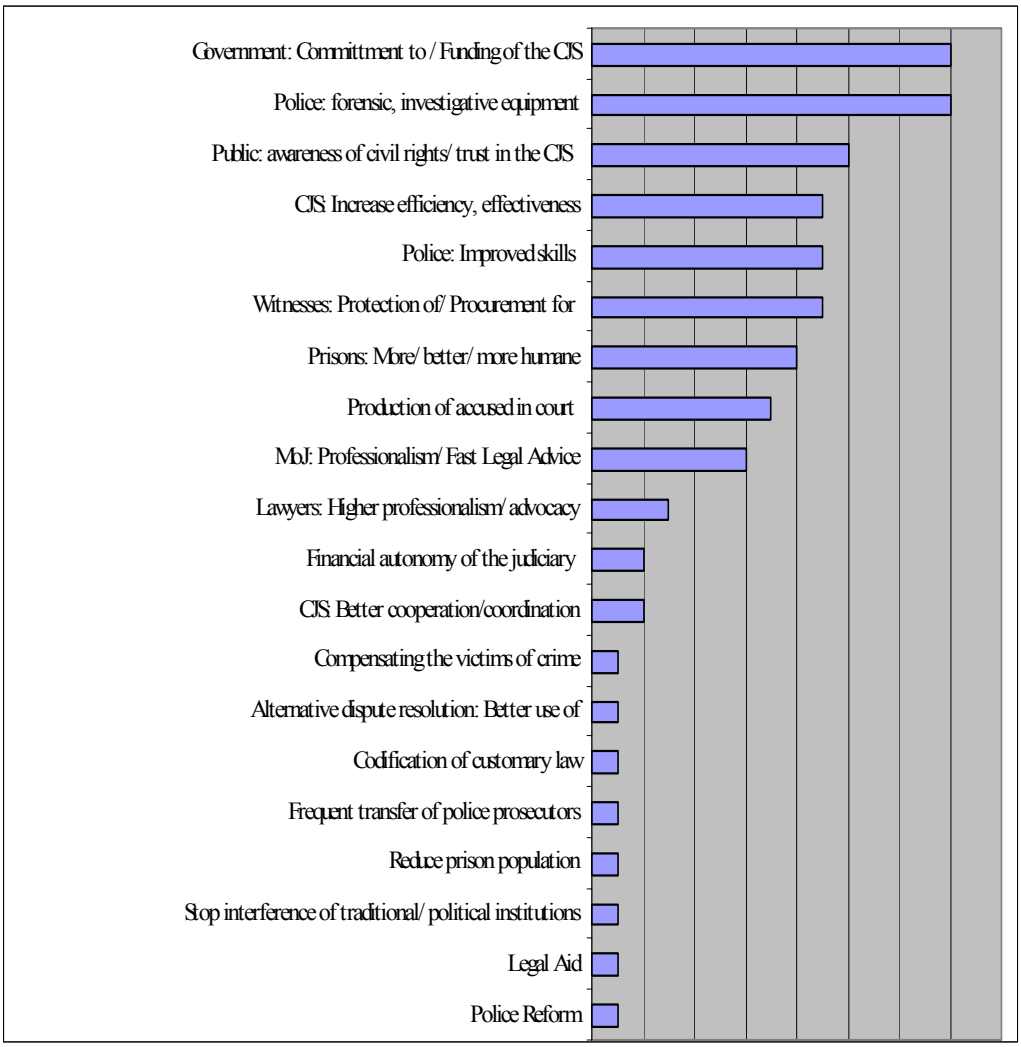


Question 5

What in your opinion are the three most important improvements needed in the criminal justice system outside the court system?

The answers given to this question differed quite significantly in scale and scope. Some of them were far reaching long-term improvement such as police reform and increased awareness of the general public regarding its civil right, its understanding of and trust in the criminal justice while others contained much more specific recommendations concerning the solution of immediate problems such as transporting suspect and accused to court.

Most important improvements needed outside the court system



The majority of answers given rendered categorisation rather difficult. Some very specific measures even though conceptually part of other far reaching ones were quoted separately because of the specific importance given to them. An example of this might again be the transportation of the accused to and from the courts which at the same time falls within the wider objective of increasing and improving police equipment in general or even reorganising the entire police force.

It was the Police which emerged as the most mentioned institution. Improvements needed included better training, improvement of investigative and forensic skills equipment and the establishment of a central data bank on crime. There seems to be a general agreement among all participants that the Police is in dire need of material and human resources. It is only if serious efforts are made to bring about the various improvements mentioned, would the criminal justice system at large has a chance to become more efficient and effective.

Another institution repeatedly mentioned was the prison system. Many participants recommended not only the creation of new prisons and the upgrading of the existing ones but also insisted that detention should be more humane. Furthermore, it was requested that prison services should focus more on rehabilitation of prisoners.

Another area identified was the handling of witnesses. Most of the recommendations given in this regard dealt with the prompt and adequate refunding of witnesses and with their protection.

These and other statements again confirmed that many of the most urgent improvements needed to increase in particular the timeliness of the delivery of Justice are not with the control of courts and are closely linked to the efficiency, effectiveness and integrity of the other stakeholders involved in the justice system, such as the police, the prisons, the Attorney General's Office and the lawyers. Any reform effort therefore should be comprehensive and include other stakeholders. This has to be kept in mind also within the context of the implementation of the here proposed project.

Question 6

What in your opinion are the three most important improvements needed in the socio-economic and/ or political environment?

Most important socio-economic and political improvements	Counts	Rank
Establish fair economic environment and labor market	10	1
Better service conditions (pensions, welfare, salaries)	9	2
Rule of Law/ Security/Crime Control and Crime Prevention	7	3
Better and Free Education System (both youth/adults)	6	4
Maintain the integrity, independence of and public confidence in the judiciary	6	4
Stable Government/Political stability	5	6
Political tolerance, Social Peace and Stability	4	7
Poverty alleviation/Salary increases	4	7
Eradicate corruption and raise awareness about negative effects	4	7
More social facilities/better infrastructure	3	10
Government serving the public/ closer to the public	3	10
Monitor political party financing	1	12
Appointment based on merit	1	12
Free Health Care	1	12
Improved Communication System	1	12
Decrease public wastage	1	12

According to the participants most urgent are those improvements that have to be made to the general living conditions of the Nigerian citizens at large. It was agreed that measures such as the establishment of a fair and enabling economic environment and labor market, including an increase in salaries.

Another priority, as identified by the participants, include strengthening the rule of law, increase in human security and eradication of corruption. Besides this generic field of intervention, the participants also agreed on the importance of upholding the independence and integrity of the judiciary. Closely linked to issue of security are also the issue of political and social stability. Religious and social tensions are among the main causes of the precarious security situation in Nigeria.

Health and social care as well as improvements in the general infrastructure, including the communication system were rated as another field in which swift improvements are needed.

C. The Small Group Discussions

On the second day of the workshop, the paticipants were divided into four groups in accordance with the four major impact indicators; viz – access to the courts; quality and efficiency of the trial process; public confidence in the courts; and response to complaints. Terms of reference were given to each group which included some secondary impact indicators that could assist the groups in their discussions. Groups were requested to focus on and develop such measures that can be addressed by the judiciary *sui motu*, bearing in mind resource constraints.

The objective was to enable the groups identify the priority areas to be addressed in relation to the four major impact indicators, as well as propose measures to address the problems identified,the institutional responsibilities and the monitoring of its implementation. Four important questions were also provided as a guide to enable them propose only realistic measures in relation to each impact indicator. Thus, paticipants were to consider the extent of control of the judiciary to the implementation of each measure, the availability of resources to implement such measures, the impact such measure are likely to have on the key problems and the likelihood of results being achieved within the next 18 months.

GROUP ONE

ACCESS TO THE COURTS

Group One, which was to discuss access to the courts as a primary indicator, had the following terms of reference:

- Public understanding of basic rights and obligations (Example: Judges involved in public information programmes);

- Finacial Cost (Example: Reduce administrative burden on court users);
- Courts sensitive to differing cultural norms (Example: Translate basic information into relevant local languages where not presently available; develop training programmes covering differing cultures);

- Friendly environment for litigants, witness etc. (Example: Shade, seating, water for those waiting etc.);

- Bail applications dealt with promptly (Example: Judges to note conditions of bail in court file and eliminate need for registry staff to be involved);

- Proportion of persons awaiting trial (Civil/Criminal) (Example: Increased coordination with prosecutors, police, prisons; enforce time limits; deny unjustified adjournments).

In considering access to justice, the group discussed in detail the six secondary indicators mentioned above with great enthusiams. The Group also took into account the process guidance issued against each of the secondary indicators, in order to determine the impact of the measures which they proposed. In conclusion, the group proposed as follows:

Public Understanding of Basic Rights and Obligations

The group concluded that the chief judge is the proper person to brief the media on the rights and obligations of litigants and the workings of the court system, including issues of jurisdiction, etc. In this regard, judges were enjoined to move away from the traditional notion that judges should shy away from publicity and therefore, not grant interviews or participate in public enlightenment activities. It was however cautioned that in educating the public on their rights and obligations, judges should avoid controversial issues which are likely to be the subject of legal dispute. The group was of the view that this secondary indicator could be attained within the envisaged 18 months period.

Financial Cost

The group noted that court fees vary from jurisdiction to jurisdiction. Whilst avoiding the temptation to fix uniform fees especially in view of its impracticability, the group noted that the fixing of court fees is within the powers of the Chief Justice and the Chief Judges. The Constitution of the Federal Republic of Nigeria empowers the Chief Justice and Chief Judges to make court rules which include the fixing of fees. Chief judges were therefore enjoined to take appropriate steps to remove obstacles to easy access to courts, particularly high fees. Other measures proposed include facilitating the appearance of witnesses, and the possible establishment of new courts. The Group also proposed the re-introduction of the old system where courts seat in sessions at the various localities in order to carry justice nearer to the people. The group also agreed that this measure is attainable within the envisaged 18 months period.

Differing Cultural Norms

The group observed that Nigerian courts have the comparative advantage of using local languages peculiar to the locality of the court in order to transact its business, and that even where a litigant is not versed in the language of the court, an interpreter is made available. It was further noted that this practice is observed in all trial courts, from the lowest court to the high court, notwithstanding the fact that all court records are in English. The group however agreed that training and public enlightenment programmes in various local languages should be undertaken by the courts.

Friendly Environment for Litigants, Witnesses, etc.

The group observed that the current practice is for witnesses to be excluded from the court room, and that no waiting facility is provided in most of our courts. It was therefore proposed that new court buildings should include waiting rooms for witnesses, litigants, etc. It was noted that this measure is not immediately attainable, and that the implementation of the measure is not within power of the court, because the resources for such capital expenditures is controlled by the executive. However, the Group recommended that Chief Judges should explore the possibility of converting idle rooms in existing court structures into waiting rooms for witnesses, litigants as well as persons released on bail who are awaiting the perfection of their bail conditions.

Prompt Treatment of Bail Applications

The group discussed the issue of bail and noted that to reduce congestion in the prisons, courts are encouraged to grant bail in respect of all offences other than those with capital punishment. The Group appreciate the need to simplify the procedures for bail, but agreed that the accused and his sureties must go to the administrative officers to sign the bail bonds, etc. The group noted the high number of persons awaiting trial amongst

whom were those whose offences though bailable were not granted bail, and those who have been granted bail but could not perfect the bail conditions, etc. It was therefore resolved that bail should be made available to accused persons in all bailable offences unless there are special circumstances which will warrant the denial of such bail. The Group emphasized the need for public enlightenment as well as the need for a review of the laws so as to introduce "suspended sentences." It was also observed that the fines provided in statute books are outdated and as such it was proposed that such fines should be reviewed to make them more meaningful.

Proportion of Persons Awaiting Trial (Civil / Criminal)

Participants in the group extensively discussed the issue of coordination between justice agencies, especially in the area of criminal justice. It was noted that in all the states there exist a coordination mechanism in the form of Criminal Justice Committees which are comprised of the representatives of the Police, the Attorney-General's Office, the Courts and the Prisons Service. It was also observed that Chief Judges periodically carry out visits to prisons with a view to ascertaining the number of inmates awaiting trial and those who are being improperly detained. The Group therefore noted that the coordination mechanism necessary for the smooth running of the system is already in place. It was however resolved that participants should ensure the effective use of such mechanisms to reduce the proportion of persons awaiting trial, as well as the harmonious inter-dependence between the various criminal justice agencies.

In the area of civil justice, the Group observed that certain aspect of our procedures tend to encourage delays, especially the filing of pleadings, the attendance of witnesses and even obedience to court orders. It was noted that in the area of civil law, it is within the purview of the judge to deal with contempt of his court or disobedience to court orders.

GROUP TWO

QUALITY OF THE TRIAL PROCESS

Group Two which discussed Quality and Efficiency of the Trial Process was given the following terms of reference:

- Decisions within the competence of the court to make (Example: Continuing education for judges);
- Exercise of Procedural discretion (Example: Continuing education for Judges; Judges' Bench Books);
- Exercise of substantive discretion (Example: Continuing education for Judges; Judges Bench Books);
- Consistency, predictability and coherence in sentencing in criminal cases (Example: sentencing guidelines);
- Merit-based judicial appointments and promotions (Example: Intensive consultations with relevant judges before appointments are made; Promote the use of academic writings and record of cases on appeal in assessing suitability for promotion);

- Performance indicators (Example: number of procedural and substantive violations; failure to enforce time limits on e.g. interlocutory orders).

The Group discussed extensively and addressed all the secondary indicators referred to it. Paticipants' discussion centered on timeliness, the quality of justice, issues related to jurisdiction, consistency in sentencing, the performance indicators of individual judges as well as abuse of civil process. In the end the following measures were proposed:

Timeliness

The Group noted that cooperation between criminal justice institutions is vital to the achievement of a speedy justice process. As such, participants proposed that appropriate steps should be taken to increase the cooperation between agencies in the justice system. In addition, the Group observed that there has been a backlog of old outstanding cases which have accumulated as a result of the slow nature of the justice system. It was therefore proposed that in dealing with such cases, some form of prioritization would be required. Incessant and unnecessary adjournments was also noted to be a major cause of the delay in the trial process. The need for strictness on granting of adjournment was therefore stressed. It was further observed that failure by judges to sit on time also contribute to the delays. The Group resolved that to facilitate timeliness in the trial process the performance of the individual judge needs to be monitored. Also, sustained consultation between judiciary and the bar should be encouraged.

The Group further observed that delays are also facilitated by some procedural rules. As such it recommended a review of such procedural rules in order to minimize delays and reduce potential abuse of process. Another problem affecting the timeliness of the trial process was lack of an effective case management system. The Group recommended the need to put in place appropriate case management system that will take into cognizance the case loads, case types and length of such cases, so as to minimize undue delays.

In the area of criminal cases, the group observed that lack of timeliness in the justice system has occasioned serious congestion in the prison system, which are populated largely by suspects awaiting trial. It was noted that apart from procedural delays, a major problem in this area has to do with non production of such suspects before the court for trial, resulting in some of them spending more years awaiting trial than they would have spent had they been convicted for the offence with which they were charged. In deploring this situation, the group recommended regular de-congestion exercises as well as prison visits by human rights organisations. The group also observed that some delays are caused because of lack of access to books by judicial officers, and recommended that appropriate measures are required to ensure increased access to law books by judicial officers.

Jurisdiction

The Group then discussed the issue of jurisdiction and in particular the need to clarify the jurisdiction of lower courts to grant bail. It was observed that such clarity is essential in order to understand the extent of such jurisdiction. The group expressed the need for public education especially on the issue of bail as it was noted that substantial number of the populace are ignorant of bail rights and procedures. It was however, the opinion of the group that such measures must be complemented with effective monitoring such as frequent court inspections as well as review of case files.

Consistency in Sentencing

As a pre-requisite of improvement in the quality of justice granted to litigants, the group discussed the need for consistency in Sentencing. To achieve this, the Group resolved that accurate criminal records are essential which must be made available at the time of sentencing. Most importantly, it was agreed that the development of a coherent sentencing guidelines is imperative as a measure that could lead to consistency in sentencing.

Performance indicators of Individual Judges

The Group deliberated on the performance indicator for individual judges, as a way of enhancing the quality of justice. It was the view of the Group that to determine the performance of judges, it is necessary to assess whether such 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, number of appeals allowed against their substantive judgements and the level of public complaints against their conduct in court. Participants in the Group stressed that these indicators could provide a definite and effective method of assessing the performance of Judges. In addition to the role of Chief Judges in monitoring the performance of individual judges, the Group also noted the role of the National Judicial Council and the Independent Anti-Corruption Commission in this endeavour.

Abuse of Civil Process

On the abuse of civil process, the group noted that the major areas of such abuse are in relation to ex-parte injunctions, improper proceedings in the absence of parties, judgements in chambers instead of open court as well as abuse of process by vacation judges. The Group therefore expressed the need for caution by judges in the issuance of ex-parte injunctions and the imperative of serving the ends of justice by fair hearing to all the parties. Whilst stressing that judges should only give judgements in open court, it was also the view of participants in the Group that vacation judges should only hear genuinely urgent matters.

GROUP THREE

PUBLIC CONFIDENCE IN THE COURTS

Group three discussed the level of public confidence in the courts as a primary indicator for determining the integrity of the judicial system. The Group was given the following terms of reference:

- Strengthen social control systems (Example: Establish Court Users Committees);
- Public confidence in the exercise of judicial functions (Example: Explain decisions openly in ways or terms which the public can understand);
- Fairness and impartiality (Example: Random case allocation; Conduct of judges in and outside the court.); and,
- Political neutrality (Example: Avoid party memberships, fund raising meetings, political gatherings, etc.).

Bearing in mind the need to prioritize the issues by laying emphasis to those indicators which could be achieved by the judiciary sui motu, the Group commenced discussions on the secondary indicators by proffering two basic assumptions; namely, that there is a direct link between conduct of the courts and public confidence in the courts; and that since the courts are accountable to the public, it is the responsibility of the courts to keep the public informed. Proceeding from this assumptions, the Group raised five priority areas which needed to be addressed. These were:

- the conduct and life-style of some judges (judicial arrogance);
- inadequate funding for the judiciary;
- irregular appointments;
- false complaints against judges which seem to take advantage of the inability of the judges to defend themselves; and,
- lack of timely information about what happens in court in such a way that the public could understand them.

Strengthen Social Control Systems

On the need to strengthen social control systems, the Group examined the current system of public complaints by court users. It was the view of the Group that there should be prompt and effective method of dealing with complaints by court users. In this regard it was recommended that Complaints Committees be established in each court and that complaints received should be expeditiously dealt with.

Public Confidence in the Judiciary

The Group noted that that there is a direct link between the conduct of judges and other court staff and public confidence in the judiciary. On the conduct of judges, the group cautioned that judges should avoid exhibiting judicial arrogance by behaving as if they are unaccountable. It was the view participants that judges are accountable to the people and that it is for that reason that a succinct code of conduct was put in place. It was therefore recommended that Chief Judges should ensure a strict enforcement of the code of conduct as well as the dissemination of such code of conduct to the understanding of the judges and the general public. It was also recommended that a strict monitoring of other court staff is essential in order to ensure that they keep to the tenets of their various responsibilities.

Another aspect of this indicator that will enhance public confidence in the courts, according to the Group, would be to keep the public informed about what happened in the courts. Public enlightenment is a necessary tool which the courts could effectively employ in winning public confidence.

Fairness and Impartiality

Fairness and impartiality were identified as necessary catalysts to public confidence in the courts. It was the view of the Group that the conduct of judges both in and outside the court determines a great deal 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. On the part of the Chief Judges, random case allocation and fairness in such case assignments was also seen to be essential.

Political Neutrality

The issue of political neutrality as a necessary pre-requisite to the independence and integrity of the judicial system was also discussed. It was the view of the Group that judges must not be seen to partake in politics or be in political associations, meetings or gatherings. Indeed, the Group even cautioned that Chief Judges as well as other judges must be cautious in the way they relate with the executive, so as not to undermine the cherished concept of separation of powers and judicial independence. The Group resolved that except where judges have a specified role to play, they should avoid delving into executive functions.

Irregular Appointments

The Group discussed the need to ensure that only qualified and competent persons of Integrity are appointed as judges. The system of appointment of judges was discussed by the Group and it was the view of participants that the current centralized system in which the Judicial Council handles the appointment is quite good, as it has helped a great deal in preventing the appointment of judges from being politicized. It was the feeling of the Group that due diligence must be exercised in recommending persons for appointment to the bench, in order to prevent irregular appointments or appointment of incompetent persons or those of questionable integrity.

Inadequate Funding for the Judiciary

Although the issue of funding is one that is beyond the purview of those indicators which the judiciary could handle sui motu, the Group felt that adequate funding is central to the effective performance of the judiciary as well as the preservation of its independence. The Group noted that whilst the other two arms of government to a large extent received adequate resources required for their functions, the judiciary at all times remained starved of the requisite funds for its effective functions. It was the view of participants that the judiciary is yet to attain its independence in the area of resource allocation. This, the Group stressed must be pursued and achieved in order to provide for the necessary requirements of the third arm of government.

External Monitoring by the ICPC

As a way of ensuring the integrity of the courts, judges and other personnel, the Group resolved that external monitoring of the system is required. In line with its mandate under the Corrupt Practices and Other Related Offences Act, 2000, the Group resolved that the Independent Corrupt Practices and Other Related Offences Commission, ICPC should monitor the courts, the conduct of judges and other court personnel, and where necessary take appropriate steps to report erring judges or court staff to the National Judicial Council, appropriate Judicial Service Committee, or where necessary take appropriate measures in accordance with its mandate. It was also the view that the ICPC should make available its reports to the public.

GROUP FOUR

RESPONSE TO COMPLAINTS

Group Four, which discussed Response to Complaints as a primary indicator was given the following terms of reference:

- Credible and effective Complaints System (Example: Publicize in courts how complaints should be made, to whom it should be made;
- Enforcement of Code of Conduct (Example: Publicize Code of Conduct in Courts and Court Registries);
- Creation of Public Communication Channels aimed at informing the court user about the procedural status of his/her complaints.

Establishment of a Credible and Effective Complaints System

The Group commenced by emphasizing that a credible 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 that such a system must be well known to the public. The Group observed that although the current complaints system in which the public are to lay their complaints to the Chief Justice of Nigeria, the Chief Judges in the various states, the National Judicial Council or the Judicial Service Committees at the Federal and State levels are quite adequate, the general public is not enlightened on these avenues, as well as the procedures for making these complaints. Hence it was resolved that the current complaints system must not only be publicized in courts, but also how such complaints are to be made.

The Group also discussed the procedural steps that needed to be taken in relation to such complaints and expressed the need to give fair hearing to the judicial officer complained against and that the result of the decision of the National Judicial Council or Judicial Service Committee should be communicated to the complainant. Indeed, the Group went further to recommend that in cases of particular public interest, such decisions should be publicized.

Participants also discussed the need to discourage frivolous and malicious petitions, but stressed that anonymous complaints should be investigated and should only be disregarded if found to be lacking in substance.

Enforcement of Code of Conduct

To complement a credible complaint system is the enforcement of code of conduct. The Group reasoned that the credibility of any complaints system lies in the ability of the system to effectively respond to such complaints by ensuring that such complaints of misconduct as have been proven are duly punished in accordance with the code of conduct, and the complainant informed of the action taken. This has the advantage of ensuring the effectiveness and integrity of the judiciary as well as building up accountability and public confidence in the institution. The Group emphasized the role of the National Judicial Council and the respective Judicial Service Committees in the effective enforcement of the Code of Conduct.

Participants also noted that although a succinct code of conduct for judicial officers is in place, the code is not sufficiently publicized to judicial officers and the public. It was resolved that this is essential for the judicial officers to comply, and for the public to hold them accountable for such compliance.

Creation of Public Communication Channels

It was argued that the judiciary being a service institution, must relate effectively with the people which it is supposed to serve. Hence it was agreed that the judicial arm must move away from the old adage that judicial officers should only be seen and not heard. It was decided that in line with the modern thinking, judicial officers should paticipate in public education programmes to enlighten the people as to their rights and how to go about enforcing such rights. The Group however, cautioned that in performing such functions, judges should endeavour to restrict themselves to fairly straight forward issues and avoid controvertial subjects that may call into question their independence and impartiality as judges. Further, the Group noted the tendency of the print media to misrepresent facts and opined that judges may consider the use of electronic media to handle such public enlightenment programmes, unless they are sure of the credibility of the print media concerned.

Training on Judicial Ethics

The Group considered training on judicial ethics as a necessary element that will enhance the integrity of the judiciary. Participants therefore stressed the role of the National Judicial Institute in undertaking this endeavour. The Group further observed that such training should not be restricted to judges alone but other court staff that work with them. This the Group reasoned would ensure the integrity of the whole system.

D. The Indicators of Change – Measures and Impact Indicators for Assessing Judicial Integrity and Capacity

Based on the discussions held in the small groups it was possible to establish a list of measures which the Chief Judges considered essential and effective in increasing the access to, the quality of and the public confidence in the justice system.

This list became the immediate basis for the refinement of the comprehensive assessment methodology. In particular the survey instruments for judges, lawyers and prosecutors, court users, court staff, both present and retired as well as private sector institutions were reviewed with a particular focus of covering all the mentioned impact indicators.

By linking each single measure directly to a set of indicators it became possible to establish individual baselines; a necessary precondition for any truly meaningful monitoring exercise The impact oriented design of the assessment will allow the fine-tuning and adjustment of each single measure and hereby greatly contribute to the achievement of the overall objectives of the project.

1. Access to Justice

Measure 1

Implementation of a relevant and up-to-date Code of Conduct for judicial officers.

Impact indicators

1.1. Date of most recent review of Code of Conduct
1.2. Number of complaints received under the Code of Conduct
1.3. Percentage of complaints received that were investigated
1.4. Percentage of complaints received and investigated that were disposed of.
1.5. Code of Conduct complying with best international standards
1.6. Percentage of officers trained on Code of Conduct

Measure 2

Enhance the public's understanding of basic rights and obligations dealing with court-related procedural matters.

Impact indicator

The number of judges involved in public information programmes offered to the media and to the public in general

2.2. Availability of the judicial Code of Conduct to the public

Measure 3

Ease of access of witnesses in civil/criminal procedural matters.

Impact indicator

Number of instances in which witnesses provide evidence without attending court
3.2. Average time and expense for a witness to attend a case

Measure 4

Affordable court fees

Impact Indicator

4.1. Percentage of fees set at too high a level

Measure 5

Adequate physical facilities for witness attending court

Impact Indicator

Adequate Witness and Litigant's waiting room (taking advantage of any unused rooms where resources do not permit additional court physical space)

Measure 6

Itinerant Judges with the capacity to adjudicate cases outside the Court Building reaching distant rural areas

Impact Indicators

6.1. Number of Itinerant Judges
6.2. Availability of necessary transport

Measure 7

Level of Informed Citizens (and court-users in particular) on the nature scale, and scope of bail-related procedures

Impact Indicator

Number of courts offering basic information on bail-related aspects in a systematic manner.

Measure 8

Use of suspended sentences and updated fine levels

Impact Indicators

8.1. Passage of empowering legislation
8.2. Existing Number of cases where suspended sentences were applied
8.3. Number of Cases where fine penalties were applied

2. Quality of Justice

Measure 9

Timeliness of Court Proceedings

Impact indicators

9.1 Level of cooperation between agencies
9.2 Prioritization of old outstanding cases
9.3 Number of adjournment requests granted
9.4 Percentage of courts where sittings commence on time
9.5 Percentage of judge s whose performance is monitored
9.6 Levels of consultations between judiciary and the bar
9.10 Procedural rules that reduce the potential abuse of process
9.11 Number of judges practicing case management
9.12 Type of case management being practiced

9.14 Regular-congestion exercises undertake
9.15 Regular prison visits undertaken with Human Rights NGO's and other stakeholders
9.16 Level of access to books for judicial officers
9.17 Functioning Criminal Justice and other committees (including participation by NGOs).

Measure 10

Courts exercising powers within their Jurisdiction

Impact Indicators

10.1 Number of judges/registrars trained/retrained in last year
10.2 Extent to which bail jurisdiction clear and implemented
10.3 Percentage of weekly court returns made and reviewed
10.4 Number of court inspections
10.5 Number of files called Up under powers of review.

Measure 11

Consistency in sentencing

Impact indicator

11.1 Availability of criminal records at time of sentencing
11.2 Development of and compliance with sentencing guidelines.

Measure 12

Performance of individual judges

Impact Indicators

12.1 Percentage of cases where sits on time
12.2 Backlog of cases? Going up? Down?
12.3 Number of errors in procedures
12.4 Number of appeals allowed against substantive judgments
12.5 Conduct in court
12.6 Number of public complaints
12.7 Level of understanding of Code of Conduct
12.8 Percentage of sentences imposed within the sentencing guidelines

Measure 13

Compliance with requirements of civil process

Impact Indicators

13.1 Number of cases where abuse of ex parte injunctions
13.2 Number of non-urgent cases heard by Vacation judges
13.3 Number of instances of proceeding improperly in the absence of parties
13.4 Number of chambers judgments (not given in open court).

Measure 14

Ensuring propriety in the appointment of judges

Impact indicator

14.1 Level of confidence among other judges

Measure 15

Raising level of public awareness of the judicial Code of Conduct

Impact indicators

15.1 Availability of Code of Conduct

15.2 Number of complaints made concerning alleged breaches

3. Public Confidence in the Courts

Measure 16

Public Confidence in the courts

Impact Indicators

16.1 Level of confidence among lawyers, Judges, litigants, court administrators, Police, general public, prisoners, and court users

16.2 Number of complaints (see above);

16.3 Number of inspections by ICPC

16.4 Effectiveness of policies regarding formal and social contact between the judiciary and the executive

16.5 Nature, scope and scale of involvement of civil society in court user committees

4. Improving our efficiency and effectiveness in responding to public complaints about the judicial process

Measure 17

Existence of credible complaints mechanisms

Impact Indicators

17.1 Complaints mechanisms which comply with best practice

17.2 Extent to which public are aware of and willing to use the complaints mechanisms

17.3 Readiness to admit anonymous complaints in appropriate circumstances

E. Follow-up Actions

Review of follow-up action identified in the course of the Workshop:

1. Access to justice

1.1 Code of conduct reviewed and, where necessary revised, in ways that will impact on the indicators agreed at the Workshop. This includes comparing it with other more recent Codes, including the Bangalore Code. It would also include an amendment to give guidance to Judges about the propriety of certain forms of conduct in their relations with the executive (e.g. attending airports to farewell or welcome Governors). Ensure that anonymous complaints are received and investigated appropriately. *(Measure 1.1; 1.6; 16.4; 17.3) Action: Chief Justice of the Federation.*

1.2 Consider how the **Judicial Code of Conduct** can be made more widely available to the public (e.g. hand outs, posters in the courts etc.) *(Measure 2.2) Action: Individual Chief Judges).*

1.3. Consider how best Chief Judges can become involved in enhancing the **public's understandings** of basic rights and freedoms, particularly through the media. *(Measure 2.1) Action: Individual Chief Judges.*

1.4 **Court fees** to be reviewed to ensure that they are both appropriate and affordable. *(Measure 4.1) Action: All Chief Judges.*

1.5 Review the adequacy of **waiting rooms,** etc. for witnesses, etc. and where these are lacking establish whether there are any unused rooms etc. that might be used for this purpose. Where rooms are not available explore other possibilities to provide shade and shelter for witnesses in the immediate proximity of courts *(Measure 5.1) Action: All Chief Judges.*

1.6 Review the number of **itinerant Judges** with the capacity to adjudge cases away from the court centre. *(Measure 5.1) Action: All Chief Judges; Chief Justice of the Federation.*

1.7 Review arrangements in their courts to ensure that they offer **basic information to the public on bail-related matters**. *(Measure 7.1) Action: All Chief Judges.*

1.8 Press for empowerment of the court to impose **suspended sentences and updated fine levels**. *(Measure 8.1) Action: Chief Justice of the Federation.*

2. Quality of justice

2.1 Ensure high levels of **cooperation between the various agencies** responsible for court matters (police; prosecutors; prisons) *(Measure 9.2) Action: All Chief Judges.*

2.2 **Criminal Justice and other court user committees** to be reviewed for effectiveness and established where not present, including participation by relevant non-governmental organisations. *(Measure 9.13; 16.5) Action: All Chief Judges.*

Old outstanding cases to be given priority and regular decongestion exercises undertaken. *(Measure 9.2; 9.10) Action: All Chief Judges.*

2.3 **Adjournment requests** to be dealt with as more serious matters and granted less frequently. *(Measure 9.3) Action: All Chief Judges; Chief Justice of the Federation.*

2.4 **Review of procedural rules** to be undertaken to eliminate provisions with potential for abuse. *(Measure 9.7) Action: All Chief Judges and Chief Justice of the Federation.*

2.5 Courts at all levels to commence **sittings on time**. *(Measure 9.4) Action: All Chief Judges*.

2.6 **Increased consultations** between judiciary and the bar to eliminate delay and increase efficiency. *(Measure 9.6) Action: All Chief Judges*

2.7 Review and if necessary increase the number of Judges practising **case management**. *(Measure 9.8) Action: All Chief Judges*

2.8 Ensure **regular prison visits** undertaken together with human rights NGOs and other stakeholders. *(Measure 9.12; 16.5) Action: All Chief Judges*.

2.9 **Clarify jurisdiction** of lower courts to grant bail (e.g. in capital cases). *(Measure 10.2)*.

2.10 Review and ensure the adequacy of the number of **court inspections.** *(Measure 10.4) Action: All Chief Judges*.

2.11 Review and ensure the adequacy of the number of **files called up under powers of review**. *(Measure 10.5) Action: All Chief Judges*.

2.12 Examine ways in which the availability of **accurate criminal records** can be made available at the time of sentencing. *(Measure 11.1) Action: All Chief Judges and Chief Justice of the Federation.*

2.13 Develop **Sentencing Guidelines** (based on the United States' model). *Measure 11.2) Action: Chief Justice of the Federation*

2.14 Monitor cases where **ex parte injunctions** are granted, where **judgements are delivered in chambers**, and where **proceedings are conducted improperly in the absence of the parties** to check against abuse. *(Measure 13.1; 13.3; 13.4) Action: All Chief Judges and Chief Justice of the Federation.*

2.15 Ensure that **vacation Judges only hear urgent cases** by reviewing the lists and files. *(Measure 13.2) Action: Action: All Chief Judges and Chief Justice of the Federation.*

3. *Public Confidence in the Courts**

3.1 Introduce **random inspections** of courts by the ICPC. (Measure 16.3) Action: *Independent Commission for the Prevention of Corruption*.

*A number of public confidence-building measures are also covered by initiatives in the other two categories, e.g. see 1, 10, 17 above.

4. ***Improving our efficiency and effectiveness in responding to public complaints about the judicial process***

4.1 Systematic registration of complaints at the federal, state and court level *(Measure 16.3) Action: All Chief Judges and Chief Justice of the Federation.*

4.2 Increase public awareness regarding public complaints mechanisms *(Measure 16.1) Action: All Chief Judges and Chief Justice of the Federation.*

4.3 Strengthening the efficiency and effectiveness of the public complaints system. *(Measure 16.3*). *Action: All Chief Judges and Chief Justice of the Federation.*

V
STRENGTHENING JUDICIAL INTEGRITY

A. Report of the Judicial Group on Strengthening Judicial Integrity: Record of the First Meeting

by
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(Judge of the High Court of Australia)

1. Introduction

1.1 Context

Under the Framework of the Global Programme Against Corruption and in conjunction with the 10th United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Vienna, Austria in April 2000, the United Nations Centre for International Crime Prevention (CICP), in collaboration with Transparency International convened a two day workshop for Chief Justices and other senior judges from eight Asian and African countries. The workshop took place in Vienna on 15 and 16 April 2000. The purpose of the workshop was to consider means of strengthening judicial institutions and procedures as part of strengthening the national integrity systems in the participating countries and beyond. The object was to consider the design of a pilot project for judicial and enforcement reform to be implemented in relevant countries. The purpose was also to provide a basis for discussion at subsequent meetings of the Group and at other meetings of members of the judiciary from other countries, based on the initiatives taken by the Group.

1.2 Membership

The Group was chaired by HE Judge Christopher Weeramantry (former Vice-President of the International Court of Justice). The participants were: Chief Justice Latifur Rahman (Bangladesh); Chief Justice Y Bhaskar Rao (Karnataka State, India); Chief Justice M L Uwais (Nigeria); The Hon F L Nyallali (former Chief Justice of Tanzania); Justice B J Odoki (Chairman of the Judicial Service Commission of Uganda); Justice Pius Langa (Vice-President of the Constitutional Court of South Africa); and Justice Govind Bahadur Shrestha (Nepal). Apologies were received from Chief Justice Sarath Silva (Sri Lanka). The rapporteurs of the Group were Justice Michael Kirby (Judge of the High Court of Australia) and Dr G di Gennaro (former President of the Supreme Court of Italy). Observers attending the meeting included Dato' Param Cumaraswamy (Malaysia: UN Special Rapporteur on the Independence of Judges and Lawyers); Mr B Ngcuka (DPP, South Africa); Dr E Markel (International Association of Judges, Austria); and Judge R Winter (Austria). The co-ordinators of the meeting were Dr Nihal Jayawickrama and Mr Jeremy Pope (Transparency International, London), and Dr Petter Langseth (CICP, United Nations).

1.3 Introduction

A welcome address was delivered by Professor Pino Arlacchi (Under Secretary- General and Executive Director of the United Nations Office for Drug Control and Crime Prevention, Vienna). He emphasized the importance of the rule of law for social and economic development and the need to strengthen judicial integrity in every country. In

some parts of the world, it was observed that extensive levels of corruption existed in the judiciary. It was, therefore, important to assist in the establishment and promotion of accountability and integrity so that judicial officers who were corrupt could be identified and removed from office and judicial officers of integrity could be supported. The role of the United Nations as a facilitator was emphasized. The difficulties of the project were not under-estimated. The initiative of Transparency International, and its work, was acknowledged.

1.4 The Opening Statement

The opening statement of the workshop was delivered by Mr Jan van Dijk (Officer-in-Charge of the Centre for International Crime Prevention in the United Nations Office for Drug Control and Crime Prevention, Vienna). Mr van Dijk outlined the initiatives of the Global Programme Against Corruption. He emphasised that the participating judges were chosen in their personal recognition. The involvement of judges in the Group and subsequent activities of the Global Programme did not indicate a conclusion or suggestion that any of the countries in which they served was specially affected by problems of judicial integrity. Instead, the participation of judges from a number of countries would ensure identification and consideration of a wide range of difficulties and solutions. The proceedings would be managed and controlled by the participating judges. The delicate task of ensuring accountability of judicial officers in a context of upholding judicial independence was fully recognised by all involved.

1.5 Activities of the Global Programme Against Corruption

Dr Petter Langseth outlined the activities of the Global Programme Against Corruption. He gave instances of initiatives taken in a number of countries to combat corruption in the judiciary. He explained the studies undertaken in connection with the Programme, including national country assessments. He outlined the possible role of the United Nations and international and regional organisations in helping countries to strengthen judicial integrity. He explained the possible future activities of similar judicial groups involving other countries with differing judicial traditions, including Latin America, Eastern Europe and the countries of the former Soviet Union. Such activities would build on the initiatives of the present Group, drawn from countries sharing the judicial traditions of the common law.

1.6 The Judicial Integrity Programme of Transparency International

Dr Nihal Jayawickrama outlined the Judicial Integrity Programme of Transparency International. He described the inter-governmental initiatives that had been taken both within the United Nations and elsewhere, relevant to strengthening judicial integrity. These include the adoption in 1975 by the General Assembly of the United Nations of the UN Declaration Against Corruption and Bribery in International Commercial Transactions (Resolution 3514(xxx) 15 December 1975); the Inter-American Convention Against Corruption (1996); the resolution of the Heads of Government of the Commonwealth of Nations (1999) concerning the Promotion of Good Governance and the Elimination of Corruption; the recent initiatives of the World Bank, the International Monetary Fund and the Asian Development Bank to strengthen governance; and the coming into force in February 1999 of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions supplemented by the laws of member states designed to give effect to this Convention. Mr Jeremy Pope emphasised that effective strategies would require initiatives at the national level but that principles could

be offered by an international group which could provide guidance and stimulus to initiatives at the local level.

1.7 Summary of Discussions

The chairman stressed the sensitivity of any proposals involving the judiciary because of the need to protect the judicial institution and its members from inappropriate external interference. He acknowledged that corruption in public life manifested itself in various forms and was not limited to bribery. He and the rapporteurs provided summaries during the discussion by the Group of the items contained on the draft agenda, which the Group adopted. This record is based upon those summaries.

1.8 Issues

The following issues were considered by the Group, namely:

- Public perception of the judicial system.
- Indicators of corruption in the judicial system.
- Causes of corruption in the judicial system.
- Developing a concept of judicial accountability.
- Remedial action.
- Designing a process to develop plans of action at the national level.

1.9 Distribution

The Group agreed to make the results of its deliberations available to relevant international bodies (such as the International Commission of Jurists; Centre for the Independence of Judges and Lawyers; the International Bar Association; the International Association of Judges; the International Association of Prosecutors etc). The Group had before it a number of publications of such bodies including the recent report of the Centre for the Independence of Judges and Lawyers within the International Commission of Jurists, Policy Framework for Preventing and Eliminating Corruption and Ensuring the Impartiality of the Judicial System; and the Standards for the Independence of the Legal Profession adopted by the International Bar Association (1990). The Group was also provided with numerous reports of other relevant international bodies including the Draft Working Paper of the United Nations Expert Group Meeting held in Vienna in April 2000 on Implementation Tools for the Global Programme Against Corruption.

1.10 Authorisation of the Distribution of this Record

The Group agreed, as appropriate, to authorise the distribution of this record to national bodies with concern about the strengthening of the judicial institution, such as National Judicial Service Commissions, National Associations of Judges, Bar Associations, Law Societies and other like bodies.

2. Recommendations

2.1 Suggestions for Action

The Group resolved to note the suggestions made by members during discussion. Those suggestions included the following:

2.1.1 Addressing Systemic Causes of Corruption

(1) *Data Collection*: There is need for the collection and exchange of information at national and international levels concerning the scope and variety of forms of corruption within the judiciary. There is a need to establish a mechanism to assemble and record such data and, in appropriate format, to make it widely available for research, analysis and response. In the context of the UN Global Programme Against Corruption and the initiatives for crime prevention, the establishment of an international data base of this kind, in appropriate format, should be a high priority.

(2) *Remuneration*: There is need to improve on the low salaries paid to judicial officers and court staff in many countries. Where it exists, there is a need to abolish the traditional system of paying "tips" to court staff on the filing of documents and the replacement of such salary supplements with conventional remuneration.

(3) *Monitor*: There is need to establish in every jurisdiction an institution, independent of the judicature itself, to receive, investigate and determine complaints of corruption allegedly involving judicial officers and court staff. Such an institution should include serving and past judges. It should possibly have a wider mandate and, where appropriate, be included in a body having a more general responsibility for judicial appointments, education and action or recommendation for removal from office.

(4) *Judicial Appointments*: There is need to institute more transparent procedures for judicial appointments to combat the actuality or perception of corruption in judicial appointments (including nepotism or politicisation) and in order to expose candidates for appointment, in an appropriate way, to examination concerning allegations or suspicion of past involvement in corruption.

(5) *Codes of Conduct*: There is need for the adoption of judicial codes of conduct, for the inclusion of instruction in such codes in the education of new judicial officers and for information to the public about the existence and provision of such codes against which the conduct of judicial officers may be measured.

(6) *Adherence*: There is need to enforce the requirements for newly appointed judicial officers formally to subscribe to such a judicial code of conduct and to agree, in cases of proven breach of the requirements of such code, to resign from judicial or related office.

(7) *Delay*: There is need for the adoption in such a code and in practical administration of publicly available standards for the timely delivery of judicial decisions and for appropriate mechanisms to ensure that such standards are observed.

(8) *Assignment*: There is need for the adoption of a transparent and publicly known (and possibly random) procedure for the assignment of cases to particular judicial officers to combat the actuality or perception of litigant control over the decision-maker.

(9) *Sentencing Guidelines*: There is a possible need for the adoption of sentencing guidelines or other means to identify clearly criminal sentences and other decisions which are so exceptional as to give rise to reasonable suspicions of partiality.

(10) *Case Loads*: There is need to draw attention to excessive caseloads for individual judicial officers and the maintenance of job interest and satisfaction within the judiciary.

(11) *Public Knowledge*: There is need to educate and enlighten the public of the work of the judiciary and its importance, including the importance of maintaining high standards of integrity. The adoption of initiatives such as a National Law Day or Law Week should be considered.

(12) *Civil Society*: There is need to recognise that the judiciary operates within the society of the nation it serves and that it is essential to adopt every available means of strengthening the civil society of each country as a means of reinforcing the integrity of the judiciary and the need for the society to be vigilant that such integrity is maintained. To combat departures from integrity and to address the systemic causes of corruption, it is essential to have in place means of monitoring and auditing judicial performance and of the handling of complaints about departures from high standards of integrity in the judiciary.

2.1.2 Initiatives Internal to the Judiciary

(13) *Plan of Action*: A national plan of action to combat corruption in the judiciary should be adopted.

(14) *Participation of Judiciary*: The judiciary must be involved in such a plan of action.

(15) *Seminars*: Workshops and seminars for the judiciary should be conducted to consider ethical issues and to combat corruption in the ranks of the judiciary and to heighten vigilance by the judiciary against all forms of corruption.

(16) *Computerisation of Records*: Practical measures should be adopted, such as computerisation of court files, in order to avoid the reality or appearance that court files are "lost" to require "fees" for their retrieval or substitution. In this respect, modern technology should be utilised by the judiciary to improve efficiency and to redress corruption.

(17) *Direct Access*: Systems of direct access should be implemented to permit litigants to receive advice directly from court officials concerning the status of their cases awaiting hearing.

(18) *Peer Pressure*: Opportunities for proper peer pressure on judicial officers should be enhanced in order to help maintain high standards of probity within the judicature.

(19) *Declaration of Assets*: Rigorous obligations should be adopted to require all judicial officers to individually declare their assets publicly and that of their parents, spouse, children and other close family members. Such publicly available declarations should be regularly updated. They should be inspected after appointment and monitored from time to time by independent and respected officials.

(20) *Judges' Associations*: Associations of Judges and equivalent bodies should be involved in the setting of standards for the integrity of the judiciary and in helping to rule on best

practices and to report upon the handling of complaints against errant judicial officers and court staff.

(21) *Internal Procedures*: Internal procedures should be adopted within court systems, as appropriate, to ensure regular change of the assignment of judges to different districts having regard to appropriate factors including the gender, race, tribe, religion, minority involvement and other features of the judicial office-holder. Such rotation should be adopted to avoid the appearance of partiality.

(22) *Law of Bias*: Judicial officers in their early education and thereafter should be regularly imparted with instruction in binding decisions concerning the law of judicial bias (actual and apparent) and judicial obligations to disqualify oneself for actual or perceived partiality.

(23) *Judges' Journal*: A judge's journal should, if it does not already exist, be instituted and it should contain practical information on all of the foregoing topics relevant to enhancing the integrity of the judiciary.

2.1.3 Initiatives External to the Judiciary

(24) *Media*: The role of the independent media as a vigilant and informed guardian against corruption in the judiciary should be recognised, enhanced and strengthened by the support of the judiciary itself.

(25) *Media Liaison*: Courts should be afforded the means to appoint, and should appoint, Media Liaison Officers to explain to the public the importance of integrity in the judicial institution, the procedures available for complaint and investigation of corrupt act and the outcome of any such investigations. Such officers should help to remove the causes of misunderstanding of the judicial role and function, such as can occur (e.g. in a case involving an ex parte proceeding).

(26) *Inspectorate*: An inspectorate or equivalent independent guardian should be established to visit all judicial districts regularly in order to inspect, and report upon, any systems or procedures that are observed which may endanger the actuality or appearance of probity and also to report upon complaints of corruption or the perception of corruption in the judiciary.

(27) *National Training Centres*: National training centres should be established for the education and training of officers involved in inspecting courts in relation to allegations of corruption. Such training centres should include the participation of judicial officers themselves at every level so as to ensure that the inspectorate is aware of the functions and requirements of the judiciary, including the importance of respecting and maintaining judicial independence.

(28) *Alternative Resolution*: Systems of alternative dispute resolution should be developed and made available to ensure the existence of alternative means to avoid, where they exist, actual or suspected corruption in the judicial branch of government.

(29) *Bar Associations*: The role and functions of Bar Associations and Law Societies in combating corruption in the judiciary should be acknowledged. Such bodies have an

obligation to report to the appropriate authorities instances of corruption which are reasonably suspected. They also have the obligation to explain to clients and the public the principles and procedures for handling complaints against judicial officers. Such bodies also have a duty to institute effective means to discipline members of the legal profession who are alleged to have been engaged in corruption of the judicial branch.

(30) *Disbarment*: The involvement of a member of the legal profession in corruption whether of a judicial officer or of court staff or of each other, in relation to activities as a member of the legal profession, should be investigated and, where proved, the persons concerned should be disbarred.

(31) *Prosecutors*: The role of public prosecutors in the investigation of allegations of judicial corruption should be acknowledged and appropriate training should be available to such officers.

(32) *Judicial Administrators*: The proper function of judicial administrators to establish systems that help to combat the possibility or appearance of judicial corruption should be acknowledged. Appropriate training for such administrators in this respect should be available.

(33) *Involving Others*: Procedures that are put in place for the investigation of allegations of judicial corruption should be designed after due consideration of the viewpoint of judicial officers, court staff, the legal profession, users of the legal system and the public. Appropriate provisions for due process in the case of a judicial officer under investigation should be established bearing in mind the vulnerability of judicial officers to false and malicious allegations of corruption by disappointed litigants and others.

(34) *Criminal Law*: It should be acknowledged that judges, like other citizens, are subject to the criminal law. They should have no immunity from disobedience of the general law. Where reasonable cause exists to warrant investigation by police and other public bodies of suspected criminal offences on the part of judicial officers and court staff, such investigations should take their ordinary course, according to law.

2.1.4 A Basis for Future Practical Programmes

The recommendation by the members of the Group of the above suggestions does not signify that all of them will be appropriate in every country represented in the Group. In some cases, the initiatives mentioned have already been taken and appropriate laws, procedures and institutions are in place. However, the Group agreed that the foregoing suggestions should be recorded and noted as a basis for future practical programmes designed to enhance integrity in the judicial branch of government.

2.2 Action by Global Programme

The Group resolved to request the Global Programme Against Corruption to:
(1) Make recommendations concerning the collection of data relevant to enhancing judicial integrity and relevant to surveys about allegations of judicial and other official corruption in particular countries;

(2) Collect initiatives and strategies which have already been taken to combat corruption in the judiciary and related offices; and to

(3) Post the foregoing on the Internet and to ensure that they are widely published and known to the judiciary and others.

2.3 Judicial Code

The Group agreed to request the Global Programme Against Corruption to analyse the Judicial Codes of Conduct which have been adopted in a number of jurisdictions and, within six months, to report to the Group concerning:
(1) The core considerations which recur in such Judicial Codes of Conduct; and
(2) The optional or additional considerations which occur in some, but not all, such Codes and which may or may not be suitable for adoption in particular countries.

2.4 National Involvement

The Group agreed to note that the judicial participants in the Group will inform the judiciary in their home countries of the establishment of the Group, of its work at its first meeting and of its future programme. They will consult with appropriate ministries, institutions, the Bar, Law Society and other organisations having a concern in strengthening the integrity of the judiciary.

2.5 Other Countries

The members of the Group recommended to the Global Programme Against Corruption that a parallel programme should be instituted in relation to civil law countries having differing systems of law and judicial organisation. The Group recommended that eventually there should be liaison between other groups dealing with countries of differing judicial tradition and this Group with a view to deriving principles common to all groups for adoption at the international level in recognition of the universal importance of strengthening the integrity of the judiciary.

2.6 Future Contact

The Group recommended that regular contact be established between the participants, observers and co-ordinators involved in the Group, and agreed to share information on action programmes and experiences. They recommended that the Group accept the invitation of the Chief Justice of Karnataka State, India (Chief Justice Y B Rao) that the second meeting of the Group should take place in Bangalore, India on 18-19 December 2000.

B. Background to the Strengthening Judicial Integrity and Capacity Project in Nigeria

by

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1. United Nations Centre for International Crime Prevention – Global Programmes

In April 1999, at the Eighth Session of the Commission on Crime Prevention and Criminal Justice (27 April to 6 May 1999),[1] the Centre for International Crime Prevention presented to the international community three global programmes to counter corruption, trafficking in human beings and combat transnational organized crime. They were the Global Programme against Trafficking in Human Beings, Global Programme against Corruption and Global Studies on Transnational Organized Crime, which was later renamed Global Programme against Transnational Organized Crime.

The three global programmes were designed to mirror the thematic areas covered by the ongoing negotiations for a United Nations Convention against Transnational Organized Crime, its Protocols thereto.

After two years of implementation of the global programmes and in the light of the recent approval by the General Assembly of the United Nations Convention against Transnational Organized Crime and its supplementary Protocols in 2000 and 2001, and in view of the impending General Assembly decision to establish an *ad hoc* open-ended committee for the elaboration of an international instrument to combat corruption, CICP revised the global programmes to lay the ground for the future.

The initial global programmes, jointly developed by the UN Centre for International Crime Prevention (CICP) and UN Interregional Crime and Justice Research Centre (UNICRI) included a range of programme areas and activities, envisaging substantial financial contributions from the international community for their implementation.[2]

Two years of praxis have provided CICP with important results and lessons that need now to be reflected in the revised global programmes. One of these lessons is that, while Member States widely welcome and supported the establishment of the global programmes, the donor community was not ready to come forth with all the resources envisaged in the global programme documents. However, the contributions received have enabled the Centre to start research activities and pilot technical cooperation projects in countries in Africa, Asia, Eastern Europe and Latin America.

Another important element arising from the experience of the past two years, and reflected in the revised global programme documents, is that global programmes need to be focused on those thematic and expert areas in which CICP possesses a comparative advantage. Such a re-focussing and specialization effort is presented under the individual headings for each global programme.

Given the highly political and sensitive nature of the themes covered by the global programmes, the development and implementation of technical cooperation activities to combat trafficking in persons, corruption and transnational organized crime, need to be

tempered by patience and considered undertakings over the medium and long term. Thus, the Centre needs to continue devoting a considerable volume of effort to engaging counterparts in the implementation of projects. Such partners include not only the recipient governments, but also donors and other relevant international and national organizations working in these fields.

The Centre now counts on a level of expertise and proven experience in the development and implementation of technical cooperation activities to combat trafficking in persons, corruption and transnational organized crime. With this foundation in place, the Centre is determined to play a pro-active role in supporting the efforts of the international community on these priority issues.

In order to translate the political commitment of the international community and the determination of the Centre into action, a sustained, increasing and dependable flow of financial resources to the Centre is required. This will be, in effect, the litmus test of the political commitment of the Member States.

2. The Global Programme against Corruption

In response to the growing concern about corruption as a global problem and the need for global solutions, the United Nations Office for Drug Control and Crime Prevention established a Global Programme against Corruption.[3] The primary functions of the Programme include examining the problems associated with corruption with a view to supporting specific efforts of countries which request assistance in developing anti-corruption strategies and policies, and serving as a forum in which information from different countries can be shared in order to bring an element of international consistency, allow each country to learn from the successes and failures of other countries, and to support the process of developing a global strategy against corruption that meets the needs of United Nations Member States.

The Programme employs a systematic process of "action learning" intended to identify best practices and lessons learned through pilot country projects, programme execution and monitoring, periodic country assessments and by conducting a global study on corruption trends. The global study will gather information and analyse and forecast trends about the types, levels, costs, causes and public awareness of corruption around the globe, as well as trends in best practices and anti-corruption policies. Within the Programme, attention is also given to institution building, prevention, raising awareness, education, enforcement, anti-corruption legislation, judicial integrity, repatriation of foreign assets derived from corruption, as well as the monitoring and evaluation of these things.

Since its inception, the Programme has seen the endorsement of many Member States,[4] and between 1999-2001, the number of countries which participate in or have asked to join the Programme increased from five to twenty and the number of active pilot countries has increased from three to seven.[5] Numerous documents have been prepared and made available, including *a United Nations Manual for Anti Corruption Policy* and a *United Nations Anti-Corruption Tool Kit*, and a new Internet web-page featuring this material and other information about corruption and the fight against it, has been launched.[6] The Programme also sponsors or participates in meetings on corruption and where feasible, publishes information about them.[7] A growing area of concern is the need to deal with the problem of assets which have been derived from cases of "grand corruption" and

transferred abroad by the offenders.[8] The sums involved are often enormous – in the hundreds of millions, and in some cases billions – of dollars, and their recovery is critical both to deterring future abuses and to assisting governments in repairing the social and economic damage done in such cases. In this area, policies against money-laundering and corruption are intertwined, and the United Nations Global Programmes against Money Laundering (GPML) and Corruption (GPAC), are jointly working to develop general policies and specific measures which can assist the countries involved in tracing, identifying and obtaining the return of such assets.

3. CICP's Integrated approach

In all its activities both, research and technical assistance related, CICP applies an integrated approach. Lessons learned from all around the globe suggest the key to reduced poverty is an approach to development which addresses quality growth, environmental issues, education, health and governance. The element of governance includes, if not low levels of corruption, then the willingness to develop and apply effective anti-corruption strategies. It has been argued that development strategies must be: *inclusive, comprehensive, integrated, evidence-based, non-partisan, transparent and impact oriented,*[9] and the same is true for anti-corruption strategies.

Inclusive

As previously discussed, including as broad a range of participants or stakeholders as possible raises the expectations of all those involved and increases the likelihood of successful reform. This is true not only for senior officials, politicians and other policymakers, but also for general populations. Bringing otherwise-marginalised groups into the strategy empowers them by providing them with a voice and reinforcing the value of their opinions. It also demonstrates that they will have an effect on policy-making, and give a greater sense of ownership for the policies which are developed. In societies where corruption is endemic, it is these individuals who are most often affected by corruption, and who are most likely to be in a position to take action against it, both in their everyday lives, and by supporting political movements against it.[10]

The establishment of strategic partnerships has also proven to be valuable, both in bringing key stakeholders into the process and developing direct relationships where they will be the most effective against specific forms of corruption or in implementing specific strategy elements. Examples include strategic partnerships between NGOs and international aid institutions, such as the partnership between the World Bank and Transparency International, which has resulted in excellent national and international anti-corruption awareness raising.

No single factor causes corruption, but a wide range of factors have been shown as supporting or contributing to it, and in many cases these factors are inter-related in such a way that if one is eliminated, increased activity in another may simply take its place. This requires that anti-corruption strategies be comprehensive, addressing as many different factors at the same time as possible. The bribery of public officials, for example, has been linked to low status and salaries, a lack of effective laws or law-enforcement, sub-cultural values that make it acceptable for applicants to offer bribes and for officials to take them, and a lack of effective transparency and monitoring with respect to the officials' duties and the way they carry them out. Acting against only one of these

factors – increasing the severity of bribery offences, for example – is unlikely to produce results unless some or all of the other factors are also addressed.

Comprehensive

Corruption is a complex problem, which requires complex responses, addressing as many aspects of corruption and as many of the different factors, which contribute to it as possible. To be effective, however, these responses must also be integrated with one another into a single, unified anti-corruption strategy (internal integration). Strategies must also be integrated with other factors, which are external, such as the broader efforts of each country to bring about such things as the rule of law, sustainable development, political or constitutional reforms, major economic reforms, or major criminal justice reforms. As many aspects of modern corruption have proven to be transnational in nature, external integration increasingly also includes the need for integration between anti-corruption strategies or strategic elements being implemented in different countries. While the need for integration is manifest, the means of achieving it in practice are not as straightforward, and are likely to vary from country to country. A major requirement is the need for the broadest possible participation in identifying problems, developing strategies and strategic elements, and effective communications between those involved once the process of implementation begins. Broad participation in identifying needs can assist in identifying patterns or similarities in different social sectors, which might all be addressed using the same approach. Broad participation in developing strategies ensures that the scope of each element is clearly defined, and the responsibility for implementing it is clearly established, but that each participant is also aware of what all of the others are doing and what problems they are likely to encounter.[11] Plans to develop legislation, for example, should also give rise to plans to ensure that law enforcement and prosecutors are prepared to enforce the laws and that they will have the expertise and resources to do so when they are needed. Effective communications between the participants – using regular meetings for example – can then ensure that elements of the strategy are implemented consistently and on a coordinated schedule, and can deal with any unforeseen problems, which arise during the process.

Transparent

Transparency in government is widely viewed as a necessary condition both to effectively control corruption, and more generally for good governance. Populations should generally have a right to know about the activities of their government to ensure that public opinion and decision-making (e.g., in elections) is well-informed. Such information and understanding is also essential to public ownership of policies which are developed , and this is as true for anti-corruption policies as for any other area of public policy. A lack of transparency with respect to anti-corruption strategies is likely to result in public ignorance when in fact broad enthusiasm and participation is needed. It can also lead to a loss of credibility and the perception that the programmes involved are corrupt or that they do not address elements of government which may have succeeded in avoiding or opting out of any safeguards. In societies where corruption is endemic, this will generally be assumed, effectively creating a presumption against anti-corruption programmes which can only be rebutted by their being clearly free of corruption and by publicly demonstrating this fact. Where transparency does not exist, moreover, popular suspicions may well be justified.

Non-Partisan

The fight against corruption will generally be a long-term effort and is likely to span successive political administrations in most countries. This makes it critical that anti-corruption efforts remain politically neutral, both in their goals and in the way they are administered. Regardless of which political party or group is in power, reducing corruption and improving service delivery to the public should always be a priority. To the extent that anti-corruption efforts cannot be made politically neutral, it is important that transparency and information about the true nature and consequences of corruption are major factors in an anti-corruption strategy, because these generally operate to ensure that corruption is seen as a negative factor in domestic politics. Where corruption is endemic, the popular perception is that individual interests are best served by predicting which political party will hold power and therefore be in a position to reward supporters. A major focus of anti-corruption strategies must be the reversal of this attitude so that the perception is that any political faction which is exposed as corrupt is not acting in the public interest and is therefore unlikely to remain in power for long.

Multi-partisan support for anti-corruption efforts is also important because of the relationship between competition and corruption. Just as competition in the private sector leads companies to resort to bribery to gain advantages in seeking business, competition between political factions can lead participants to resort to political corruption in order obtain or maintain advantages, or to offset real or perceived advantages on the part of other factions. Common problems in this area include the staffing of public-service positions with political supporters to reward them and ensure further support and to influence areas public administration in their favour. Critical public service positions in this context include senior law-enforcement, prosecutorial and judicial offices, senior positions in the military or security forces, and officials responsible for the conduct of elections. Similarly, supporters in the private sector may be rewarded (or opponents punished) using the allocation of government spending on goods or services. As noted in Part 1, a major challenge in this regard is distinguishing between legitimate political contributions from individuals or companies to parties or candidates whose policies they support, and contributions made in the belief or expectation that the contributor will obtain a reward or avoid retaliation if the recipient is elected.

Evidence-based

It is important that strategies be based on concrete, valid evidence at all stages, including preliminary assessments of the extent of corruption and need for countermeasures, the setting and periodic reassessment of strategic objectives, and the assessment of whether objectives have been achieved or not. In countries where corruption is seen as endemic, the external gathering or validation of this evidence is often seen as an important factor in the credibility of the evidence, and hence the credibility of strategic plans based on that evidence as well as periodic assessment of progress against corruption. The United Nations Global Programme against Corruption has established a *comprehensive country assessment* to assist in this process, where such assistance is requested. This includes a review of all available information about relevant factors to establish information as a "base-line" for future comparison and an initial qualitative and quantitative assessment of the forms and general extent of corruption (see below).

Sources of information may vary, but will generally include opinion surveys, interviews with relevant individuals such as officials or members of companies which deal with the government, focus group discussions about the problem of corruption and aspects of the problem or measures against it which may be unique to the country involved, the preparation of case-studies, an assessment of anti-corruption laws and the agencies which are intended to monitor, prevent and/or prosecute corruption cases, and assessments of other key institutions. Also critical is a more general assessment of strengths and weaknesses in civil societies, national cultures or other areas which may be important in the development of a successful and effective anti-corruption strategy. Many factors will vary from country to country, which makes it important that comprehensive country assessments be custom-tailored to each country, and that much of the actual design be done domestically.

Country assessments and other sources of evidence should be used to assess corruption in both qualitative and quantitative terms, considering the full range of corruption-related activities, their effects, and how they operate in the circumstances of each country, the extent and relative prevalence of these activities, as well as the overall extent and impact of corruption in the country as a whole. At the policy-making level, the evidence should then form the basis of the development of anti-corruption strategies and policies. At management levels, the knowledge that evidence will be objectively gathered and assessed should encourage result-oriented management, and a clear understanding of exactly what results are expected. At operational levels, service providers should gain an understanding of what corruption is, how it affects them and what is expected of them in terms of applying anti-corruption policies in their work. The users of the various services should have the same information, so that they come to expect corruption-free services and are prepared and equipped to speak out when this is not the case. The international element in country assessments should serve as a validation of the evidence, a source of objective and independent analysis and reporting, and form the basis for international comparison, the communication of information about problems encountered and solutions developed from one country to another, and the development of a coherent international or global strategy against corruption.

Once anti-corruption strategies are in place, further country assessments should review both actual progress made and the criteria by which progress is defined and assessed. In practical terms, this gives participants at all levels an opportunity to comment, providing valuable feedback about both results and policies, and helping to protect a general sense of ownership and support for the programme. The need for popular participation makes credibility or legitimacy a critical factor in controlling corruption. For this reason, further assessments should consider not only evidence about whether the programme is actually achieving its goals, but about the perceptions of key figures and the general population.

It is important that the process of gathering and assessing evidence be seen as an ongoing process and not a one-time event. One term used to describe this is “action research,” which has been described as embracing “principles of participation and reflection, and empowerment and emancipation of groups seeking to improve their social situation.”[12] Common among most is the concept of using dialogue between different groups to promote change through a cycle of evaluation, action and further evaluation,

Impact oriented

As discussed earlier, it is critical that clear and realistic goals be set and that all participants in the national strategy be aware of these goals and the status of progress made in achieving them. The complexity of the corruption problem and the difficulty in gathering valid "baseline" and progress data make this difficult, but it is critical. Initial evidence is used to provide the basis for comparison and to set initial goals, while periodic assessments of what has been accomplished monitors progress, identifies areas which may need more attention or a different approach, and supports ongoing revision of the initial goals of the programme. Validated evidence can also play an important role in reforms in other areas. Evidence that corruption is being reduced supports confidence in national economies, for example, and evidence of the nature and consequences of political corruption will lend support to democratization and similar political reforms.

National anti-corruption strategies involve long-term and wide-ranging policies, and it is essential that planning and philosophy make allowances for periodic monitoring and assessment and for adjustments based on those assessments.[13] The need for such adjustments should not be seen as evidence of failure: indeed, changes are as likely to be triggered by elements which are more successful than expected or which succeed in unexpected ways as by the need to re-think elements which have fallen short of the desired or predicted results. Adjustments may also be triggered or advised by outside information or changes in external circumstances, such as successes achieved in other countries or the development of international agreements or instruments.

In concordance with this approach the project on strengthening judicial integrity will involve a series of different actors at the national, international and sub-national level including the Judiciary at the Federal- and the State level, the International Chief Justices' Leadership group, the Independent Corrupt Practices and Other Related Offences Commission (ICPC), the victims of corruption, the media, the private sector, the NGO's and the International donor community.

4. Other Lessons learned when helping countries build integrity to fight corruption

Finally, in order for this initiative to be successful a series of crucial lessons which have emerged clearly in the course of the past decade should be internalised by all stakeholders involved.

(a) Economic growth is not enough to reduce poverty: Unless the levels of corruption in the developing world are reduced significantly there is little hope for sustainable economical, political and social development. There is an increasing consensus that if left unchecked, corruption will increase poverty and hamper the access by the poor to public services such as education, health and justice. However besides recognising the crucial role of good governance for development, the efforts undertaken so far to actually remedy the situation have been too limited in scope. Curbing systemic corruption will take stronger operational measures, more resources and a longer time horizon than most politicians will admit or can afford. The few success stories, such as Hong Kong or Singapore, demonstrate that the development and maintaining of a functioning integrity system needs both human and financial resources exceeding by far what is currently being spent on anti-corruption efforts in most countries.

(b) Need to balance awareness raising and enforcement: The past decade has mainly be characterised by an substantive increase of the awareness of the problem. Today we are confronted with a situation where in most countries not a day passes without a political leader claiming to eradicating corruption. However, it increasingly emerges that this increase in the awareness of the general public all too often is not accompanied by adequate and visible enforcement. In various countries this situation has led to growing cynicism and frustration among the general public. At the same time it has become clear that public trust in the government anti-corruption policies is key.

(c) It *takes integrity to fight corruption*: As obvious as this might seem, there are countless initiatives that have failed in the past because of the main players not being sufficiently "clean" to withstand the backlash that serious anti-corruption initiatives tend to cause. Any successful anti-corruption effort must be based on integrity and credibility. Where there is no integrity in the very system designed to detect and combat corruption, the risk of detection and punishment to a corrupt regime will not be meaningfully increased. Complainants will likely not come forward if they perceive that reporting corrupt activity exposes them to personal risk. Corrupt activity flourishes in an environment where intimidating tactics are used to quell, or silence, the public. When the public perceives that its anti-corruption force can not be trusted, the most valuable and efficient detection tool will cease to function. Without the necessary (real and perceived) integrity, national and international "corruption fighters" will be seriously handicapped

(d) Building integrity and credibility takes time and consistency: It is fair to say that, in the eyes of the public, most international agencies have not demonstrated sufficient integrity to fight corruption. These agencies have not accepted that integrity and credibility must be earned based upon "walk rather than talk." The true judges of whether or not an agency has integrity and credibility are not the international agencies themselves but rather the public in the recipient country.

(e) There is a neeed for an integrated approach: It has emerged clearly that national institutions cannot operate successfully in isolation but there is a need to create partnerships across all sectors and levels of government and civil society in the fight against corruption.

(f) Importance of involving the victims of corruption: Most donor-supported anti-corruption initiatives primarily involve only the people who are paid to fight corruption. Very few initiatives involve the people suffering from the effects of corruption. It is therefore critical to do more of what ICAC in Hong Kong has done over the past *25* years. For example, the ICAC interfaces directly (face to face in awareness raising workshops) with almost 1 percent of the population every year.

(g) Managing Public Trust: While Hong Kong has monitored the public's confidence in national anti-corruption agencies annually since 1974,[14] few development agencies and/or Member States have access to similar data. The larger question is whether the development agencies, even with access to such data, would know how to improve the trust level between themselves and the people they are supposed to serve. Another question is whether they would be willing to take the necessary and probably painful action to improve the situation.[15]

(h) Money Laundering and Corruption: Even though these two terms are quite synonomous, they seem to be treated as different problems. The media frequently link 'money laundering' to illicit drug sales, tax evasion, gambling and other criminal activity.[16] While it is hard to know the percentage of illegally-gained laundered money attributable directly to corruption, it is certainly sizeable enough to deserve prominent mention. It is crucial to recognize the dire need for an integrated approach in preventing both activities. When we accept the idea that lack of opportunity and deterrence are major factors helping to reduce corruption, it follows that when ill-gotten gains are difficult to hide, the level of deterrence is raised and the risk of corruption is reduced.

(i) Identifying and recovering stolen assets is not enough: According to the *New York Times*,[17] as much as $1trillion in criminal proceeds is laundered through banks worldwide each year with about half of that moved through American banks. In developing countries such as Nigeria, this can be translated into US$ 100 Billion stolen by corrupt regimes over the last 15 years.[18] Even if Nigeria, for example, receives the necessary help to recover its stolen assets, does it make sense to put the money back into a corrupt system without trying to first increase the risk, cost and uncertainty to corrupt politicians who will again abuse their power to loot the national treasury?

(j) Need for international measures: Quality in government demands that measures be implemented world-wide to identify and deter corruption and all that flows from it. In the U.S., attempts are being made to pressure banks to know who its clients are and to monitor the accounts of foreign officials and their business partners. However, the powerful banking industry is blamed for preventing legislative measures from becoming law. The good news is that the disease of corruption is getting more attention than ever before. Abuse of power for private gain can only be fought successfully with an international, integrated and holistic approach introducing changes both in the North and the South.

5. Judicial Integrity as a Cornerstone

Corruption is the natural enemy of the rule of law. Corruption within criminal justice institutions mandated to enforce and safeguard the rule of law is particularly alarming and destructive to society. It is a sad fact that in many countries, it is precisely these institutions that are perceived as corrupt. Instances and allegations of corrupt police who sell "protection" to organized crime, judges who are "in the pocket" of powerful criminals and court systems that are so archaic that citizens are denied access to justice are rampant. The immediate effect of such perceptions is public cynicism towards government, lack of respect for the law and societal polarization. This environment inevitably leads to unwillingness on the part of the public to participate in bona fide anti-corruption initiatives.

An honest criminal justice system, including the courts, is a necessary prerequisite to any comprehensive anti-corruption initiative. Corruption in criminal justice systems will absolutely devastate legal and institutional mechanism designed to curb corruption, no matter how well targeted, efficient and honest. It will serve no purpose to design and implement anti-corruption programs and laws if the police do not seek to enforce the law, or a judge finds it easy and without risk to be bribed. Judicial integrity should therefore be the cornerstone of any anti-corruption program and a priority of the GPAC. Special attention will be given to the involvement of civil society using, for example, judicial complaints boards.

6. An International Judicial Leadership Group on Strengthening Judicial Integrity

In April 2000 the Centre for International Crime Prevention in collaboration with Transparency International convened a Meeting of 8 Chief Justices and seniot high-level Justices from Africa and Asia. It was hosted by the Centre in conjunction with the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. The Workshop was conducted under the chairmanship of former World Court Judge Christie Weeramantry, with Justice Michael Kirby of Australia acting as Rapporteur.

This Judicial Group considered means by which to strengthen the judiciary, strengthening judicial integrity, against corruption and to effect judicial reform across legal systems. The Global Programme against Corruption found that the unique approach to the subject matter taken on that occasion is one most likely to yield the best results in terms of combating judicial corruption. In the view of the authors, some important lessons, which might help overcome the impasse against corruption, were learned in this experience. The unusual partnership, based on mutual trust, exemplified by the Group, and the self-evaluative and remedial, or, "indigenous", nature of the recommendations of the justices themselves demarcate the road to progress and future effectiveness in combating judicial corruption. In this regard CICP has found this promising approach to assessment and remedy as a forerunner to the transfer of such judicial know-how among senior judges of different parts of the world.[19] In fact, the insightful and practical recommendations made by the participating justices highlighted the importance of involving senior practitioners of the sector which is a target of reformative action.

7. Strengthening Judicial Integrity Project in Nigeria

The project (Strengthening Judicial Integrity and Capcity Project in Nigeria) aims at improving the precarious situation of the rule of law in Nigeria caused by insufficient integrity and capacity of the justice system in general and the judiciary in particular.

A recent study, conducted by the Nigerian Institute of Advanced Legal Studies, seems to confirm the rather discouraging state of art of the Nigerian Justice System. The surveys conducted by the Nigerian Institute of Advanced Legal Studies (NIALS)[20] indicates a general lack of efficiency and effectiveness in the Nigerian Judiciary

It is the aim of the project to remedy this situation. More specifically the project is designed to assist the Nigerian authorities in the development of sustainable capacities within the Nigerian judiciary and to strengthen judicial integrity to contribute to the re-establishment of the rule of law in the country and to create the necessary preconditions for handling complex court cases in the area of financial crimes and by doing so, to support the development of a functioning institutional anti-corruption framework to contribute to the prevention of illegal transfers.

In the absence of an in-depth knowledge of the current capacity and integrity levels within the judiciary and consequently of an evidence-based anti-corruption action plan for the judiciary, this project will focus on supporting the Nigerian Judiciary in the ***action planning process***. The preconditions for evidence-based planning will be made available through the conduct of capacity and integrity assessments of the criminal justice system in three pilot States including: a desk review of all relevant information regarding corruption in the criminal justice system; face to face interviews with judges, lawyers and prosecutors; opinion surveys with court users; an assessment of the rules and

regulations disciplining the behaviour of judges; a review of the institutional and organisational framework of the criminal justice system; and the conduct of focus groups.[21]

Based on the outcomes of this assessment, CICP will assist the judiciary at the federal level, in the three pilot States and the nine pilot courts to conduct integrity meetings to develop plans of action focusing on the strengthening of judicial integrity and capacity. Finally, CICP will support the judiciaries, in close collaboration with the Attorney General's offices, to launch the implementation of the State level actions plans.

Different from past initiatives by donor agencies trying to assist in the reform of judiciaries, the project is characterised by a strong commitment towards maintaining and strengthening judicial independence and at the same time make the judiciary more accountable. It is, therefore, crucial to note that within the context of all the various components of the project, the Judiciary itself, headed by the Chief Justice of the Federation, owns and controls the entire planning, implementation and monitoring process.

Even though limited to the judiciary in its immediate scope, the programme takes a wider perspective aiming at the promotion of integrity, efficiency and effectiveness of the entire criminal justice system. It will comprise an exhaustive assessment of the levels, causes, types, locations and effects of corruption within the judiciary and thereby provide the basis for an integrated approach to change. At all stages of this process, particular attention will be given to the empowerment of the general public and the court users through social control boards and other forms of participatory channels.

The Programme, furthermore, focuses on the building of **strategic partnerships** reaching across institutions and branches of Government, the legislative and including representatives of the civil society. In concordance with the action learning process which is applied by CICP in general, the Centre will pilot test various measures within three pilot States in 9 courts. The outcomes will be collected documented and further cross fertilised through broad information sharing and dissemination. At the international level the lessons learned will be analysed by the international Chief Justices' Leadership group.

As mentioned above, the overall framework for the development of the judicial integrity promotion programme has been provided by the outcome in particular of the first meeting of the International Chief Justices' Leadership Group.[22]

The recommendations made in this occasion fall under the broad categories of (i) access to justice; (ii) the quality and timeliness of justice; (iii) the public's confidence in the judiciary; and (iv) the efficiency, effectiveness and transparency of the judiciary in dealing with public complaints. More specifically the Group issued the following recommendations as key reform areas to be addressed:

- Enhancement of case management
- Reduction of Court delays
- Increased judicial control over delays
- Strengthen interaction with civil society
- Enhance public confidence in the Judiciary
- Improve terms and conditions of service
- Counter abuse of discretion
- Promote merit-based judicial appointments

- Enhanced judicial training
- Develop transparent case assignment system
- Introduce sentencing guidelines
- Develop credible and responsive complaints system
- Refine and enforce Code of Conduct.

The First Federal Integrity Meeting for Chief Judges provided an excellent opportunity to assess the extend to which the recommendations made by the International Judicial Leadership Group for Strengthening Judicial Integrity are relevant to the specific Nigerian context. For this purpose the Chief Judges were invited to prioritise as part of a participants survey these recommendations.[23]

The first Federal Integrity workshop for Chief Judges defined and agreed upon the objectives of the project which initially will be implemented over a 24 month period. In order to facilitate this planning process the meeting was furthermore asked to identify the respective impact indicators which these measures will directly impact on and which consequently should be assessed to establish the baseline against which progress will be monitored.

As far as the operational management of the project is concerned, a National Project Coordinator will be hired for two years starting December 1, 2001 and a local Research Institute for the conduct of the assessment. After the completion of the assessment State-level integrity workshops for the judiciary will be conducted in the three pilot states (September 2002) to review the findings of the assessments and based on the former develop an action plan for strengthening judicial integrity. These state-level integrity and action planning workshops will also facilitate the development of strategic partnerships across the various stakeholder groups including civil society at large and court user interest groups in particular in order to increase the sustainability of the reform process. After 18 month it is planned, given the availability of additional funding, to conduct a second assessment within the three pilot States in order to measure the results of the single measures implemented within the framework of the action plans in each of the 9 pilot courts. Based on the findings of this second assessment, necessary adjustments of the already implemented measures will be made. The second assessment will also provide the basis for broadening the assistance in its geographical and substantial scope (e.g. involve more courts within and outside the pilot states and increasingly extend the assistance to the other criminal justice institutions).

END NOTES

1. The global programmes were presented to the Commission as conference room papers bearing the following symbols: E/CN.15/1999/CRP.2 (trafficking in human beings), E/CN.15/1999/CRP.3 (corruption) and E/CN.15/1999/CRP.4 (transnational organized crime).
2. The initial Global Programmes proposed budgets for the 1999-2002 period were: US $6.3 million (trafficking), US $6.5 million (corruption), and US $1.4 million (organized crime).
3. A series of resolutions of the General Assembly and ECOSOC call upon the Secretary General to take various actions against corruption, including General Assembly resolutions 51/59, 51/191, 54/128, 55/61 and 55/188. The decision to refer the matter to the United Nations Office for Drug Control and Crime Prevention and the Centre for International Crime Prevention reflects the predominant view of Member States that, while the fight against corruption goes beyond the criminal justice field in many aspects, the perception is that most forms of corruption should be seen as crimes for purposes of research, analysis and the development of preventive and reactive countermeasures.
4. See, for example GA/Res/55/59, annex, "Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century", paragraph 16, in which countries at the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders undertake to consider supporting the Programme.
5. As of August 2001, pilot projects were planned or ongoing in Benin, Colombia, Hungary, Lebanon, Nigeria, Romania and South Africa, and others were underconsideration for Indonesia, Iran and Uganda.
6. www.ODCCP.org/corruption.html
7. For example, expert group on the "Global Programme against Corruption - Implementation Tools", Vienna, 13-14 April 2000 and workshop on integrity in the judiciary, Vienna, 15-16 April 2000. A report on the latter meeting appears on the Global Programme web-page.
8. See General Assembly resolution 55/188 of 20 December 2000 and United Nations Commission for Crime Prevention and Criminal Justice, Report on the tenth session, E/2001/30, E/CN.15/2001/13, paragraphs 17-24.
9. Petter Langseth, 2001, Helping Member States Build Integrity to Fight Corruption, Vienna, 2001.
10. One example of this is Hong Kong's Independent Commission Against Corruption (ICAC). Over the past *25* years it has conducted workshops involving almost 1 % of the population each year. This gives those consulted input, allows policy-makers to gather information, and generally raises popular awareness of the problem of corruption and what individuals can do about it.
11. United Nations pilot projects have successfully used national integrity systems workshops for this purpose.
12. Kaye Seymour-Rolls and Ian Hughes, "Participatory Action Research: Getting the Job Done," Action Research Electronic Reader, University of Sydney, 1995.
13. See also Part 4.VIII, below, for detailed discussion on monitoring and assessment.
14. In Hong Kong the trust level is considered critical for the effectiveness of any complaint or whistleblower measures and is monitored closely. In 1997, 85.7 percent of the public stated that they would be willing to report corruption to ICAC and 66 percent were willing to give their names when reporting corruption. As a result more than 1,400 complaints were filed in 1998, up 20 percent from 1997. See: Richard C. LaMagna, *Changing a Culture of Corruption,* US Working Group on Organized Crime, 1999
15. Results from "client satisfaction surveys" conducted between multilateral agencies and the public in the past were often so bad that they were given limited circulation and/or ignored.
    Even within the international development agencies the trust level between their own staff and their internal complaints function is rarely monitored
16. New York Times Feb 7th 2001
17. Financial Times, London 24/7/99, Nigeria's stolen money
18. The findings and recommendations of the first meeting of justices, documented by Michael Kirby, can be accessed on the web page of the Centre *(http://www.ODCCP.org/corruption_judiciary.html)*.
19. The findings and recommendations of the first meeting of justices, documented by Michael Kirby, can be accessed on the web page of the Centre *(http://www.ODCCP.org/corruption_judiciary.html)*
20. NIALS book on corruption in Nigeria
21. The assessment of judicial integrity and capacity will be conducted following the recommendations made by the second meeting of Chief Justices on "Strengthening Judicial Integrity" held in February 2001 in Karnataka State, India.
22. Annex IV.
23. See Findings of the participants' survey.

C. The Pilot Projects and the Comprehensive Assessment Methodology

by

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As a result of discussions held in this workshop, the Chief Judges have been addressing four main areas dealing with enhancing access to justice, improving the quality of court services, increasing confidence in the judicial system, and introducing an effective system for filing and addressing the public's complaints. The international case studies explained below constitute best practices covering these same four areas.

In order to avoid cultural, socio-economic, geographic, and political barriers to access the court system, the judiciary must adopt the most effective substantive and procedural mechanisms capable of reducing the direct and indirect costs faced by those seeking to resolve their conflicts, including the reduction of corrupt practices. If barriers to the judicial system, caused by corrupt practices, affect the socially-marginalized and poorest segments of the population, expectations of social and political conflict are more common, social interaction is more difficult, and disputes consume additional resources.[1] Moreover, the current gap between the "law in the books" and "law-in-action" found in most developing countries hampers confidence in the judicial system and negatively affects the quality of court services. Recent international comparative studies show that the scarce capacity to translate the "law found in the books" into a "law in action" for dispute resolution purposes can, many times, be linked to corruption-fostering excessive procedural formalisms and administrative complexities on court users. This state of affairs damages the legitimacy of the state, hampers economic interaction, and negatively affects the poorest segments of the population.[2] This kind of environment also blocks the filing and resolution of relatively simple cases brought by the socially weakest segments of the population. As a result, large segments of the population, who lack the information or the means to surmount the significant substantive and procedural barriers, seek informal mechanisms to redress their grievances. Informal institutions do provide an escape valve for certain types of conflicts. In this context, social control mechanisms applied to the judiciaries have emerged in several countries.

International studies of judicial systems show that judicial sectors within counties affected by systemic corrupt practices are ill-prepared to foster social development. In these cases, the most basic elements that constitute an effective judicial system are missing. These elements include: (a) predictable judicial discretion applied to court rulings; (b) access to the courts by the population in general regardless of their income level; (c) reasonable times to disposition; and (d) adequate remedies.[3] The corruption-related time delays, backlogs, and uncertainty associated with expected court outcomes have hampered the access to justice to those court users who lack the financial resources required to face the licit and illicit litigation costs.

Some countries from different regions around the world have utilized socially-driven informal control mechanisms to inject social pressures in the implementation of judicial reforms addressing the above problems. These social control mechanisms have mainly covered four functions: (i) monitoring and reporting on the implementation of much-needed judicial reforms; (ii) monitoring and reporting on the quality of judicial services supplied to citizens; (iii) monitoring the number and types of complaints filed by users of

judicial services; and (iv) in some cases, these social control boards also provide informal alternative dispute resolution channels. These social control boards are mostly composed of representatives of the judicial system (judges and prosecutors are included in all of them) working hand in hand with representatives from civil society (e.g. members of the bar and litigants). The boards act as organs that state authorities are required by law to consult on a periodic basis. The subset of five countries shown below in Chart 2 have implemented social control boards as part of their judicial reform drives. These social control boards, composed of civil society representatives at the local level, have varied in nature and scope. The numerical results shown in Chart 2 are preliminary conclusions of a recent field jurimetric study.[4] For example, in some countries these civil society boards were proposed as simply civil society-based court-monitoring systems (Singapore and Costa Rica) and in other cases, these bodies were recognized and performed their conflict resolution function as alternative – informal mechanisms (in the cases of Chile, Colombia, and Guatemala).

For example, in the case of Colombia, 3.7 per cent of those interviewed, in a recent University of Virginia survey, showed proof that they have attempted to access formal court- provided civil dispute resolution mechanisms, (compared to 4.9 per cent of the same poorest segment of the population in urban areas nationwide) while just 0.2 per cent of the sampled households (i.e. 9 out of 4,500 households) responded that they were able to obtain some type of final resolution to their land or family disputes (due involving mainly to title-survey defects and alimony cases) through the court system. Colombia also shows that 91 per cent of those demanding court services during the period 1998-99 were within the upper ranges of net worth. While just 9 per cent of those court users were in the lowest 10 per cent range of measurable net worth within the region. In contrast to this low demand for court services, Colombia also shows that 8 per cent of those interviewed in 1999 and 7.5 per cent of those interviewed in 2000 gave specific detailed instances of using community-based mechanisms (mostly neighborhood councils and complaint panels) in order to resolve land-title-commercial and/or family civil disputes. This indicates a gap between formal and informal institutional usage through community community-based conciliation and neighborhood complaint boards that is common in the other four countries sampled here. In the case of Colombia, social judicial control bodies r in the form of a so-called "Complaint Panel or Board" and composed of three "prominent local residents" selected by Neighborhood Councils ("Parroquias Vecinales or Comunas") and as such, they do enjoy a high level of popular-based legitimacy. Although the Boards' decisions are not legally binding, Their decisions do receive tacit approval by municipal authorities. but the Boards' decisions are not legally binding. In fact, Survey Bureaus usually formally refer to the Boards' findings in order to substantiate their own rulings. This clearly indicates the local governments' recognition of the Boards' rulings. Decisions are not appealed and social control mechanisms usually prevail in the enforcement of the Boards' decisions.

In all cases, these civil society-based bodies emerged and were "recognized" by governments as a result of the increasing gap between the demand and supply of court services. At the same time, these bodies served the purpose of monitoring the progress of judicial reforms. Specifically, these civil society-based boards have performed two functions within the judicial domain. These are: in some countries, such as in Chile, Colombia, Costa Rica, Singapore, and Guatemala, these boards have served the purpose of resolving civil disputes (mostly family and commercial related case types) through

informal means; in Costa Rica and in Singapore, these social control boards have also monitored the functioning of pilot courts during judicial reforms.

The performance of the first specified role has clearly enhanced access to justice in civil cases and, judging from the indicators gathered and shown below, they have also reduced the frequency of perceived corruption and institutional legitimacy.

CHART 2

Two-year Percentage Changes In Corruption-related Indicators Before And After Social Control Mechanisms

	Frequency of Corruption	Access to Instit.	Effectiveness	Transparency	Administrative Complexity
Chile (3 pilots)	-28.7 %	19 %	5 %	93 %	-56.9%
Colombia (3 pilots)	-2.5%	16.4%	8.2%	17.4%	-12.5%
Costa Rica (N-12 pilots)	-7.9 %	6.2%	3.7 %	18.5 %	-23.8%
Guatemala 7 pilots	-9.4%	32.6 %	9.5 %	41.9 %	-71.3%
Singapore -4 pilots	-6.3%	8.4 %	9.2 %	8.4 %	-12.7%

It is clear from Chart 2 above that all percentage indicators of institutional performance, captured through court surveys, have shown significant improvements. The social control boards were designed with variable numbers of civil society representatives and in three cases (in the cases of Chile, Colombia, and Guatemala) these represented alternative mechanisms to resolve family and commercial disputes mostly in rural regions where poverty concentrates most. Yet, the indicators above refer to improvements in pilot courts experiencing administrative, organizational, and procedural reforms (to be specified in the next section) in jurisdictions within which informal mechanisms to resolve disputes in civil society monitoring bodies were also introduced and implemented. On the other hand, in these same countries, there were also pilot courts introducing the same types of organizational, administrative, and procedural reforms in areas where no informal monitoring and informal dispute resolution mechanisms existed.

One should also compare judicial reforms with no civil society components to other reforms with civil society components. The results from our next chart are striking. For example, when one compares courts undergoing the same internal organizational, administrative and procedural reforms in regions with NO social control boards with pilot courts implementing the same types of reforms in regions with social court-control boards, we find significant differences in the indicators of perceived frequencies of corruption, access to justice, and transparency of court proceedings. The differences are shown in the Chart immediately following covering the period 1990-2000.

CHART 3

Differences in Percentage Indicators Between Courts With and Without Social Control Mechanisms

(The percentages shown below are computed for each category-column- by subtracting the average indicator for the courts with social control from the indicators from the board without social control)

	Frequency of Corruption	Access to Instit.	Effectiveness	Transparency	Administrative Complexity
Colombia (3 pilots)	-5.3%	7.1%	4.9%	10.2%	- 0.2%
Guatemala 7 pilots	-3.2%	17.4 %	5.2 %	31.2 %	- 0.5%

The numerical results are based on surveys conducted with court users at point of entry. Survey results indicate that court users, drawn in this case from the lowest income levels (i.e. bottom quartile in each region) do experience significant differences in their experiences when comparing courts with and courts without social control. This analysis was only performed in two of the ten countries selected for the aforementioned jurimetric study. Yet, the differences in the perceived frequencies of corruption when comparing courts with social control and those without social control are striking (and tested for significance through the Friedman test). For example, the access to institutions perceived by court users in Guatemala's courts subject to social control is 17.4 per cent higher than in courts not subject to social control bodies such as the ones described above. The same applies to differences in perceptions of transparency in court proceedings, differences in administrative complexity, and to the differences in the effectiveness applied to the provision of court services.[5]

END NOTES

1. Norms are here understood as coordinating mechanisms for social interaction. Refer to Buscaglia, Edgardo (1996), "Introduction to Law and Economics of Development," *Law and Economics of Development*, New Jersey: JAI Press, pp. 24-29; and to Cooter, Robert (1996) "The Theory of Market Modernization of Law", *International Review of Law and Economics,* Vol. 16, No 2, pp. 141-172.
2. See Buscaglia, Edgardo (1996), "Introduction to Law and Economics of Development," *Law and Economics of Development*, New Jersey: JAI Press, pp. 24-29
3. Buscaglia, Edgardo, Ratliff, William, and Dakolias, Maria (1995), "Judicial Reform in Latin America: A Framework for National Development", *Essays in Public Policy*, Stanford, California: Stanford University Press.
4. The study covers ten countries in Africa, Asia, and Latin America. This study was designed and conducted at the Center for International Law and Economic Development-CILED- at the University of Virginia School of Law (USA).
5. The survey conducted by the Center for International Law and Economic Development (CILED) at the University of Virginia focuses on the poorest segments of the populations in the five countries sampled. For example, in Colombia the CILED survey also aims at comparing the poorest households' net worth (i.e. households within the bottom 20 per cent of the regional socioeconomic range) before and after their access to formal and informal conflict resolution mechanisms in cases dealing with land title-survey-related disputes and alimony payments. We then seek precise indications of how and why dispute resolution mechanisms affect the average household's net worth as one of the possible determinants of poverty conditions. The sample sizes all cover between 5 and 10 per cent of all court users within each pilot court selected. Differences in indicators and their statistical significance were tested by using the Friedman test and other standard regression techniques. These differences are all statistically significant at the 5 per cent level. See Buscaglia, Edgardo. 2001. Paper Presented at the World Bank Conference on Justice. St. Petersburg, Russia. July 3-6, 2001.

VI
ANNEXES: TECHNICAL PAPERS, GUIDES AND TOOLS

A. Strengthening Judicial Integrity and Capacity – Lessons Learned

by
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I. Background

Under the Framework of the Global Programme Against Corruption and in conjunction with the 10th United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Vienna, Austria in April 2000, the United Nations Centre for International Crime Prevention (CICP), in collaboration with Transparency International convened a two day workshop for Chief Justices and other senior judges from eight Asian and African countries. The Meeting was chaired by HE Judge Christopher Weeramantry (former Vice-President of the International Court of Justice). The participants were: Chief Justice Latifur Rahman (Bangladesh); Chief Justice Y Bhaskar Rao (Karnataka State, India); Chief Justice M L Uwais (Nigeria); The Hon F L Nyallali (former Chief Justice of Tanzania); Justice B J Odoki (Chairman of the Judicial Service Commission of Uganda); Justice Pius Langa (Vice-President of the Constitutional Court of South Africa); and Justice Govind Bahadur Shrestha (Nepal). Apologies were received from Chief Justice Sarath Silva (Sri Lanka). The rapporteurs of the Meeting were Justice Michael Kirby (Judge of the High Court of Australia) and Dr G di Gennaro (former President of the Supreme Court of Italy). Observers attending the meeting included Dato' Param Cumaraswamy (Malaysia: UN Special Rapporteur on the Independence of Judges and Lawyers); Mr B Ngcuka (DPP, South Africa); Dr E Markel (International Association of Judges, Austria); and Judge R Winter (Austria). The co-ordinators of the meeting were Dr Nihal Jayawickrama and Mr Jeremy Pope (Transparency International, London), and Dr Petter Langseth (CICP, United Nations).[1] The purpose of the workshop was to consider means of strengthening judicial institutions and procedures as part of strengthening the national integrity systems in the participating countries and beyond. The object was to consider the design of a pilot project for judicial and enforcement reform to be implemented in participating countries. The purpose was also to provide a basis for discussion at subsequent meetings of the Meeting and at other meetings of members of the judiciary from other countries, stimulated by the initiatives taken by the Meeting.

The outcome of this Meeting served the Chief Justice of Nigeria and the Centre for International Crime Prevention as a basis for the elaboration of a pilot project to strengthen judicial integrity and capacity in Nigeria. The project was launched in October 2001 with the conduct of the First Federal Integrity meeting for Chief Judges, held in Abuja, Nigeria.[2] Based on the initial plan of action developed by the eight Chief Justices from Asia and Africa the meeting identified 17 measures which would address the most pressing issues of access to justice, timeliness and quality of justice, the public's trust in the judiciary and the development and implementation of a credible and responsive complaints system. The meeting also delineated 57 indicators that should be measured by

CICP to provide a baseline against which future progress could be assessed. For this purpose CICP hired the Nigerian Institute for Advanced Legal Studies (NIALS) to conduct the data collection in the three pilot states, which had been chosen by the Meeting. The first round of the data collection has been completed and the Centre has initiated in collaboration with NIALS to analyze the data.
The present paper outlines lessons learned and emerging best practices in strengthening judicial integrity and capacity from judicial reform projects that implemented similar measures to the ones which were identified by the First Federal Integrity as particularly relevant to the Nigerian context.

II. Access to justice

1. Enhance the Public's Understanding of Basic Rights and Obligations

The First Federal Integrity Meeting concluded that the Chief Judge is the proper person to brief the media on the rights and obligations of litigants and the workings of the court system, including issues of jurisdiction etc. In this regard, judges were enjoined to move away from the traditional notion that judges should shy away from publicity and therefore, not grant interviews or participate in public enlightenment activities. It was however cautioned that in educating the public on their rights and obligations, judges should avoid controversial issues which are likely to be the subject of legal dispute. The Meeting was of the view that this secondary indicator could be attained within the envisaged 18 months period.

Some Studies suggest that the citizens' lack of information on their rights and obligations as well as basic information on the court process rank among the most important obstacles to access to justice.[3] 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 issues linked to the administration of justice, including the basic rights and obligations of citizens. Such community outreach and other communication strategies were not only beneficial for the public but did also contribute to improving the judges public image and, ultimately contributed to enhancing the public's trust towards the judiciary.[4] In some jurisdictions information centers were established in the courts with the purpose of providing information to the public on the court process and case status as well as to receive comments, suggestions and complaints.[5] This did not only facilitate the access to timely and user friendly information by the public but also alleviated the burden previously born by the judges.

2. Financial Cost

The First Federal Integrity Meeting noted that court fees vary from jurisdiction to jurisdiction. Whilst avoiding the temptation to fix uniform fees especially in view of its impracticability, the meeting noted that the fixation of court fees is within the powers of the Chief Justice and the chief judges. The Constitution of the Federal Republic of Nigeria empowers the Chief Justice and Chief Judges to make court rules which encapsulate the fixing of fees. Chief judges were therefore enjoined to take appropriate steps to remove obstacles to easy access to courts, particularly high fees. Other measures proposed include facilitating the appearance of witnesses, and the possible establishment of new courts. The Meeting also proposed the re-introduction of the old system where courts

seat in sessions at the various localities in order to carry justice nearer to the people. The Meeting also agreed that this measure is attainable within the envisaged 18 months period.

Some jurisdictions have used exponentially increases in court fees according to court time used to enhance institutional efficiency and to maintain the affordability of the system to everyone. One such example is Singapore, where parties are no longer entitled to unlimited use of court time. While the first trial day is free from added fee, thereafter, each additional day of trial incurs an extra charge, which escalates with time in order to curb abuse. As a result over 80% of the cases take only one day to complete.[6] In addition, cost orders are being used against parties and their lawyers for abuses of civil process. This gives the court the flexibility to hold accountable the lawyers rather than their clients. Such a system allows for making at least initially the courts more accessible also to the poor, since additional income from exponentially growing court fees can be used to cut down on the initial cost. However, in most countries more serious obstacles to access to justice are stemming form 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 to some extend providing legal aid to the poor.[7] Courts should be aware of such structures and in case indicate them to needy users.

3. Differing Cultural Norms

The Meeting observed that Nigerian courts have the comparative advantage of using local languages peculiar to the locality of the court in order to transact its business, and that even where a litigant is not versed in the language of the court, an interpreter is made available. It was further noted that this practice is observed in all trial courts, from the lowest court to the high court, notwithstanding the fact that all court records are in English. The Meeting however agreed that training and public enlightenment programmes in various local languages should be pursued.

In some countries alternative dispute resolution mechanisms have been introduced allowing disputing parties to seek their own solutions. The emanating, rather flexible and non-binding decisions are normally more adept to reflect local or tribal cultural norms. Neighborhood councils and complaint panels and boards manned with prominent local residents can enjoy a high level of popular-based legitimacy and become the preferred form of dispute resolution.[8]

4. Friendly Environment for Litigants, Witnesses, etc.

The First Federal Integrity Meeting observed that the current practice is for witnesses to be excluded from the court room, and that no waiting facility is provided in most of our courts. It was therefore proposed that new court buildings should include waiting rooms for witnesses, litigants, etc. It was noted that this measure is not immediately attainable, and that the implementation of the measure is not within power of the court, because the resources for such capital expenditures is controlled by the executive. However, the Meeting recommended that Chief Judges should explore the possibility of converting idle rooms in existing court structures into waiting rooms for witnesses, litigants as well as persons released on bail who are awaiting the perfection of their bail conditions.

Inadequate physical facilities that constrain smooth operations of courts are an important aspect of judicial reform. Shortages, rundown conditions, inappropriate space distribution, lack of security, poor lighting, poor maintenance, and a lack of decorum and appropriate symbolism as well as poor locations and the lack of facilities in rural areas are only the main shortcomings.[9] Many reform projects, therefore, have been addressing court infrastructure through the development of simple conceptual models addressing strategic planning needs, accommodating the increased need for judicial services and meeting the requirements emanating from newly introduced changes of court procedures. In some countries courthouses have consciously been conceptualized as catalysts of change, taking into account five main concepts: Cultural and judicial decorum, expansion of facilities, reform oriented spaces, needs for increased transparency, accessibility to the public and upgraded technology.[10]

5. Prompt Treatment of Bail Applications

The Meeting discussed the issue of bail and noted that to reduce congestion in the prisons, courts are encouraged to grant bail in respect of all offences other than those with capital punishment. The Meeting also appreciated the need to simplify the procedures for bail, but agreed that the accused and his sureties must go to the admin officers to sign the bail bonds, etc. The Meeting noted the high number of persons awaiting trial amongst whom were those whose offences though bailable were not granted bail, and those who have been granted bail but could not perfect the bail conditions, etc. It was therefore resolved that bail should be made available to accused persons in all bailable offences unless there are special circumstances which will warrant the denial of such bail. The Meeting also emphasized the need for public enlightenment as well as proposed the need for a review of the laws so as to introduce "suspended sentences." It was also observed that the fines provided in our statute books are outdated and as such it was proposed that such fines should be reviewed to make them more meaningful.

No best practice example identified.

6. Increased Coordination between various Criminal Justice System Institutions

Participants extensively discussed the issue of coordination between justice agencies, especially in the area of criminal justice. It was noted that in all the states there exist a coordination mechanism in the form of Criminal Justice Committees which are comprised of the representatives of the Police, the Attorney-General's Office, the Courts and the Prisons Service. It was also observed that Chief Judges periodically carry out visits to prisons with a view to ascertaining the level of inmates awaiting trial and those who are being improperly detained. The Meeting therefore noted that the coordination mechanism necessary for the smooth running of the system is already in place. It was however resolved that participants should ensure the effective use of such mechanisms to reduce the proportion of persons awaiting trial, as well as the harmonious inter-dependence between the various criminal justice agencies, i.e. the investigative, the prosecution, the adjudication, and the penal/reformative.

Criminal Justice Committees are being used in several jurisdiction around the world to enhance the cooperation and coordination of the various institutions involved in the criminal justice process, mainly in order to increase the overall efficiency of the system. Regular meetings of the various actors provide a vehicle for problem identification, the sharing of differing institutional perspectives, the exchange of information and ideas and

the collaborative development of plans for improvement.[11] Particularly useful are such Committees when they involve officials at the operational levels, e.g. at the court level since many coordination problems may not require strategic changes but rather ad-hoc adjustments within existing procedures.[12] In some countries such committees have been formed at various geographical and hierarchical levels. In addition to strategic and practical problem solving, such Committees lend themselves to the organization of interdisciplinary training sessions aiming particularly at increasing the capacity of the various actors to cooperate and coordinate.

7. Reducing delays

In the area of civil justice, the Meeting observed that certain aspect of our procedures tend to encourage delays, especially in the filing of pleadings, the attendance of witnesses and even obedience to court orders. It was noted that in the area of civil law, it is within the purview of the judge to deal with contempt of his court or disobedience to court orders.

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 significantly. As a matter of fact 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.[13] This may include not only the strict enforcement of deadlines but also a more mediating approach to encourage settlement among parties to a dispute. Some countries have established pre-trial conferences, with the sole purpose of encouraging parties to make every effort to resolve their dispute under judicial supervision or with the help of a mediator.[14]

Other jurisdictions increased court time and extended the hours of the registrar's office, a measure which did not only enhance the overall productivity of staff but also increased the access to justice and impacted positively on the perceptions of service users. [15] As a Georgian lawyer stated "Before, you could go there in the middle of the day and not to be able to find a judge. Now, everyone is there, working."[16]

III. Quality and Timeliness of Justice

1. Increase Timeliness of the criminal justice process

Cooperation between agencies is vital to the achievement of a speedy justice process. As such, participants proposed that appropriate steps should be taken to increase the cooperation between agencies in the justice system. In addition, there has been a backlog of old outstanding cases which have accumulated as a result of the slow nature of the justice system. It was therefore proposed that in dealing with such cases, some form of prioritization is required. Incessant and unnecessary adjournments was also noted to be a major cause for the delays in the trial process. The need for strictness on adjournment requests was therefore stressed. It was further observed that failure by judges to sit on time also contribute to the delays. To facilitate timeliness in the trial process the performance of the individual judge needs to be monitored. Also, sustained consultation between judiciary and the bar should be encouraged. Delays are also facilitated by some procedural rules. As such it recommended a review of such procedural rules in order to minimize delays and reduce potential abuse of process. Another problem affecting the timeliness of the

trial process was the lack of an effective case management system. The Meeting recommended the need to put in place appropriate case management system that will take into cognizance the case loads, case types and length of such cases, so as to minimize undue delays.

Most countries embarking on judicial reform projects were forced to address delays and extensive backlogs if their reform efforts were to be successful. Extensive 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 its independence. Some countries have tried to solve the issue through simply increasing the number of judges. Hiring more judges is often a favorite solution for problems of inefficiency.[17] The lack of judges has been cited frequently as the main reason for delay.[18] This perception, however, relates primarily to courts that are not well-managed rather than understaffed. While hiring additional staff in some situations may be necessary, more successful have been those attempts aiming at increasing the output of the system through strengthening its efficiency rather than its over all capacity in terms of human resources. [19]

Much of the delay is caused by an unnecessary high number of procedural steps combined with a lack of time-limits. This does not only increase the time-to-disposition but also the propensity of the system towards corrupt practices.[20] Delay reduction programmes may include reducing the amount of 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.[21] However, "delays cannot be legislated away."[22] Meaningful service delivery deadliness seem only to be achieved, where judges and court staff are involved in their establishment and commit themselves to the prescribed times.[23] Regular meetings to review if all service deadlines are being met are useful since they confirm the commitment and allow for eventually needed adjustments. Other judicial reform programs address both the issue of time-to-disposition and judicial work culture by improving incentives for court employees, including judges. In most jurisdictions the reduction of procedural times will actually require changes in the respective procedural codes. Such measures will take time and require consolidated action by the judicature, the executive and the legislative. In one country it was possible to reduce the amount of procedures foreseen by the Civil Procedural Code from over a 100 to 6.[24]

Delay reduction programs will normally be combined with backlog-solving exercises. It has shown that courts that have reduced the backlog were able also to experience substantial reduction in processing time. Some countries in this regard made good experiences with the hiring of temporary personal whose sole purpose was to review and process the existing backlog of cases. A relatively easy way to start, which yields quick success consists in reducing the backlog by identifying inactive cases and purging them from the files as well as preparing those case for hearing, which require immediate action by the judges.[25]

Much of the delay is also caused by parties and their lawyers. As already mentioned 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 permit of 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.[26] Also minimal court fees, the lack of court fines for rejected motions, a system permitting appeals in all cases, and the accrual of legal fees on each new procedural step potentially encourage clients and lawyers likewise to pursue claims up to the highest instance, regardless of the merit of the case.[27]

Some countries try in addition to reduce delay and increase user satisfaction by emphasizing negotiation and mediation seeking pre-trial settlement.[28] All of them experienced significant success reaching settlement on the average in more then 70% of the cases.[29] This did not only prevent delay and backlog in the respective courts but reduced also significantly the caseload in appeal.[30]

2. Reduce proportion of prison population awaiting trial

In the area of criminal cases, the Meeting observed that the lack of timeliness in the justice system has occasioned serious congestion in the prison system, which are populated largely by suspects awaiting trial. It was noted that apart from procedural delays, a major problem in this area has to do with non production of such suspects before the court for trial, resulting in some of them spending more years awaiting trial than the would have spent had they been convicted for the offence with which they were charged. In deploring this situation, the Meeting recommended regular de-congestion exercises as well as prison visits with human rights organizations. The Meeting also observed that some delays are caused because of lack of access to books by judicial officers, and recommended that appropriate measures are required to ensure increased access to books for judicial officers Some countries have undertaken specific measures to reduce congestion in prison caused by a high number of persons awaiting trial. These measures necessarily have to involve the various institutions taking part in the criminal justice process. Particular focus was given to the initial stages of the criminal case processing. 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.[31] In particular regarding misdemeanors, administrative hearings and similar caseflow management practices facilitate early negotiations, that may lead to rapid, non-trial disposition of the case.[32] Also, non-incarcerative dispositional alternatives for low-level offenders should be considered.[33] In other jurisdiction specialized courts[34] or the function of popularly elected lay judges[35] have been created with the exclusive function of dealing with minor criminal offences and small civil claims.

3. Jurisdiction on Bail

The Meeting then discussed the issue of jurisdiction and in particular the need to clarify the jurisdiction of lower courts to grant bail. It was observed that such clarity is essential in order to understand the extent of such jurisdiction. The Meeting expressed the need for public education especially on the issue of bail as it was noted that substantial number of the populace are ignorant of bail rights and procedures. It was however, the opinion of the Meeting that such measures must be complemented with effective monitoring such as frequent court inspections as well as review of case files.

No best practice example identified.

4. Consistency in Sentencing

As a pre-requisite of quality of justice, the Meeting discussed the need for consistency in Sentencing. To achieve this, the Meeting resolved that accurate criminal records are essential which must be made available at the time of sentencing. Most importantly, it was agreed that the development of a coherent sentencing guidelines is imperative as a measure that could enable achievement of consistency in sentencing.

Rulings disregarding laws and jurisprudence generate inconsistencies, uncertainty and unpredictability and, as a consequence, increase the propensity of the judiciary towards corrupt practices.[36] 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 the access to legal materials, developing codes of conduct and improving the incentive system.[37] Various judicial reform projects revealed the 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 among the main obstacles to the successful delivery of justice.[38]

Training is probably the field that most donor agencies get involved to. There are several approaches both regarding content as well as organization and follow-up to such 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.[39] However, critical voices complain that there is still too much emphasis by donors on training programmes 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.[40] 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.[41] Training should focus on improving organizational performance. Training evaluations should not be conducted once training is completed but rather when knowledge has been applied. Research demonstrates that training is not effective until worker assimilate the acquired skills and the skills are applied naturally.[42]

Also, training programmes are mostly held in the capital cities and often do only reach the judicial leadership, while the biggest training needs exist at the lower courts, especially outside the capital. Even though the latter may impose even greater challenges in terms of sustainability there is a more urgent need.[43] Study tours that for long have been observed with suspicion, seem to have potentially an impact that goes beyond the mere increase of professional skills. Participants report that their entire vision of their profession and role in society changed.[44] It is important to observe that training does not only enhance the quality of justice by increasing the professional qualification and vision, but it also contributes to the attractiveness of the profession as such, which ultimately draws more and better qualified candidates to the bench.[45]

As far as the academic legal training is concerned, in many countries complaints have been raised that teaching methodologies are antiquated, inefficient and actually do not prepare for the profession. Clinical legal education seems to represent a promising

alternative.[46] 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.[47] 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.[48]

5. Establishing performance indicators for courts and judges

Further, the Meeting discussed performance indicators for individual judges, as a way of enhancing the quality of justice. To determine the performance of judges it is necessary to assess whether such 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, number of appeals allowed against their substantive judgements and the level of public complaints against their conduct in court. These indicators could provide a definite and effective method of assessing the performance of Judges. In addition to the role of Chief Judges in monitoring the performance of individual judges, the Meeting also noted the role the National Judicial Council and the Independent Anti-Corruption Commission in this endeavour.

Even though justice is not a service just like any other, there are qualitative and quantitative indicators that allow for reviewing judicial performance. Quantitative, this means the number of cases handled, absolutely and in relation to the total demand, the average time to resolution, and the percentage of cases completed within some reasonable time. Qualitatively, the assessment is more subjective, and requires some external evaluation of predictability, conformity with the law and legitimacy as well as user satisfaction.[49] Several judicial reform projects have proven, that establishing performance standards and indicators, both for individual judges and for courts, is an extremely effective way for enhancing the efficiency of the entire system. In one jurisdiction the Supreme Court sets performance goals for courts across the country. It then measures the performance of each court on an annual basis against these performance goals and awards a 5% bonus to the employees of the courts that rank in the top 40%.[50] 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 administrational office of the court. The compliance with these performance indicators is monitored on a regular basis.[51] Some experts suggest that, in addition, it would be important to review the number of decisions revoked by higher courts and the reasons for these revocations.[52]

6. Abuse of Civil Process – ex parte communications

On the abuse of civil process, the Meeting noted that the major the major areas of such abuse are in relation to ex-parte injunctions, improper proceedings in the absence of parties, judgements in chambers instead of open court as well as abuse of process by vacation judges. The Meeting therefore expressed the need for caution by judges in the issuance of ex-pate injunctions and the imperative of serving the ends of justice by fair hearing to all the parties. Whilst stressing that judges should only give judgements in

open court, it was also the view of participants in the Meeting that vacation judges should only hear genuinely urgent matters.

No best practice example identified.

IV. Public confidence in the courts

1. Public Confidence in the Courts

The First Federal Integrity Meeting concluded that there is a direct link between the conduct of judges and other court staff and public confidence in the judiciary. On the conduct of judges, the Meeting cautioned that judges should avoid exhibiting judicial arrogance by behaving as if they are unaccountable. It was the view of the participants that judges are accountable to the people and that it is for that reason that a succinct code of conduct was put in place. It was therefore recommended that Chief Judges should ensure a strict enforcement of the code of conduct as well as the dissemination of such code of conduct to the understanding of the judges and the general public. It was also recommended that a strict monitoring of other court staff is essential in order to ensure that they keep to the tenets of their various responsibilities.

Another aspect that will enhance public confidence in the courts, according to the Meeting, would be keeping the public informed about what happens in the courts. Public enlightenment is a necessary tool which the courts could effectively employ in winning public confidence.

In some countries efforts were made to transform the judicial mentality in order to accept that the role of the judiciary is to provide a service to the public. In addition to their traditional role of studying cases and issuing judgement, judges have become social actors and critical member of the local community.[53]

2. Strengthening Social Control System:

During the First Federal Integrity Meeting the Meeting examined the current system of public complaints by court users. There should be prompt and effective method of dealing with complaints by court users. In this regard it was recommended that Complaints Committees be established in each court and that complaints received should be expeditiously dealt with.

In some countries the implementation of social control boards as part of judicial reform programmes has shown positive results. The so-called "Complaints Panel or Board" can enjoy a high level of popular-based legitimacy.[54] 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.[55] 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.

3. Fairness and Impartiality

Fairness and impartiality were identified as necessary catalysts to public confidence in the courts. It was the view of the Meeting that the conduct of judges both in and outside the court determines a great deal 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. On the part of the Chief Judges, random case allocation and fairness in such case assignments was also seen to be essential.

Judges must not only render impartial judgement, but their entire behavior must project an aura of fairness. In this regard a Code of Conduct and even more the respective guidelines may be extremely helpful giving an account of what behavior is expected and what behavior is not acceptable. Fear of bias may stems in particular from the assignment of sensitive cases to judges who are 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. Also, a potential loss of expertise can be avoided by forming subject related divisions within courts.[56]

4. Political Neutrality

The issue of political neutrality as a necessary pre-requisite to the independence and integrity of the judicial system was also discussed. It was the view of the Meeting that judges must not be seen to partake in politics or be in political associations, meetings or gatherings. Indeed, the Meeting even cautioned that Chief Judges as well as other judges must be cautious in the way they relate with the executive, so as not to undermine the cherished concept of separation of powers and judicial independence. The Meeting resolved that except where judges have a specified role to play, they should avoid delving into executive functions.

Executive-mindedness or a predisposition to favor the government is a serious problem of judges in many countries. Political neutrality and the perception of such can be challenged by various factors. Among those behaviors that may compromise the appearance of fairness rank also the socializing with members of the executive or the providing of legal opinions even when they detached from the facts of a particular case. Since the latter in some legal traditions may be considered acceptable or even desirable to some extend, there should be exact guidelines, which would be elaborated based on the inputs of the various legal professions, the executive, legislative and civil society.

5. Inadequate funding for the judiciary

During the First Federal Integrity Meeting was said that although the issue of funding is one that is beyond the purview of those indicators which the judiciary could handle sui motu, an adequate funding is central to the effective performance of the judiciary as well as the preservation of its independence. The Meeting noted that whilst the other two arms of government to a large extent received adequate resources required for their functions, the judiciary at all times remained starved of the requisite funds for its effective functions.

It was the view of participants that the judiciary is yet to attain its independence in the area of resource allocation. This must be pursued and achieved in order to provide for the necessary requirements of the third arm of government.

Judicial budget is an important economic instrument to ensure a reliable and efficient judicial system.[57] 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. In several countries the increase of budgetary resources has helped judiciaries to improve their overall performance.[58] A common problem remains the poor allocation and lack of management of resources within the judiciary, rather than or in addition to an overall lack of resources.[59] More detailed studies actually have proven, that budgetary increases were particularly effective where the capital budget grew exponentially comparing to those budgetary resources used for salaries, benefits and additional staff. One important lesson learned in this context seems to be that an increase in capital resources affects time to disposition, but adding general resources to the budget does not.[60] While the latter allows for increasing salaries and number of staff,[61] the first sets aside the necessary monies to improve information technology and facilities in the courts, which in turn increase the clearance rate.[62] E.g. in Singapore a significant increase of capital budget in 1991 was rewarded by a subsequent 39 % decrease of pending cases in 1993. Also in Panama an increase in the capital budget was followed by improved court performance. 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.

6. Irregular appointments

The First Federal Integrity Meeting concluded that there is the need to ensure that only qualified and competent persons of Integrity are appointed as judges. The system of appointment of judges was discussed and it was the view of participants that the current centralized system in which the Judicial Council handles the appointment is quite good, as it has helped a great deal in preventing the appointment of judges from being politicized. It was the feeling that due diligence must be exercised in recommending persons for appointment to the bench, in order to prevent irregular appointments or appointment of incompetent persons or those of questionable integrity.

Although it is not possible to determine which selection process works best, some principles are emerging: [63]
Transparency: This can achieved i.e. by advertising judicial vacancy widely, publicizing candidate's names, their background as well as the selection process and criteria; inviting public comment on candidates' qualifications and dividing responsibility for the process between two separate bodies.

Broad-based composition of the judicial council: In order to increase the credibility of the body responsible for the selection of the candidates, its members should include additional actors such lawyers and law professors, lower-level judges, and civil society representatives. Each member should be chosen by the sector they represent. That will be increase the likelihood that they will have greater accountability to their own group and autonomy from the other actors.

Merit-based selection. A positive example is the Chile experience. 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 for their knowledge, abilities and physiological fitness. Those selected attend a six month course at the judicial academy and the graduates receive preference over external competitors for openings. The obvious disadvantages is its expense. Few judiciaries have resources to provide long-term training for applicants who may not ultimately be selected as judges.

Diversity. A judiciary that reflects the diversity of its society is more likely to garner public confidence, important for a judiciary 's credibility.

The appointment process, terms of appointments and salary levels directly impact on the quality of applicants and ultimately on the quality of justice.[64] High salaries and terms of appointment for life seem to contribute to the independence of judges. Regardless of the high salary level, public confidence seems to remain low where judges are appointed only for a limited time period.[65] Judges appointed to the bench for life with retirement at seventy and regular performance reviews as well as incentives for performance improvement have shown positive results. As far as court staff is concerned, some reforms targeted specifically wide-spread nepotism by prohibiting non-salaried clerical staff and not allowing judges' family members to work in the court.[66]

7. External Monitoring by the ICPC:

As a way of ensuring the integrity of the courts, judges and other personnel, the Meeting resolved that external monitoring of the system is required. In line with its mandate under the Corrupt Practices and Other Related Offences Act, 2000, the Meeting resolved that the Independent Corrupt Practices and Other Related Offences Commission, ICPC should monitor the courts, the conduct of judges and other court personnel, and where necessary take appropriate steps to report erring judges or court staff to the National Judicial Council, appropriate Judicial Service Committee, or where necessary take appropriate measures in accordance with its mandate. It was also the view that the ICPC should make available its reports to the public.

Philippine Center for Investigative Journalism led in one case to resignation of a supreme court justice. (Guidance for promoting judicial independence and impartiality, USAID, January 2002, p. 36)

V. A Credible and Responsive Complaints Mechanism

1. Establishment of a Credible and Effective Complaints System

The Meeting commenced by emphasizing that a credible 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 that such a system must be well known to the public. The Meeting observed that although the current complaints system in which general public are to lay their complaints to the Chief Justice of Nigeria, the Chief Judges in the various states, the National Judicial Council or

the Judicial Service Committees at the Federal and State levels are quite adequate, the general public is not enlightened on these avenues, as well as the procedures for making these complaints. Hence it was resolved that the current complaints system must not only be publicized in courts, but also how such complaints are to be made.

The Meeting also discussed the procedural steps that needed to be taken in relation to such complaints and expressed the need to give fair hearing to the judicial officer complained against and that the result of the decision of the National Judicial Council or Judicial Service Committee should be communicated to the complainant. Indeed, the Meeting went further to recommend that in cases of particular public interest, such decisions should be publicized.

Participants also discussed the need to discourage frivolous and malicious petitions, but stressed that anonymous complaints should be investigated and should only be disregarded if found to be lacking in substance.

The need of the public to voice their eventual complaints against judges in order to initiate disciplinary or even criminal action against them is a crucial tool in increasing the accountability of judges, and hereby reducing both actual as well as perceived levels of corruption in the judicial domain. All judiciaries around the world have some form of disciplinary body, however, many of them do not contribute to strengthening 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.[67] But also relying exclusively on judges to discipline their colleagues does not only raise problems of credibility, but has also proven problematic in terms of misinterpreted solidarity among judges.[68] Positive experiences, as far as credibility and impartiality are concerned, were made in those countries were disciplinary bodies are composed of all relevant stakeholder groups, including judges from various levels, the bar, the Attorney General's Office, the academia, the parliament and civil society.[69]

Another challenge faced by any judicial complaints mechanism is the number and nature of complaints. Experiences from several countries confirm that complaints are filed mainly by disgruntled litigants and are largely unfounded. 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.[70] It also puts high pressure on disciplinary boards in terms of capacity. Complaints should be handled in a speedy and effective manner in order to limit the negative professional and personal impact on the concerned judge, who turns out to be falsely accused.[71] Citizen education about the role and responsibilities of judges should include information about how to file complaints. Further, a strict separation of performance evaluation and the handling of complaints as well as discipline seems to be key.[72]

2. Enforcement of Code of Conduct

The participants agreed that the already existing Code of Conduct needed to be complemented by a credible complaint system. The Meeting reasoned that the credibility of any complaints system lies in the ability of the system to effectively respond to such

complaints by ensuring that such complaints of misconduct as have been proven are duly punished in accordance with the code of conduct, and the complainant informed of the action taken. This has the advantage of ensuring the effectiveness and integrity of the judiciary as well as building up accountability and public confidence in the institution. The Meeting emphasized the role of the National Judicial Council and the respective Judicial Service Committees in the effective enforcement of the Code of Conduct. Participants also noted that although a succinct code of conduct for judicial officers is in place, the code is not sufficiently publicized to judicial officers and the general public. It was resolved that this is essential for the judicial officers to comply, and for the public to hold them accountable for such compliance.

Enhancing ethical behavior among judges through the development and enforcement of a Code of Conduct is an approach that has been taken up by many countries. However, while the development of the Code of Conduct is quickly achieved, its enforcement in most countries has been much more difficult.[73] Not everywhere a credible monitoring and complaints mechanism could be established. In some countries even constitutional problems occurred because of the membership of non-judges. In other countries, even though independent, the Commission was formed exclusively by judges causing the above mentioned credibility problems. In any case the independence of the compliance monitoring body is crucial for its credibility in the eyes of the public.[74] An important element is that the public can directly file their complaints with the commission.[75] Besides investigating complaints, statistical analysis and breakdown can be used in order to monitor the behavioral patterns of the judiciary at large. Another tool to ensure the monitoring the judicial behavior consists in providing access to information to the public, including judicial decisions, the judiciaries' expenditures, its budget, the personal background of judge and other statistical information. Full public disclosure of information helps to avoid conflicts of interest as well as the appearance of such conflicts.[76] Additionally, the judiciary needs a mechanism to interpret the Code of Conduct and to keep a record of those interpretations that will be available for those seeking guidance. Judges should not be left solely responsible to determine how the general words of a code apply in particular situations.

As mentioned above, the enforcement mechanism must protect the judges themselves from unfair treatment. Although codes are supposed to have a positive impact on judicial independence, there are some potential abuses. Codes have been used time again to punish judges that have not fully understood the details of the code and what behaviors are prohibited. Also, they have been used to punish judges that have been considered as to independent. Therefore codes should not be used as a basis for disciplinary action until they are widely known and understood.[77]

3. Creation of Public Communication Channels

It was argued that the judiciary being a service institution, must relate effectively with the people which it is supposed to serve. Hence it was agreed that the judicial arm must move away from the old adage that judicial officers should only be seen and not heard. It was decided that in line with the modern thinking, judicial officers should participate in public education programmes to enlighten the people as to their rights and how to go about enforcing such rights. The Meeting however, cautioned that in performing such functions, judges should endeavour to restrict themselves to fairly straight forward issues

and avoid controversial subjects that may call into question their independence and impartiality as judges. Further, the Meeting noted the tendency of the print media to misrepresent facts and opined that judges may consider the use of electronic media to handle such public enlightenment programmes, unless they are sure of the credibility of the print media concerned.

Public enlightenment efforts and 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,[78] but also contributes to a more favorable public perception.[79] 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.[80] A media strategy is essential in this context. This is even more true since the media is not an natural ally to the judiciary. In some countries it actually paints a very negative image of the judges – "absurd misconceptions become conventional wisdom."[81] Journalists, just like the public, may not understand the role of the judiciary and therefore contribute to the negative image of judges. A media strategy should therefore, seek to interest sufficiently at least one media outlet in the process, so that it identifies the reforms as a key issue, provides publicity, and calls for transparency. Public relation capacities need to be developed to keep the public informed about the steps taken. This does not only build public support for the judicial system, it also helps to communicate and reinforce through increasing public scrutiny and the notion that citizens have a legitimate interest in the integrity and capacity of the courts.[82] In one country journalists were successfully trained in legal literacy as part of a judicial reform project in order to improve understanding and accuracy of reporting.[83]

4. Training on Judicial Ethics:

The Meeting considered training on judicial ethics as a necessary element that will enhance the integrity of the judiciary. Participants therefore stressed the role of the National Judicial Institute in undertaking this endeavour. The Meeting further observed that such training should not be restricted to judges alone but other court staff that work with them. This the Meeting reasoned would ensure the integrity of the whole system.

A number of experts emphasize, that training should be – and rarely is – designed to change the attitude of judges. In large part this means educating judges about the importance of their role in the society. Training in judicial ethics can have an important impact on a judge's ability to maintain impartiality. It seems that the most effective training is to work through exercises based on practical problems, that judges often confront. Also seminars on ethics, involving visiting foreign judges, have been well received in many countries, especially where the visiting judges made clear that they struggle with the same issues. Discussing common ethical concerns with foreign colleagues may be perfectly acceptable.[84]

END NOTES

1 Finnegan, Observations on Tanzania's Commercial Court – A Case Study, p. 7
2 Ernst & Young, Reducing Delay in Criminal Justice System, p. 2.
3 Council for Court Excellence, A Roadmap to a Better Criminal Justice System, p. 4
4 Council for Court Excellence, A Roadmap to a Better Criminal Justice System, p. 5
5 Dakolias, Court Performance around the World, p. 26
6 World Bank, Staff Appraisal Report – Peru, Judicial Reform Project, p. 22
7 Buscaglia/ Langseth, Empowering the Victims of Corruption through Social Control Mechanisms, p. 23
8 USAID, Office for Democracy and Governance, Guidance for Promoting Judicial Independence and impartiality, p. 27
9 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
10 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
11 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
12 Dietrich, Legal and Judicial Reform in Central Europe and the Former Soviet Union (Romania), p. 13
13 Said/ Varela, Colombia, Modernization of the Itagüí Court System, pp. 11,12 & 18
14 USAID, Office for Democracy and Governance, Guidance for Promoting Judicial Independence and impartiality, p. 28
15 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
16 Dakolias, Court Performance around the World (Peru), p. 44
17 Dietrich, Legal and Judicial Reform in Central Europe and the Former Soviet Union (Romania), p.25
18 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
19 USAID, Office for Democracy and Governance, Guidance for Promoting Judicial Independence and impartiality (Romania & Georgia), p. 66
20 Hammergren, Institutional Strengthening and Justice Reform, p. 75
21 Dakolias, Court Performance around the World (Chile), p. 29
22 Said/ Varela, Colombia, Modernization of the Itagüí Court System, pp. 17, 18
23 USAID, Office for Democracy and Governance, Guidance for Promoting Judicial Independence and impartiality (Dominican Republic), p. 114
24 Said/ Varela, Columbia, Modernization of the Itagüí Court System. A Management and Leadership Case Study, p. 24; Dakolias/ Said, Judicial Reform. A process of Change Through Pilot Courts, p. 7
25 Langseth/ Buscaglia, Empowering the Victims of corruption through social control mechanism, p. 18
26 These social control boards, composed of civil society representatives at the local level, have varied in nature and scope. For example, in some countries these civil society boards were proposed as simply civil society-based court-monitoring systems (Singapore and Costa Rica) and in other cases, these bodies were recognized and performed their conflict resolution function as alternative –informal mechanisms (in the cases of Chile, Colombia, and Guatemala).
27 USAID, Guidance for Promoting Judicial Independence and Impartiality, p. 48 & 49
28 McEldowney, Developing the Judicial Budget: An Analysis, p. 3
29 McEldowney, Developing the Judicial Budget: An Analysis, pp. 11, 12. Crucial in this context were the development of sound management rules for the judical 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 on 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,
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.

30 USAID, Guidance for promoting judicial independence and impartiality, p. 26
31 Buscaglia/ Dakolias, Comparative International Study of Court Performance Indicators, p. 15
32 In many countries almost the 95% of the budget is used for salaries.
33 Buscaglia/ Dakolias, Comparative International Study of Court Performance Indicators, p. 21
34 USAID, Guidance for promoting judicial independence and impartiality, pp. 17-18
35 Dakolias , Court Performance around the world, p. 22
36 Dakolias , Court Performance around the world (Ecuador), p.32
37 Dakolias , Court Performance around the world (Peru), pp. 43-44
38 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
39 USAID, Guidance for Promoting Judicial Independence and Impartiality, p. 61
40 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
41 USAID, Guidance for Promoting Judicial Independence and Impartiality, p. 115
42 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 then defending themselves in prolonged disciplinary proceedings. USAID, Guidance for Promoting Judicial Independence and Impartiality, p. 115
43 USAID, Guidance for Promoting Judicial Independence and Impartiality, p. 117
44 USAID, Guidance for Promoting Judicial Independence and Impartiality, p. 31
45 USAID, Guidance for Promoting Judicial Independence and Impartiality, p. 52
46 USAID, Guidance for Promoting Judicial Independence and Impartiality (Georgia), p. 62
47 USAID, Guidance for Promoting Judicial Independence and Impartiality (USA), pp. 118, 119
48 USAID, Guidance for Promoting Judicial Independence and Impartiality, p. 31
49 Dietrich, Legal and Judicial Reform in Central Europe and the Former Soviet Union (Russia), p. 21; Argentina, Legal and Judicial Sector Assessment, p. 77;
50 Said/ Varela, Colombia, Modernization of the Itagüí Court System. A Management and Leadership Case Study, p. 23
51 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
52 Said/ Varela, Colombia, Modernization of the Itagüí 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
53 USAID, Guidance for Promoting Judicial Independence and Impartiality, p. 39
54 Dietrich, Legal and Judicial Reform in Central Europe and the Former Soviet Union (Russia), p. 15
55 USAID, Guidance for promoting judicial independence and impartiality, pp.28-31
56 This paper reviews the most recent literature related to economic causes of corruption within the public sector in general and particularly within the court systems in developing countries. It shows the need to generate public policies based on sound and scientific principles that can be accepted by civil societies and the public sector at the same time. An earlier version of this summary paper appeared as an Essay in Public Policy, Hoover Institution Press, 1999

57 McEldowney, Developing the Judicial Budget: An Analysis, p. 3
58 McEldowney, Developing the Judicial Budget: An Analysis, pp. 11, 12. Crucial in this context were the development of sound management rules for the judical budget. As e.g. in Venezuela:
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59 USAID, Guidance for promoting judicial independence and impartiality, p. 26
60 Buscaglia/ Dakolias, Comparative International Study of Court Performance Indicators, p. 15
61 In many countries almost the 95% of the budget is used for salaries.
62 Buscaglia/ Dakolias, Comparative International Study of Court Performance Indicators, p. 21
63 USAID, Guidance for promoting judicial independence and impartiality, pp. 17-18
64 Dakolias , Court Performance around the world, p. 22
65 Dakolias , Court Performance around the world (Ecuador), p.32
66 Dakolias , Court Performance around the world (Peru), pp. 43-44
67 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
68 USAID, Guidance for Promoting Judicial Independence and Impartiality, p. 61
69 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
70 USAID, Guidance for Promoting Judicial Independence and Impartiality, p. 115
71 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 then defending themselves in prolonged disciplinary proceedings. USAID, Guidance for Promoting Judicial Independence and Impartiality, p. 115
72 USAID, Guidance for Promoting Judicial Independence and Impartiality, p. 117
73 USAID, Guidance for Promoting Judicial Independence and Impartiality, p. 31
74 USAID, Guidance for Promoting Judicial Independence and Impartiality, p. 52
75 USAID, Guidance for Promoting Judicial Independence and Impartiality (Georgia), p. 62
76 USAID, Guidance for Promoting Judicial Independence and Impartiality (USA), pp. 118, 119
77 USAID, Guidance for Promoting Judicial Independence and Impartiality, p. 31
78 Dietrich, Legal and Judicial Reform in Central Europe and the Former Soviet Union (Russia), p. 21; Argentina, Legal and Judicial Sector Assessment, p. 77;
79 Said/ Varela, Colombia, Modernization of the Itagüí Court System. A Management and Leadership Case Study, p. 23
80 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
81 Said/ Varela, Colombia, Modernization of the Itagüí 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
82 USAID, Guidance for Promoting Judicial Independence and Impartiality, p. 39
83 Dietrich, Legal and Judicial Reform in Central Europe and the Former Soviet Union (Russia), p. 15
84 USAID, Guidance for promoting judicial independence and impartiality, pp.28-31.

B. Judicial Corruption in Developing Countries*

1. The main Causes of Corruption within the Judiciaries in Developing Countries

The field known as law and economics of development focuses its attention on the effects that well-functioning legal and judicial systems have on economic efficiency and development. Adam Smith states in his *Lectures on Jurisprudence* that a factor that "greatly retarded commerce was the imperfection of the law and the uncertainty in its application" (Smith, 528). Entrenched corrupt practices within the public sector (i.e., official systemic corruption) hamper the clear definition and enforcement of laws, and therefore, as Smith (1978) stated, commerce is impeded. A scientific approach to the analysis of corruption is a necessary requirement in the fight against any social ill. Corruption is no exception. Systemic corruption deals with the use of public office for private benefit that is entrenched in such a way that, without it, an organization or institution cannot function as a supplier of a good or service. The probability of detecting corruption decreases as corruption becomes more systemic. Therefore, as corruption becomes more systemic, enforcement measures of the traditional kind affecting the expected punishment of committing illicit acts become less effective and other preventive measures, such as organizational changes (e.g., reducing procedural complexities in the provision of public services), salary increases, and other measures, become much more effective. The growth and decline of systemic corruption is also subject to laws of human behavior. We must better define those laws before implementing public policy. For this purpose we must:

- Formulate a policy claim (e.g., administrations with high concentrations of organizational power in the hands of few public officials with no external auditing systems are prone to corrupt behavior)

- Formulate a logical explanation of a policy claim (e.g., why higher concentrations of organizational power and corrupt behavior go hand in hand)

- Gather information to support or disprove the claim

2. Design public policies based on the findings

In this context, in order to design public policies in the fight against corruption, it is necessary to build a data base with quantitative and qualitative information related to all the factors thought to be related to certain types of systemic corrupt behavior (embezzlement, bribery, extortion, fraud, etc.). For example, the World Bank is currently assembling a data base of judicial systems worldwide (Buscaglia and Dakolias 1999) that covers those factors associated to relative successes in the fight for an efficient judiciary.

International experience shows that specific macropolicy actions are associated with the reduction in the perceived corruption in countries ranging from Uganda to Singapore, from Hong Kong to Chile (Kaufmann 1994). These actions include lowering tariffs and other trade barriers; unifying market exchange and interest rates; eliminating enterprise subsidies; minimizing enterprise regulation, licensing requirements, and other barriers to market entry; privatizing while demonopolizing government assets; enhancing transpar-

*. This paper reviews the most recent literature related to economic causes of corruption within the public sector in general and particularly within the court systems in developing countries. It shows the need to generate public policies based on sound and scientific principles that can be accepted by civil societies and the public sector at the same time. An earlier version of this summary paper appeared as an Essay in Public Policy, Hoover Institution Press, 1999

ency in the enforcement of banking, auditing, and accounting standards; and improving tax and budget administration. Other institutional reforms that hamper corrupt practices include civil service reform, legal and judicial reforms, and the strengthening and expansion of civil and political liberties. Finally, there are the micro-organizational reforms, such as improving administrative procedures to avoid discretionary decision making and the duplication of functions, while introducing performance standards for all employees (related to time and production); determining salaries on the basis of performance standards; reducing the degree of organizational power of each individual in an organization; reducing procedural complexity; and making norms, internal rules, and laws well known among officials and users (Buscaglia and Gonzalez Asis 1999).

3. Sequencing the Design of Anticorruption Policies

The following steps are recommended in the design of anticorruption policies:

- Perform a diagnostic analysis within a country identifying, within a priority list, the main institutional areas where systemic corruption arises. This identification must be conducted through surveys of users of government services, businesses, or taxpayers. The survey should be applied to each government institution (e.g., customs, judiciary, tax agencies, and others).

  Once a priority list of areas subject to systemic corruption is derived, develop a data base for each of these institutions containing objective and subjective measures of corruption (e.g., reports of corruption, indictments related to fraud, embezzlement, extortion, or bribery in that agency, prices charged by the agency) and other variables that are thought to explain corruption. Gather information on procedural times in the provision of government services; users' perceptions of efficiency, effectiveness, corruption, and access related to that agency; procedural complexity in the provision of services; and so on.

- Conduct a statistical analysis clearly identifying the factors causing corruption in a specific government agency. Identify whether any of the economic, institutional, and organizational factors mentioned above are related to corruption.

Once the diagnostic and identification stages are complete, civil society should become involved in implementing and monitoring the anticorruption policies. The action plan should be developed through consensus between civil society and government and contain problems, solutions, deadlines for implementation of solutions, and expected results.

This approach has been applied at the judicial and municipal levels in many countries with significant results (Buscaglia and Dakolias 1999). Those cases used the following steps: First, a survey was conducted of those users applying for specific permits from their local government (county office, in Venezuela). Those users were interviewed just after finishing the application procedure and were asked to rank the efficiency, effectiveness, level of access, quality of information received, and corruption in the administrative procedure used to obtain construction and industrial license permits. Next, numerical and qualitative data were gathered to identify those variables affecting the public's responses to the survey by applying statistical analyses. The results of this diagnostic study were then shared with representatives of civil society and local government at a workshop. In this workshop, representatives of civil society and local government could agree or disagree with the results.

Once the civil society and the government agreed on the nature of the problems, a technical empirical study conducted by the interdisciplinary team focused on how to reduce corruption and increase efficiency in those areas (e.g., issue of permits) covered by the diagnostic study. This technical study, which identified the mechanisms to reduce corruption and increase efficiency/effectiveness, was later discussed, understood, and accepted by members of the civil society and local government. Civil society was able to devise mechanisms for monitoring the implementation of reforms with deadlines included. The results of implementing these reforms must be measured months after the implementation stage has been completed through another survey of users applying for those same types of permits. The actual results were then compared with the expected results, previously defined as goals by civil society groups. Those experiences show that the implementation of any anticorruption campaign must be based on sound multidisciplinary scientific principles applied by researchers, practitioners, and civil society. Only a multidisciplinary approach specifying methodology, data, a scientific analysis of what works and what does not work, and, finally, a well-specified sequencing of policy steps as mentioned above can establish a solid policy consensus in the fight against systemic corruption.

Scholars have already recognized the advantages of going beyond the analysis of the impacts of corruption on economic growth and investment, and some have stated the urgent need to isolate the structural features that create corrupt incentives (Rose-Ackerman 1997; Langseth and Stolpe, 2001). But only general situations within which corruption may arise have been identified in the literature. These situations are neither overlapping nor exhaustive. A rigorous analysis, however, of the corruption-enhancing factors within the courts has been unexplored in the literature. The need to develop an empirically testable anticorruption policy in the courts is necessary to incorporate the study of corruption into the mainstream of social science.

The empirical frameworks first introduced by Buscaglia (1997a) to Ecuador and Venezuela and by Buscaglia and Dakolias (1999) to Ecuador and Chile explain the yearly changes in the reports of corruption within first-instance courts dealing with commercial cases. That work shows that specific organizational structures and behavioral patterns within the courts in developing countries make them prone to the uncontrollable spread of systemic corrupt practices. For example, their work finds that the typical Latin American court provides internal organizational incentives toward corruption. A legal and economic analysis of corruption should be able to detect why the use of public office for private benefit becomes the norm. In theory, most developing countries possess a criminal code punishing corrupt practices and external auditing systems within the courts for monitoring case and cash flows. Even if they function properly, however, those two mechanisms would not be enough to counter the presence of systemic corruption in the application of the law. Other dimensions need to be addressed.

Specific and identifiable patterns in the administrative organization of the courts, coupled with a tremendous degree of legal discretion and procedural complexities, allow judges and court personnel to extract additional illicit fees for services rendered. Buscaglia (1997a) also finds that those characteristics fostering corrupt practices are compounded by the lack of alternative mechanisms to resolve disputes, thus giving the official court system a virtual monopoly. More specifically, according to Buscaglia (1998) and Buscaglia and Dakolias (1999), corrupt practices are enhanced by (1) internal organizational roles

concentrated in the hands of a few decision makers within the court (e.g., judges concentrating a larger number of administrative and jurisdictional roles within their domain); (2) the number and complexity of the procedural steps coupled with a lack of procedural transparency followed within the courts; (3) great uncertainty related to the prevailing doctrines, laws, and regulations (e.g., increasing inconsistencies in the application of jurisprudence by the courts due to, among other factors, the lack of a legal data base and defective information systems within the courts); (4) few alternative sources of dispute resolution; and, finally, (5) the presence of organized crime groups (e.g., drug cartels), that, according to Gambetta (1993), demand corrupt practices from government officials.

These five factors associated with corrupt practices provide a clear guideline for public policy making. Developing countries such as Chile and Uganda that have enacted a simple procedural code while introducing alternative dispute resolutions have witnessed a reduction in the reports of court-related corruption. Moreover, the success stories of Singapore and Costa Rica show that corruption has been reduced by creating specialized administrative offices supporting the courts in matters related to court notifications, budget and personnel management, cash and case flows. These administrative support offices that were shared by many courts have decentralized administrative decision making while reducing the previously high and unmonitored concentration of organizational tasks in the hands of judges (Buscaglia 1997a).

4. Corruption and its long-term Impact on Efficiency and Equity

Some scholars have observed that official corruption generates immediate positive results for the individual citizen or organization who is willing and able to pay the bribe (Rosenn 1984). For example, Rose-Ackerman (1997) accepts that "payoffs to those who manage queues can be efficient since they give officials incentives both to work quickly and favor those who value their time highly." She further states that, in some restricted cases, widely accepted illegal payoffs need to be legalized (Rose-Ackerman 1997). This statement, however, disregards the effects that present entrenched corruption has on people's perception of social equity and on long-term efficiency. The widespread effects of corruption on the overall social system have a pernicious effect on efficiency in the long run. To understand this effect, an economic theory of ethics needs to be applied to the understanding of the long-term effects of corruption on efficiency.

The average individual's perception of how equitable a social system is has a pronounced effect on that individual's incentives to engage in productive activities (Buscaglia 1997a). The literature has delved into many of the negative impacts that corruption has on the efficient allocation of resources. Yet previous work does not pay attention to the effects that corruption has on the individual's perception of how equitable a social system is. First, in all developing countries, a vast majority of the population is not able to offer illicit payoffs to government officials, even when they are willing to do so (Buscaglia 1997a), and, second, legalizing illicit payoffs may have no impact on social behavior in societies where most social interactions are ruled not by modern laws but by multiple layers of customary and religious codes of behavior.

A significant impact of corruption on future efficiency is the effect that official corrupt practices have on the average citizen's perception of social equity. Homans (1974) shows that, in any human group, the relative status given to any member is determined by the "group's perception" of the member's contribution to the relevant social domain. Homans

further states that changes in the relative wealth-related status of an individual member without a perceived change in his social contribution will face open hostility by the other members of society (e.g., envy may generate retaliation and destruction of social wealth). Therefore, within Homans's view, in cases of corrupt practices, a "socially unjustified" increase in the wealth-related status of those who offer and accept bribes represents a violation of the average citizen's notion of what constitutes an "equitable hierarchy" of status within society.

Homans's theory of ethics can be applied to the understanding of the effects of official systemic corruption on efficiency over time. Those members of society who are neither able nor willing to supply illicit incentives will be excluded from the provision of any "public good" (e.g., court services). In this case, even though corruption may remove red tape for those who are able and willing to pay the bribe, the provision of public services becomes inequitable in the perception of all of those who are excluded from the system due to their inability or unwillingness to become part of a corrupt transaction. This sense of inequity has a long-term effect on social interaction. Systemic official corruption promotes an inequitable social system where the allocation of resources is perceived to be weakly correlated to generally accepted rights and obligations. Buscaglia (1997a) shows that a "perceived" inequitable allocation of resources hampers the incentives to generate wealth by those who are excluded from the provision of basic public goods. The average citizen, who cannot receive a public service due to his inability to pay the illegal fee, ceases to demand the public good from the official system (Buscaglia 1997a). On many occasions, the higher price imposed by corrupt activities within the public sector forces citizens to seek alternative community-based mechanisms to obtain the public service (e.g., alternative dispute resolution mechanisms such as neighborhood councils). These community-based alternative private mechanisms, however, do not have the capacity to generate precedents in certain legal disputes affecting all society (e.g., human rights violations or constitutional issues) like the state's court system does. Hernando de Soto's account of these community-based institutions in Peru attests to the loss in a country's production capabilities owing to the high transaction costs of access to public services (de Soto 1989).

One may initially think that, by eliminating bureaucratic red tape, the payment of a bribe can also enhance economic efficiency. This is a fallacy, however, because corruption may benefit the individual who is able and willing to supply the bribe. As described above, however, the social environment is negatively affected by diminishing economic productivity over time because of the general perception that the allocation of resources is determined more by corrupt practices and less by productivity and, therefore, is inherently inequitable. This creates an environment where individuals, in order to obtain public services, may need to start seeking illicit transfers of wealth to the increasing exclusion of productive activities. In this respect, present corruption decreases future productivity, thereby reducing efficiency over time

5. Corruption and Institutional Inertia

When designing anti-corruption policies within the legal and judicial domains, we must take into account not only the costs and benefits to society of eradicating corruption in general but also the changes in present and future individual benefits and costs as perceived by public officials whose illicit rents will tend to diminish due to anticorruption public policies. Previous studies argue that institutional inertia in enacting reforms stems from the long-term nature of the benefits of reform in the reformers' mind, such as

enhanced job opportunities and professional prestige (Buscaglia, Dakolias, and Ratliff 1995). These benefits cannot be directly captured in the short term by potential reformers within the government. Contrast the long-term nature of these benefits with the short-term nature of the main costs of reform, notably, a perceived decrease in state officials' illicit income. This asymmetry between short-term costs and long-term benefits tends to block policy initiatives related to public sector reforms. Reform sequencing, then, must ensure that short-term benefits compensate for the loss of rents faced by public officers responsible for implementing the changes. In turn, reform proposals generating longer-term benefits to the members of the court systems need to be implemented in later stages of the reform process (Buscaglia, Ratliff, and Dakolias 1996).

For example, previous studies of judicial reforms in Latin America argue that the institutional inertia in enacting reform stems from the long-term nature of the benefits of reform, such as increasing job stability, judicial independence, and professional prestige. Contrast the long-term nature of those benefits with the short-term nature of the main costs of judicial reform to reformers (e.g., explicit payoffs and other informal inducements provided to court officers). This contrast between short-term costs and long-term benefits has proven to block judicial reforms and explains why court reforms, which eventually would benefit most segments of society, are often resisted and delayed (Buscaglia, Dakolias, and Ratliff 1995). In this context, court reforms promoting uniformity, transparency, and accountability in the process of enforcing laws would necessarily diminish the court personnel's capacity to seek extra income through bribes. Reform sequencing, then, must ensure that short-term benefits to reformers compensate for the loss of illicit rents previously received by court officers responsible for implementing the changes. That is, initial reforms should focus on the public officials' short-term benefits. In turn, court reform proposals generating longer-term benefits need to be implemented in the later stages of the reform process.

Additional forces also enhance the anticorruption initiative. We usually observe that periods of institutional crisis come hand in hand with a general consensus among public officials to reform the public sector. For example, within the judiciary, a public sector crisis begins at the point where backlogs, delays, and payoffs increase the public's cost of accessing the system. When costs become too high, people restrict their demand for court services to the point where the capacity of judges and court personnel to justify their positions and to extract illicit payments from the public will diminish. At that point, court officials increasingly embrace reforms in order to keep their jobs in the midst of public outcry (Buscaglia, Dakolias, and Ratliff 1996, 35). At this point, the public agency would likely be willing to conduct deeper reforms during a crisis as long as reform proposals contain sources of short-term benefits, such as higher salaries, institutional independence, and increased budgets.

It comes as no surprise, then, that those developing countries undertaking judicial reforms have all experienced a deep crisis in their court system, including Costa Rica, Chile, Ecuador, Hungary, and Singapore (Buscaglia and Dakolias 1999). In each of these five countries, additional short-term benefits guaranteed the political support of key magistrates who were willing to discuss judicial reform proposals only after a deep crisis threatened their jobs (Buscaglia and Ratliff 1997). Those benefits included generous early retirement packages, promotions for judges and support staff, new buildings, and expanded budgets.

Nevertheless, to ensure lasting anticorruption reforms, short-term benefits must be channeled through permanent institutional mechanisms capable of sustaining reform. The best institutional scenario is one in which public sector reforms are the by-product of a consensus involving the legislatures, the judiciary, bar associations, and civil society. Keep in mind, however, that legislatures are sometimes opposed to restructuring the courts in particular and other public institutions in general from which many of the members of the legislature also extract illicit rents.

This essay has provided a review of the most recent literature related to the economic causes of entrenched corruption within the public sector in general and particularly within the court systems in developing countries. This study stresses the need to develop scientific explanations of corruption containing objective and well-defined indicators of corrupt activities. Along these lines, this essay proposes that the joint effects of organizational, procedural, legal, and economic variables are able to explain the occurrence of corruption within the courts in developing countries.

Additionally, this essay describes how equity considerations by individuals affect long-term efficiency. Social psychologists could shed more light in future studies linking the impact of corruption on equity and efficiency. Finally, in order to understand and neutralize institutional inertia during anti-corruption reforms, all future studies must incorporate the identification of those costs and benefits that are relevant to those who reform public sector institutions and are responsible for implementing new anti-corruption policies.

C. Agenda of the First Integrity Meeting for the Delta State Judiciary

Venue: Nelrose Hotel, Asaba, Delta State
Date: 16 – 17 September 2002

First Day: Monday 16 September 2002

08.30 Registration – Filling in of the Participants Survey

09.00 Welcoming Remarks by the Hon. Justice M.A. Okungbowa, Chief Judge of Delta State

09.20 Opening Remarks by the Hon. M.L.Uwais, Chief Justice of Nigeria, deliverd by the Hon. Justice Constance, Momoh, Chief Judge of Edo State

09.40 Remarks by Prof. A. Utuama, Attorney General of Delta State

10.05 Key Note Address by Prof. Malik, Commissioner, Anti-Corruption Commission.

10.30 Remarks by Dr. P. Langseth, Programme Manager, Global Progamme against Corruption, UN-ODCCP.
Global dynamics of corruption, lessons learned
Short account of the Judicial Integrity Project
Organization of the State Integrity Meeting

11.00 *Coffee Break*

11.20 Presentation of the Methodology applied by the Nigerian Institute for Advanced Legal Studies (NIALS), Prof. Azinge, Director of Research, NIALS

11.40 Presentation of the main findings and conclusions emanating from the integrity and capacity surveys conducted by NIALS in Delta, Mr. P. Akper, Senior Research Fellow, NIALS

12.10 Discussion and Observations

12.30 Presentation of the main findings and conclusions emanating from the Legal Assessment conducted by NIALS, Prof. Azinge, Director of Research, NIALS

13.00 Discussion and Observation

13.15 *Lunch*

14.15 Forming of Working Groups: Each Working Group (8-12 participants) to identify main problem areas. Each group will be assigned a chairperson and a facilitator. Each Group will select a presenter.

15.30 *Coffee Break*

16.00 Small Groups to present their findings

17.00 Closing of the day

Second Day 17 September 2002

09.00 Working Groups resume their work.
Working Groups to identify and prioritize reform measures.

11.00 ***Coffee Break***

11.30 Filling in of Decision Making Matrix

12.30 Lunch

13.30 Each working group to present their action planning matrix

14.30 Discussion

15.30 *Coffee Break*

16.00 Each Working Group should select one representative to become part of the *Working Committee* for the Project, which will have the mandate to review and agree upon the one comprehensive action planning matrix, which will be presented by CICP upon completion of the comprehensive Reports of the Judicial Integrity and Capacity Assessment. The Chief Judge of the respective state will be the chairman of the Implementation Board.

16.15 Agreement on Press Release and/ or Workshop Communiqué

16.45 Closing Remarks by Hon. Justice M.A. Okungbowa, Chief Judge of Delta State

16.55 Closing Remarks by Dr. P. Langseth, UNODCCP

17.00 Closing of the Meeting

D. Working Group Composition

Working Group 1

on

Access to Justice

The Group was chaired by
Hon. Justice S.A. Ehiwario.

The participants in the Group were:

- P.N. Obanor
- F. Oho
- I.E. Okogwu
- A.K. Nma
- J. Ehizienlen.

The Group was facilitated by:
O. Stolpe, Centre for International Crime Prevention.

Working Group 2

Prof. A. Utuama
Honourable Attorney-General &
Commissioner for Justice,
Delta State.

Mrs. Tina Anianwa
Legal Officer,
Ministry of Justice
Delta State

Steve C. Okebu
Chief Magistrate
Asaba.

O. A. Jinge CP
Nigeria Prisons Service
Asaba

A. A. Suleiman CSP
O/c Legal/Prosecution
The Nigeria Police
Asaba.

Inspector Asaboro Ilusota
Legal Dept, 2CID, Asaba
ASP Daniel Ogbena
'A' Division Asaba
Prosecutor Court II, Asaba

Mr. Okaforf Moses (Insp.)
Prosecutor, SCID, Asaba

Mr. Omeren Arioah (Insp.)
Legal Dept,
Prosecutor, Nghilli Magistrate Court

Ada Ozoemena
Research Fellow
Nigeria Institute of Advanced Legal Studies,
Abuja - Rapporteur

E. List of Participants

S/NO	NAME	OFFICE AND ADDRESS	POSITION	TELEPHONE/ E-MAIL
1	HON. JUSTICE M.A. OKUNGBOWA	CHIEF JUDGE'S CHAMBERS, ASABA	CHIEF JUDGE, DELTA STATE	056-28085
2	K. O. OKPU ESQ	HIGH COURT OF JUSTICE	CHIEF REGISTRAR	056-280454
3	DANIEL OGBENA	" A" DIVISION ASABA	PROSECUTOR	056-280229
4	PROF. A. A. UTAMA	MIN. OF JUSTICE ASABA	ATTORNEY GENERAL	065-281451
5	ASABORO ILUSOLA	SCID ASABA	PROSECUTOR	056-280019
6	G. A. JINGE	NIG. PRISONS SERVICE	CONTROLLER OF PRISONS	056-281398, 2801396
7	P. N. OBANOR	HIGH COURT OF JUSTICE	REVENUE JUDGE	056-280454
8	A. OJO ESQ	JSC MEMBER	MEMBER J.S.C.	08037226930
9	A. N. OSIAMGBI	HIGH COURT OF JUSTICE	SENIOR REGISTRAR 1	
10	A. U. BIOSE	HIGH COURT OF JUSTICE	SENIOR REGISTRAR 1	
11	S. O. ONYEKACHI	HIGH COURT OF JUSTICE	CHIEF ACCOUNTANT	08023320362
12	A. A. SULEIMAN	O/C LEGAL/ PROSECUTION		080235033311
13	P.N. EDE	HIGH COURT OF JUSTICE	PRIN. SECRETARY ASST 1	
14	UBIRI, A. E. ESQ	CUSTOMARY COURT OF APPEAL	PRESIDENT GRADE 1	056-280763
15	FREDRICK OHO ESQ	JUDICIAL SERVICE COMMISSION	CHIEF MAGISTRATE	056-280674
16	ISIEKWENE M. C. ESQ	JUDICIAL SERVICE COMM.	SECRETARY	056-280674
17	AGBAZA O. C. ESQ	HIGH COURT OF JUSTICE	DCR (LITIGATION)	056-280454
18	G.E.O EGEREGA	MAGISTRATE COURT UGHELLI	PRINCIPAL REGISTRAR	
19	P. K. OGBIMI ESQ	JUDICIAL SERVICE COMM.	MEMBER	054-3452843
20	HON JUSTICE T. O DIAI	HIGH COURT OF JUSTICE	JUDGE	056-282215
21	HON JUSTICE G.B.BRIKI- OKOLOSI	HIGH COURT OF JUSTICE	JUDGE	056-280449,282215
22	C. CHINYE OKOBAH ESQ	HIGH COURT	CHIEF PERSONNEL OFFICER	056-282519
23	J.M. EGBUSON (CHIEF)	JUDICIAL SERVICE COMM.	MEMBER	08023375196
24	A. K. NAMAH ESQ	PRIVATE LEGAL PRACTIONER		056-280538,08023402277
25	S.C. OKEBU ESQ	CHIEF MAGISTRATE COURT 3	CHIEF MAGISTRATE	056-282070
26	T. O. OVWERE (JP)	JUDICIAL SERVICE COMM.	MEMBER	053-250955,254097
27	HON JUSTICE S. A. EHIWARIO	HIGH COURT OF JUSTICE	JUDGE	08037016290

28	IFEOMA E. OKOGWU	MAGISTARATE COURT	CHIEF MAGISTRATE GRADE I	
28	EMMANUEL EGBUHE	THE POINTER	PRESS PHOTOS	
29	SMART ESENAFARE	THE POINTER REPORTER	PRINCIPAL REPORTER	
30	FESTUS UKPE	DELTA BROADCASTING SERVICE	PRESS	
31	OKAFOR MOSES	CRIMINAL INVESTIGATION DIV.	PROSECUTOR	
32	OGBOGU C. A. (MRS)	MAGISTRATE COURT 4	SENIOR MAGISTRATE II	
33	MICHEAL G. ODIAH	HIGH COURT OF JUSTICE	DIRECTOR FINANCE/ SUPPLIES	08023317870
34	JOHN EHIZIENLEM	PROSECUTOR MAG. COURT1 ASABA	PROSECUTOR	08023317886
35	EMMANUEL ESEMEZO	N. P. F. ASABA	PROSECUTOR	N. P. F. DIR ASABA
36	MBA BLESSING	JUSTICE, DEVELOPMENT AND PEACE COMMISSION ISSELE- UKU	ADMINISTRATIVE SECRETARY	085-888089
37	HON. JUSTICE E.U. AKPORIDO	JUDGE	HIGH COURT 2, ASABA	

F. Decision Making Matrix

Measures	Expected impact of measure 1= high impact 2= medium 3=low impact	Level of control 1= Own control 2= Pilot in control 3= State in control 4= Federal control 5= Others	Cost 1= low cost 2= medium cost 3= high cost	Time line 1= short term 2= medium 3= Long term	Complexity (implementation) 1= easy to implement 2= hard to implement 3= very hard to implement	Importance to the Judiciary staff 1= very important 2= important 3= not important	RANKING
Score							
Access to Justice							
Media appearance by legal practitioners	1	3	3	3	1	1	12
Annual Law Report	1	3	2	1	1	1	9
Dissemination of Annual Law through Press Conferences	1	3	2	1	1	1	9
Commissioner of Police to attend CJC Meetings	1	3	1	1	1	1	8
Judges to involve in training of police	1	3	1	1	3	1	9
Journalists trained in legal matters	1	5	2	3	3	1	15
Information points in courts	1	3	2	2	1	1	10
Award realistic costs to parties	1	1	1	1	1	1	6
Public Defender's function to be taken over by NGO's	2	5	3	3	3	2	18
Constant electricity supply	1	4	3	3	1	1	13
Create friendly environment of witnesses	1	3	3	3	3	3	16
Increase maintenance culture	1	1	3	3	1	1	16
Maintaining judicial decorum	1	1	1	1	1	1	6
Establish Court Marshall Service	1	4	3	2	1	1	12
Training for court recorders	1	3	3	2	1.5	1	11.5
12 cars to the 4 prisons located in Lagos State	1	4	3	3	2	1	14
Provide basic information to arrested persons	3	4	3	5	2	1	18
Locate Public Prosecutors in Police Area Commands	1	4	3	3	1	1	13
Co-ordination of Fire to Fire strategy with other CJ Institutions	1	4	1	3	1	1	11
Simplify granting of bail	1	4	1	2	1	1	10
Any responsible person should stand surety	1	4	1	2	1	1	10
Establish Court User Committee	1	2.5	2	2	1	1	9.5
Add Complaints Boxes	1	3	1	1	1	2	9