

U4 Expert Answer



Corruption in justice and security

Query

What are the main types, causes, and impacts of corruption in the security and justice sectors, with particular reference to the issues facing poor people? What are the lessons learned from attempts to tackle corruption in the security and justice sectors, particularly in terms of holistic approaches to reform?

Purpose

To guide further engagement with country offices on how to best incorporate anti-corruption measures in security and justice sector reform programmes.

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Summary

Although there are a number of causes and types of corruption that are specific to the institutions within the justice or security sector, many forms of corruption are common to both, or indeed result from the links between the sectors. Factors common to both include lack of transparency and oversight, insufficient sanctions, and personnel related issues. Causes specific to particular sectors include political interference

in legal systems or poor financial management and national security concerns in defence.

Corruption in justice and security institutions has a negative impact on the lives of the poor, both directly and indirectly. Direct impacts include reduced accessibility to services responsible for ensuring their rights and maintaining their safety, and an increased vulnerability to security threats and crime. The poor are also more likely to be subjected to bribery and extortion, as well as threats, intimidation and victimization by security forces (UNODC 2007). Indirect impacts for the poor are mainly economic, resulting from wasted resources and a reduction in foreign investment.

When incorporating anti-corruption measures into reforms, it is essential to address the issues specific to particular institutions, as well as the overlap between the two sectors. Existing approaches often address institutions in isolation, and fail to address governance and oversight of the sectors as a whole. They also tend to focus on higher level reforms, overlooking local knowledge and the use of non-formal mechanisms. A number of examples of effective reform processes exist, which allow a number of key principles to be developed regarding effective reforms. However, as corruption in the justice and security sector is also

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linked to the specific context in which the institutions are operating, it is important to ensure that each reform process also reflects an understanding of the local environment.

1 Introduction

At present there is no common definition of the security or justice sector, or a clear distinction in terms of which institutions belong to each. For example, definitions of the justice sector often refer to enforcement agencies such as the police and penal institutions (see USAID), whilst definitions of the security sector can often include legal bodies such as courts or tribunals (see the UN). Definitions of reform processes are broader still. The [DAC-OECD guidelines on security sector reform CHECK](#) for example list a wide range of organisations that could be considered in a reform process. These include the armed forces, the police, customs officials, intelligence services, judicial and penal institutions, as well as human rights organisations and the press (OECD 2005). The diversity of institutions that need to be addressed creates a number of difficulties in designing and implementing reform processes, whilst the lack of a clear definition creates a barrier to effective monitoring and evaluation of reforms (Rynn and Hiscock 2009).

The growing understanding of the links between the two sectors, such as the need for effective legislation to enforce anti-corruption efforts in the security sector, is being reflected in the increasing discussion and development of holistic approaches to reform. This is particularly the case in post-conflict countries, where a weak central government, absence of the rule of law and infiltration of security and justice organisations all combine to increase the opportunity for corrupt practices. In order to address issues that are related to both, reforms need to address the sectors simultaneously, as well as deal with corruption issues that are specific to individual organisations within them. Measures that address corruption directly are also needed. At present, measures that explicitly address corruption are often missing in reforms, reflecting an assumption that improvements in governance will also have a positive impact on corruption.

With a focus on the poor, this response will discuss the causes, types and impacts of corruption in the two sectors separately, before discussing lessons learned for reform, particularly regarding the need for holistic approaches. The justice sector analysis will focus on

judges and court processes, looking at both formal and informal mechanisms. Analysis of the security sector will focus on the police, the military and defence organisations.

2 Corruption in the justice sector

Within the justice system there are a number of organisations that could be involved in corrupt practices before a case reaches the courts. These include the police force, lawyers and prosecutors. Once judicial decisions have been reached, there are also a number of organisations responsible for enforcing these decisions such as the prison system. When addressing corruption, it is important to be aware of the links between these different bodies. Although this answer will focus on judges and courts responsible for the court process itself, the role of external mechanisms will also be considered.

Causes and types of corruption in the justice sector

Transparency International's *2007 Global Corruption Report*, which focuses on corruption in the judicial system, identified several factors which result in corrupt practices. These included a number related to personnel such as low judicial and court staff salaries, poor training and lack of rewards for ethical behaviour (Noel Pepys 2007).

Lack of transparency can also lead to corruption in the courts. In many countries, court proceedings and trial outcomes all remain hidden, as do disclosure of assets and the income and selection of judges (USAID 2009). Access to information including current laws, or revisions to laws remains limited (Noel Pepys 2003). Mechanisms for investigating allegations of corruption within the courts also lack transparency. Research in Mexico, for example, found that the mechanisms for supervising and disciplining judges were opaque, whilst the body responsible for carrying out investigations was not fully independent (Carbonell 2007). Research in Afghanistan found that the Supreme Court had no effective mechanisms in place to detect, investigate and prosecute cases of misconduct within the system (Chêne 2007).

One of the main types of corruption in the judiciary is political interference and state capture. In some countries, such as Russia and Argentina, political

influence on the judiciary is increasing (Global Corruption Report 2007). Political interference can influence several areas of the justice system, including recruitment procedures, court cases and sanctioning processes. Motivated court rulings where judges stand to gain economically or professionally are common in developing countries (Buscaglia 2007). In cases related to commercial law, economic interests often play a key role in influencing outcomes (Noel Pepys 2007). In Algeria, judges who are seen as 'too' independent may be transferred to distant locations, whilst in Sri Lanka, judges who are perceived as problematic can be reassigned from sensitive positions (2007 Global Corruption Report).

Alongside political pressure, a number of other groups may influence the independence of court cases. Research in Afghanistan for example found that the alongside influence by public officials, the independence of the Afghan judiciary is also undermined by interference from armed groups and private individuals (Chêne 2007). Organised crime networks can also influence the outcome of court processes. A **2009 Europol** report suggests that criminal groups use corrupt means to avoid investigation and detection, or to impede ongoing judicial or investigative processes (Europol 2009).

Bribe payments are common in the judiciary. Transparency International's *2010 Global Corruption Barometer* found an increase in the percentage of people worldwide who reported paying a bribe in the judiciary from 8% in 2006 to 15% in 2010. Indeed in some countries, paying a bribe is often the only way to access legal services or to achieve a result in court (Noel Pepys 2007). Bribe payments may be used to influence court procedures in several ways. For example: to encourage lawyers to present a sub-standard defence, to persuade court staff to delay a case, or to sway a judge's final verdict. Court users may also pay bribes to administrative personnel in order to alter the legal treatment of files or evidentiary material.

Impact of corruption in the justice sector

In developing countries, courts are often too expensive, difficult for people to get to, and use procedures that are hard to understand (DFID 2000). Corruption, whether perceived or real, can worsen this situation, further reducing the accessibility, quality and legitimacy of the system.

Access to justice

A USAID report suggests that under most corrupt judicial systems, *'the powerful and wealthy can escape prosecution and conviction, while large segments of society are excluded from their rightful access to fair and effective judicial services'* (Noel Pepys 2003). A UNDP survey in Indonesia identified a number of perceived barriers to achieving justice through the courts cited by citizens (UNDP 2007). These included cost, bias, fear, and a perception that judges are unfair. Research in Nepal found a perception that justice is reserved for the rich and powerful, thus preventing poor people from accessing legal services (International Alert 2010).

Non-state justice systems are common in developing countries, reflecting the failure of the state to provide a system that is accessible to everyone in society (Schärf 2003). In parts of Africa, customary systems operating outside of the state regime cover up to 90% of the population (Chirayath et al 2005). Although, non-state justice institutions increase access to justice among the poor, they are often unmonitored and fail to provide universal access to all citizens. A report by the *Vera Institute of Justice* states that non-state institutions often serve the interests of unelected individuals and powerful groups, leaving the poor out of the decision-making process. In addition, non-state institutions sometimes coerce conciliation and force confessions (Vera Institute of Justice 2003). The 2004 *Sierra Leone Justice Sector Development Programme* also found that these systems do not provide equitable justice, in particular for women and children.

Quality of Justice

Corruption in courts may also result in guilty criminals not being convicted. A study in Uganda found that corruption had enabled suspected robbers to be released and recommit offences (Government of Uganda 2002). A 2008 UNODC report *Drug Trafficking as a Security Threat in West Africa* links a lack of convictions and growth in the drug trade, to corruption in the justice sector (UNODC 2008).

Reduced Legitimacy

Corruption in the justice sector will reduce the legitimacy of the system and erode public confidence (Ferguson and Isima 2004). A 2003 USAID report suggests that *'citizens are less likely to abide by the law if they believe others, particularly governmental*

leaders, are disobeying the law and avoiding detection and punishment'. Corruption within the justice sector can also impact the effectiveness and legitimacy of other institutions, including those linked to anti-corruption efforts. For example, an anti-corruption commission that relies on an attorney general's office to prosecute sensitive cases will be hindered if that office is tainted by corruption (Schulz 2009).

Examples of reform

Personnel related reforms

Greater controls over judicial appointments and regulated career development procedures are increasingly seen as important steps to reducing corruption. The introduction of entrance examinations in Argentina, Guatemala and Peru, for example, is said to have raised the quality of new judicial appointees and eliminated candidates most likely to adopt undesirable behaviour (Hammergren 2007).

Increasing salaries can also have a positive impact. In Georgia, for example, wage increases have helped to stop judges soliciting bribes. In 2004 the authorities increased judges' salaries, making them among the highest paid employees in public service (Karosanidze and Christensen 2007).

Community level reforms

The development of 'Justice Centres' in Guatemala provides a strong example of the way in which donors can effectively work with the local community to increase the accessibility and efficiency of the justice system to the poor (Hendrix 2000). Justice sectors, which are set up according to local needs identified by the local community, have been effective in Guatemala, providing a way to break with traditional structures and introduce alternative services that are accessible to everyone. The organizational and administrative structures are more user-friendly, reduce delays, and minimize exposure to corruption (Hendrix 2000). These centres also provide a strong example of effective holistic reforms, bringing together police, prosecutors, judges, public defenders, local civil society, and private law practitioners to address concerns at the local level (Hendrix 2000).

Increased transparency

In Costa Rica, efforts have been made to increase transparency. As part of an Inter-American Development Bank backed programme (aimed primarily at building the capacity of judges, the public prosecution and the ombudsman), more information is now available online. These include laws, budgets, procurement reports, audits, annual reports and other relevant documents (Salazar et al 2007). The judiciary also decided to introduce electronic e-cases so each case could be monitored. The reforms have helped to reduce public perception of corruption.

3 Corruption in the security sector

This section will discuss corruption in the security forces with which people most commonly interact, such as the police and the military, as well as examining higher level corruption in state defence and security organisations.

Causes and types of corruption in the security sector

Police

As with organisations in the justice sector, corruption in the police is often attributed to insufficient income, poor recruitment policy and insufficient training. An assessment in Uganda, for example, found that low salaries, lack of equipment, under staffing and lack of organisational development had all affected the response capacity of the police in terms of speed and morale (Government of Uganda 2002). In Nepal it was found that police often have to pay bribes in order to secure promotions (International Alert 2010). Research in Georgia also found that official positions needed to be purchased. Taking bribes was then seen as a necessity to repay this initial investment (di Puccio 2007).

Bribe payments are common in the police force. Transparency International's 2010 *Global Corruption Barometer* found an increase in the percentage of people worldwide who reported paying a bribe to the police from 17% in 2006 to 30% in 2010. A *Chr. Michelsen Institute* (CMI) working paper which examined police corruption in developing countries suggests the most visible form of police corruption is the collection of bribes to avoid fines or conviction by

traffic police (Andvig and Fjeldstad 2008). Bribes may also be accepted to pass security checkpoints or borders.

Extortion and embezzlement of funds are also common in the police force (Human Rights Watch 2010). In cases where the police force have relative freedom to carry out arrests, independent of the courts, innocent people may be arrested and a bribe requested for their release. Police may also embezzle funds, manipulate time sheets or steal valuables of those under arrest (Andvig and Fjeldstad 2008).

Military

Within the military, strict hierarchies can provide certain officials with a high degree of discretion, allowing them to make decisions without challenge. In transition countries, the military often has a monopoly on several state institutions, giving those in charge a high level of influence and control over policy, budgets and recruitment.

In addition, research has shown that although codes of conduct have been developed, these are often not implemented in practice. A recent *Transparency International UK* analysis of defence and military organisation codes of conduct in a number of countries including Argentina, Australia, Croatia, Denmark, Germany, Kenya and Ukraine found that legal frameworks to regulate business conduct were often compliance-based, rather than enforced. It was also found that insufficient attention was paid to corruption issues, especially to the particular risks faced by defence personnel (Shiple et al 2011).

A 2010 DCAF report *Building Integrity and Reducing Corruption in Defence* suggests that theft and extortion are common in the military (Tagarev 2010). Theft can involve the use of funds provided for uniforms and other resources for personal use, or the abuse of authority to steal personal property or extort payments. It could also involve the registration of so-called 'ghost soldiers', which can account for up to 20 - 30% of some forces (Tagarev 2010). Ghost soldiers are fictitious soldiers registered by commanders (often with the help of administrative officials) so that extra pay, food and equipment will be received. This will then be kept for personal use or sold on for profit. Bribery can be used to influence personnel decisions, for example to avoid conscription or to gain preferred postings (Tagarev 2010).

Defence

The traditional secrecy and exclusiveness of the security domain has tended to constrain transparency, accountability and oversight of the sector (Fluri and Hadžić 2004). The need for confidentiality in some areas of the defence sector is often overused and reduces opportunities for scrutiny by oversight bodies in government and civil society (Ball 2002). In Guatemala, for example, it was found that secretiveness had been applied to all defence expenditure, including officials' salaries and food allocations (León-Escribano and Aycinena 2004). Fluri and Hadžić (2004) suggest that official secrecy, justified on grounds of national security, has been used to avoid political embarrassment or cover up corruption. Secrecy concerns also mean that standard practices such as external auditing of budgets are not employed. The International Budget Partnership's *Open Budget Index*, for example, found that nearly a quarter of the countries they investigated did not conduct any security sector audits or only conducted partial ones, often completely excluding military intelligence agencies or other security sector bodies.

The nature of defence procurement procedures further adds to the lack of transparency. Alongside the secret nature of contracts, the technical and complex nature of defence procurement bids can act to reduce oversight and transparency of defence contracts. In addition, procurement contracts are often funded outside of the main defence budget or entail large post-contract requirements or offset agreements. This reduces the use of safeguards to monitor and evaluate procedures (Pyman 2011). This situation can be made worse by the 'revolving door' syndrome. As large contracts are often implemented over a long period of time, payoffs and kickbacks can materialize long after the signing of the contract (Perito and Kristoff 2010). Finally, the practice of using agents and intermediaries, who may be susceptible to bribes, is common in the defence and security sector.

Impact of corruption in the security sector

Within the security sector, the poor will often suffer directly from the impact of operational forces such as the police and the military, whilst the impact of corruption in defence industries and ministries will have a more indirect influence due to diverted financial resources.

Public trust

Corruption in the security services can leave people feeling insecure and vulnerable. Research in Africa found, for example, that corruption had caused security services to become ineffective, sometimes predatory (Magahy et al 2009). At the same time, public distrust can contribute to an environment where citizens perceive corruption to be a more effective recourse for securing their own protection (Transparency International 2010).

Although it is the police with which the poor have greatest contact and interaction, local populations will also have contact with the military, particularly during operations. Whether at home or abroad, it is essential that the military promotes a positive image to retain public confidence and respect (Pyman 2011). The public image of international forces during a mission can contribute to the overall success of the operation.

Increased crime and violence

Corruption in the security services can lead to increased levels of crime. For example: bribe payments to the police force could result in criminals not being arrested. Corrupt personnel policies, or systems that allow official positions to be bought, will reduce the overall quality of the security sector. Corruption among border guards and collusion with transportation companies have been suggested as key factors aiding inefficiencies in tracking and preventing drug trafficking. For example, only an estimated 1% of the heroin trafficked out of Afghanistan in 2008 was seized (UNODC 2010).

Shortfalls in the security sector can also lead to an increase in armed violence. A study by the *Centre for International Cooperation and Security, Department of Peace Studies* (2005) highlights a number of impacts this can have on the poor. It suggests that armed violence has an 'almost entirely negative impact on poverty and development, through displacement, damage to education, health, and agriculture, and impoverishment of large sections of communities and populations'. The report suggests that these impacts combine to reduce progress in the MDGs.

Wasted resources

Corruption in defence can lead to the purchase of unnecessary equipment, wasting large amounts of money that could have been used for other purposes.

Research in sub-Saharan Africa has found that defence corruption can lead to inflated defence budgets (Magahy et al 2009). This often corresponds with lower investment in basic social services for poor people (Collier 2004). Perito and Kristoff (2010) state that although citizens are generally unaware of the impact of this form of corruption on their lives, it results in the draining of scarce public resources.

Corruption in defence and security organisations can also reduce operational effectiveness. Poor equipment or inadequately trained staff can reduce the quality of security services. This will ultimately reduce the state's ability to guarantee human security and the wellbeing of its citizens.

For example, the Singapore Police Force has succeeded in preventing and minimising police corruption by improving its salaries and working conditions (Quah 2007). Similar findings exist for Georgia where significant salary increases, along with new uniforms, led to a reduction in corruption levels (Kukhianidze 2006).

Examples of reform

Personnel related reforms

As with the justice sector, a number of case studies demonstrate the positive impact of increasing staff salaries in order to reduce corruption levels. For example, the Singapore Police Force has succeeded in minimising police corruption by improving its salaries and working conditions (Quah 2007). Similar findings exist for Georgia where significant salary increases, along with new uniforms, led to a reduction in corruption levels (Kukhianidze 2006). Research in South Africa also found that the adoption of new uniforms or a new name for the service were important steps in signifying a break with the past and in regaining public trust (Bruce 2003). Although not sufficient, this can be a vital first step in improving the lives of those most affected by corruption in the justice and security sectors.

Training of staff has also been an effective tool for developing integrity and reducing corruption. In Singapore, training is provided for new recruits. This includes a number of integrity-based lessons which aim to build staff resilience to corruption. This training continues throughout their careers (Quah 2006). The course also highlights examples of sanctions to deter offences.

Improving financial management in light of secrecy concerns

In order to increase transparency of defence industries, concerns regarding national security need to be addressed. This involves identifying and justifying which areas of work need to be carried out without public oversight and/or external audit (Ball 2002). In South Korea the government separates its defence budget into three categories of differing secrecy. This process ensures that secrecy is used only when essential (Pyman 2011).

Improved levels of financial planning can also improve transparency and accountability of the defence budget. In Bulgaria, the introduction of the *Integrated Defence Resources Management System* (IDRMS), similar to systems used by NATO, has enabled an annual budget to be produced for the Ministry of Defence (Totov). The process involves economic planning based on an assessment of existing resources and capacity. In Bulgaria, the MoD invites the Ministries of Finance and Economics to assist in this process. Once finalised, the defence budget becomes a key document for promoting accountability and monitoring of the budget (Pyman 2011). Totov suggests this system also increases senior leaders' awareness of the importance of the financial dimension of defence planning.

Reducing opportunities for corruption in defence procurement

A number of initiatives have demonstrated that defence procurement can immediately benefit from greater transparency and active engagement with civil society. TI-UK's *Defence against Corruption* programme has worked with a number of countries to improve the transparency in defence procurement. A notable example is that of Transparency International-Croatia who hosted and facilitated a roundtable event in Zagreb in 2007 to discuss the procurement of armoured vehicles. The event was attended by senior defence officials, other senior officials, representatives from international organisations (such as NATO, the European Union, and OSCE), representatives from defence companies and representatives from the media, academia and civil society (Pyman 2009). Following the event, the national defence procurement requirements and the full defence budget for the next ten years were published.

Since November 2005, the Polish Ministry of National Defence has introduced a number of mechanisms to reduce opportunity for single source procurement. They

now publish simplified information on future and current procurements in one place on the ministry website. The changes have enabled companies to protest against single-source procurement if they feel they have been excluded from a competition (Pyman 2009).

Integrity Pacts, a tool developed by Transparency International, can also be applied to defence procurement contracts. The pacts are an agreement between a government and all bidders for a public contract. All partners agree not to pay, offer, demand or accept bribes; collude with competitors to obtain the contract; or engage in such abuses while executing the contract. For example, in Columbia, the process for purchasing 22 combat aircraft was monitored using such as pact. Although the bid collapsed in the end due to a number of companies withdrawing from the bid, the experience confirmed that it is possible to implement an arms trade procurement process including all the same publicity efforts that can be introduced in any other sector's process.

4 Lessons learned

As suggested in the introduction, it is difficult to consider the causes, types and impact of corruption in the security and justice sectors in isolation. This is firstly due to the overlap in the operations of the two sectors and the implications this has for developing effective anti-corruption reforms. For example, as Azami (2009) suggests in her discussion of police reform in Afghanistan, if prosecutors and judges continue to release criminals who have been arrested by the police, an effective police force will not mean anything. Secondly, the consequences and impact of corruption in justice and security institutions often reflect a combination of inefficiencies in both sectors, for example increased levels of crime or the outbreak or relapse into conflict (Foaleng 2009).

To date, many reform processes have occurred in silos. Whether this happens at the institutional level, sector level or national level, donors are increasingly recognising that this can limit the impact of reform efforts (Domingo 2009). However, although the logic of holistic reforms is now widely accepted, holistic models focusing on security forces, democratic governance, and the rule of law have been largely unsuccessful in practice, for example in Iraq and Afghanistan (Sedra 2007). A DFID review of security and justice sector reform programming in Africa states that Sierra Leone provides the strongest example of effective holistic reforms. The reforms connected all strategic level

actors that have a role to play in the delivery of overall reform outcomes. The report stresses, however, that this positive outcome was the result of incremental progress and continuous learning of lessons (Ball et al 2007).

It is increasingly suggested that reforms need to be more specifically tailored to local needs. Baker and Scheye (2007) argue that there is currently a state-centric bias in security sector reform which contradicts development principles involving a 'people-centered, locally owned' approach. State-centric approaches assume that the state alone is capable of delivering justice and security; and that it is the main actor in security and justice. However, as this is often not the case, particularly in post-conflict and fragile state contexts, such an approach is unlikely to be effective.

The current focus of much donor-supported security and justice programming is on formal security and justice institutions. In Afghanistan, for example, some have argued that support has been donor-driven rather than locally-owned, and as a result has overlooked transitional justice and informal justice institutions (UNODC 2007). As non-state justice systems are often more commonly used, particularly by poor people, it is essential that the shortfalls in these institutions are addressed within security sector reform. Linking state and non-state security and justice systems could raise standards of reforms by increasing state understanding of local needs and knowledge, and increasing non-state actors' awareness of international standards (Baker and Scheye 2007). Resources provided to support reforms must also be tailored to the capacities and budget limitations of national authorities (Domingo 2009).

5 Research Gaps

The literature review carried out for this query has identified a number of strengths and weaknesses in the research field. Whilst the causes, types and impacts of corruption in the justice and security sector are well understood and documented, more work is needed to evaluate how best to address the issues, what has worked so far and what has not. There are a number of programmes that are building the evidence base in this area. For example, the *TI-UK Defence against Corruption Programme* provides valuable sets of case studies and best practice. With regard to the justice system, the literature is currently more dispersed although the Transparency International 2007 *Global*

Corruption Report provides a useful background document.

At present there is extensive literature on certain organisations within the security sector, such as the police and the military, but less on border security systems and border guards, the prison system and intelligence organisations. Certain issues also require greater investigation. For example, evaluation of attempts to remove ghost soldiers from payrolls is currently lacking.

Different levels of governance also need further analysis, in particular local level reforms. The work conducted by *International Alert* in Nepal which focuses on reforms at the district level provides a useful example. At present, much donor-supported security and justice programming focuses on formal security and justice institutions. The impact of informal institutional factors needs to be better understood. In addition, more information is required regarding the prevalence of 'self-help' responses to security and justice shortfalls which are particularly common in Africa (Ismail and Hendrickson 2009).

Differences within particular organisations also need to be identified and evaluated. For example, with regard to border management, it has been highlighted that as the role of border guards varies considerably so too can the temptations for corruption (Batara and Sukadis 2007). Institutions should not be treated as a universal body, but rather should be investigated in-depth before developing reforms. It is increasingly recognised that local level requirements are often overlooked in reforms. Local knowledge should, however, provide a key element of reforms. In Hungary, border management has been improved through a number of factors. These include the introduction of a legal framework which takes the opinion of border guards into account and the delegation of power to lower levels to improve the speed of responses (Batara and Sukadis 2007).

Finally, there is also a need for more case studies or country studies to demonstrate what has been effective in different contexts. Human Rights Watch's 2010 report on *Corruption and Human Rights Abuses by the Nigeria Police Force* provides a useful example. Building such an evidence base would enable trends to be more easily identified, thus aiding future development of reforms.

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