

U4 Expert Answer



Indicators of judicial efficiency in corruption cases

Query:

Could you give me a quick response (48 hours) describing indicators for measuring judicial efficiency in corruption cases. Are there any best practices on systems designed to follow the case from when it is first registered to when it has been dealt with finally in the courts?

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case management systems all increase efficiency. Judicial integrity and independence are of particular importance in cases of corruption and also enhance efficiency. Indicators measuring judicial integrity and corruption are thus also used to assess judicial efficiency in handling corruption cases.

Within the framework of this query, efficiency is understood as the ability of a judicial system to process corruption cases in a professional and independent manner without unreasonable delays and backlogs.

Summary:

Increasing judicial efficiency reduces opportunities for corruption in all court proceedings, not just those dealing with corruption. Therefore, indicators of judicial efficiency generally do not distinguish between case types but rather focus on tracking the volume of cases passing through the system. A supportive legal framework and strong capacity of the judicial system in the form of adequate budgetary allocations, sufficient number of staff, adequate training of staff and good

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Date: 20 October 2008

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Part 1:**Indicators of Judicial Efficiency in Corruption Cases**

The helpdesk has not found many examples of indicators of judicial performance specifically focusing on measuring efficiency in processing corruption cases. Most judiciary targeted interventions aimed at combating corruption work under the assumption that an efficient and independent judiciary will have increased capacity to handle all court cases, including corruption cases. They also involve a comprehensive approach focused on strengthening not only the efficiency of the judicial system but also its integrity.

Effective investigation and prosecution of corruption cases are dependent on the quality of the national legislation and procedures when dealing with corruption related offences. For example, national corruption laws must include a wide range of behaviours, such as nepotism, influence peddling, bribery and embezzlement, make carefully framed provisions for resorting to investigation techniques such as electronic or undercover operations, provide for reduced burden of proof in corruption cases, etc. to effectively combat corruption.

Indicators of Judicial Efficiency

Indicators of judicial efficiency usually track the volume of case passing through the system, the speed of decision making/duration of proceedings and the nature of decisions that are finally reached. More specifically, such indicators look at the total number of court decisions rendered in a year, the total number of new incoming cases and the total number of cases registered but still pending (backlog).

www.undp.org/oslocentre/docs05/cross/Justice%20Indicators%20Background%20Paper.pdf

In **Macedonia**, the coalition "All for Fair Trials" has applied such approach to corruption related offences. It monitored corruption related court procedures between 2005 and 2007. The study looked at indicators such as volume of cases, nature of offences, duration and outcome of the procedures, types of sanctions with the view to assess the state's response to corruption as

well as the judiciary's capacity to handle corruption cases¹.

The Mozambique's Central Office for the Fight against Corruption (GCCC) for example looks at numbers of corruption related court cases tried and sentenced, numbers and nature of cases processed, investigated, prosecuted or dropped, etc. This data is disaggregated according to different variables, including a provincial breakdown. Higher numbers of cases tried in a particular province are interpreted as greater efficiency of the provincial courts to deal with corruption rather than as higher levels of corruption in a particular province. The GCCC also looks at the rank of public officials being tried and sentenced as an indicator of level of independence and efficiency of the judicial system.

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

Reasons invoked for the deterioration of times-to-disposition of cases as well as of the quantity and quality of justice services include inadequate resources, technical capacity and court administration to manage increased case load. As a result, measures aimed at strengthening the capacity to handle corruption cases typically strive to address court inefficiencies, case loads and capacity challenges through changes in rules and procedures, training, increased number of judges and the introduction of computerised case management systems.

Budget Allocation

The judiciary must have the required financial, logistical and human resources to perform its functions adequately, with sufficient resources to maintain court buildings and offices, attract and retain well trained and capable staff. Some judicial indicators look at the proportion of government budget allocated to courts, while other indicators of progress made by a country to improve judicial efficiency include the level of the annual budget of the court and infrastructure and equipment. The American Bar Association (ABA)'s Central and East European Law Initiative (CEELI) Checklist on Judicial Independence for example looks

¹ The report can be accessed through TI International Secretariat

at the percentage of the country's national budget allocated to the judiciary, including judicial and administrative staff salaries, court education and training, court maintenance, etc.). (Please see: <http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/hammergrenJudicialPerf.pdf>). A similar indicator could be derived for corruption, looking at the resources allocated to corruption related offences.

However, inadequate financial resources cannot be used as a stand alone proxy for judicial efficiency or should be interpreted carefully. Empirical research indicates that there seem to be no significant direct correlation between judicial efficiency (measured in terms of clearance rates and time to disposition) and the percentage of government budget allocated to the courts. A reason for this lack of direct correlation may be that increased judicial resources ultimately lead to an increased work load. Additional resources may initially increase court productivity and reduce backlogs and delays. But after a lag, a more efficient judiciary may attract additional demand from citizens that had been reluctant to use the courts on account of delays and backlogs.

http://works.bepress.com/edgardo_buscaglia/13/

Court Personnel Assigned to Corruption Cases

Reliable statistics should be kept on the total numbers of judges and support staff allocated to corruption related cases. Training and professionalisation of court and justice personnel in anti-corruption techniques are prerequisites for judicial efficiency in handling corruption cases. The profile and level of professionalism/specialisation of staff allocated to corruption related investigations and prosecution can also be considered as proxy of judicial efficiency in corruption cases.

Sufficient resources should also be allocated to provide court personnel with required training on the law to effectively investigate and prosecute corruption cases as well as keep up to date with the latest legislation, jurisprudence and evolution of judiciary policies. Indicators looking at judicial training in corruption related issues – whether pre-service training of judicial candidate or in-service training of judicial staff - are a key determinant of judicial efficiency in tackling corruption cases. Court personnel must be prepared and trained to prosecute corruption cases, as corruption cases are often very complex and sophisticated, and involve highly technical and

specialised skills. The level of specialisation/training provided to staff assigned to corruption case can be used as an indicator of judicial efficiency in tackling corruption cases.

Case Management and Administration

A key dimension of increasing the capacity of the judiciary to deal with corruption cases consists in identifying more efficient ways to handle the court administration of cases and speed up case proceedings through improved caseload management and tracking systems. A quantitative analysis of the factors related to procedural times in Latin America shows that the efficiency of the judicial system measured in terms of procedural times is greatly influenced by the technology available to courts (e.g. computer data base of cases, computerised case tracking system, etc), uniform administrative procedures and improvement in case management. In this study, the use of computer was clearly associated to reduced times-to-disposition, increasing in some courts in sentencing productivity by three times, while increase in judicial resource had little effect on reducing times-to-disposition.

http://works.bepress.com/edgardo_buscaglia/13/

Procedural indicators such as selection of cases, assignment of judges and the use of computers in case management and tracking may greatly influence the outcome of the justice process in corruption cases. Characteristics of a good case management system include a well-organised computerised registry and recording of court proceedings and cover key areas such as controlling forms, establishing record controls, scheduling case events and controlling filings of final records.

http://www.usaid.gov/our_work/democracy_and_governance/publications/pdfs/pnacm001.pdf

Part 2: The Link between Judicial Efficiency and Judicial Integrity

Indicators of judicial performance in investigating and prosecuting corruption cases cannot be isolated from a broader set of indicators looking at judicial independence and integrity. Most initiatives supporting judicial capacity and efficiency to handle corruption cases are integrated into broader interventions aimed at strengthening judicial independence and accountability through transparent appointment,

promotion and disciplinary procedures and the introduction of higher ethical and professional standards. Within this framework, indicators measuring judicial integrity and corruption are used as one of the dimensions of judicial efficiency in handling corruption cases.

Judicial Integrity can Positively Influence Judicial Efficiency

Judicial corruption and the capacity of judicial systems to handle corruption cases are closely intertwined. The UNODC states that *"a corrupt judiciary means that the legal and institutional mechanisms designed to curb corruption, however well-targeted, efficient and honest, remain crippled."*

<http://www.unodc.org/unodc/en/corruption/judiciary.html>

Judicial corruption undermines efficient prosecution of corruption cases as those responsible for interpreting and enforcing anti-corruption rules are themselves corrupt - corrupt judges and officials can create obstacles at all stages of a case – investigation, prosecution and sanction. Judicial decisions are likely to favour members from the political and economical ruling elites, while providing legal protection for illegal practices including fraud and corruption. Without judicial independence, the outcome of justice processes can be influenced by various forms of pressure exerted by high level public officials such as threats, bribery or the manipulation of judicial appointments, salaries and conditions.

At the same time, inefficient judicial systems are likely to fuel corruption. An inefficient judiciary creates a supportive environment for corrupt practices, providing court users with incentives to resort to bribery to circumvent established procedures, smuggle their way through the judicial system and speed up court proceedings.

Indicators of Judicial Corruption

As judicial efficiency is usually understood as a component of judicial integrity, many of the indicators of judicial corruption cover efficiency related issues. UNODC's indicators of judicial corruption, for example, include delays in the execution of court orders; unjustifiable issuance of summons and granting of bails; prisoners not being brought to court; lack of public access to records of court proceedings; disappearance of files; unusual variations in sentencing; delays in delivery of judgements; high acquittal rates, conflict of interests; prejudices for or against a party witness, prolonged service in a particular judicial station; high rates of decisions in

favour of the executive; appointments perceived as resulting from political patronage; preferential or hostile treatment by the executive or legislature; frequent socialising with particular members of the legal profession, executive or legislature and post-retirement placements.

<http://www.unodc.org/pdf/crime/gpacpublications/cicp10.pdf>

Checklists of Judicial Independence and Integrity

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

A collection of various examples of indicators used to evaluate the judiciary has been compiled within the framework of a World Bank/TI-USA working paper on diagnosing judicial performance. Such checklists usually focus on aspects of judicial performance that relate to efficacy, transparency, accountability and independence.

<http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/hammergrenJudicialPerf.pdf>

The American Bar Association (ABA)'s Central and East European Law Initiative (CEELI) Checklist on Judicial Independence for example has been designed to quantify the independence of the judiciary in any given country. Indicators used include selection and appointment, education and training, budget, salary, safeguards from improper influences, jurisdiction and judicial powers, transparency, case loads and work conditions, assignment of cases and support by non governmental organisation.

The IFES Judicial Transparency Checklist provides another example of a set of indicators used to measure judicial integrity and independence. It considers key mutually supporting pillars and values for judicial integrity including i) impartiality; (ii) integrity; (iii) transparency; (iv) accountability and (v) public trust. It

looks at various categories such as judicial career (e.g. judicial selection, promotion and disciplinary processes), guarantees for judges (e.g. security of tenure, judicial immunity, salaries, benefits and functions), budgetary and administrative control (e.g. control over the judicial budget, transparency case assignment process), judicial ethics and corruption (e.g. effective judicial codes of ethics, asset disclosure, disciplinary measures against corrupt judges, conflict of interest rules), access to justice and legal information, freedom from interference whether internal or external and monitoring and performance evaluation by civil society and judicial watchdog groups.

<http://www.cejamerica.org/doc/documentos/jud-transparency-checklist.pdf>

Within the framework of the 2007 Global Corruption Report on Corruption in Judicial Systems, a **checklist for assessing safeguards against judicial corruption** was also developed by a working group of experts with the view to providing a diagnostic tool to assess the extent of judicial corruption in a given country. It synthesises existing international standards on judicial independence, accountability and corruption and was developed through a process of consultation with judges, judges associations, legal professionals, academics and professionals in the justice reform field. This checklist covers two main areas: 1) the system requirements for a clean judiciary, including safeguards for the protection of judicial independence, good working conditions for judges, appointments of judges, judicial accountability and transparency and resources and 2) responsibilities of actors involved (judges, judiciary, legislature and executive, judges' associations, prosecutors, lawyers, media, civil society, donors, etc).

www.transparency.org/content/download/27437/413264/file/Judiciary_Advocacy_ToolKit.pdf -

Examples of Judicial Reform and Independence Monitoring Systems

There are not many monitoring systems in place to assess progress made in advancing the anti-corruption agenda through increased judicial efficiency and integrity in developing countries.

As part of the American Bar Association's rule of law initiative, the **Judicial Reform Index** is one example of such approach. It assesses judicial reform and judicial independence in emerging democracies by monitoring progress towards establishing more accountable, effective and independent judiciaries,

using a set of 30 indicators covering 1) quality, education and diversity 2) judicial powers 3) financial resources 4) structural safeguards and 5) accountability and transparency.

http://www.abanet.org/rol/publications/judicial_reform_index.shtml

In **Bulgaria**, reform of the judiciary and the fight against corruption and organised crime have been monitored under the Co-operation and Verification mechanism. Specific anti-corruption related actions were used as indicators of progress towards meeting a set of benchmarks defined as follows:

1. Adopt constitutional amendments removing any ambiguity regarding the independence and accountability of the judicial system;
2. Ensure a more transparent and efficient judicial process by adopting and implementing a new judicial system act and civil procedure code;
3. Continue the reform of the judiciary in order to enhance professionalism, accountability and efficiency. Evaluate the impact of this reform and publish the result annually;
4. Conduct and report on professional, non-partisan investigations into allegations of high-level corruption. Report on internal inspections of public institutions and on the publication of assets of high level officials;
5. Take further measures to prevent and fight corruption, in particular at the borders and within local government;
6. Implement a strategy to fight organised crime and money laundering. Report on new and ongoing investigations, indictments and convictions in these areas.

http://www.sofiaecho.com/article/insight-bulgarias-judicial-reform-and-the-fight-against-corruption-and-organised-crime/id_23628/catid_5

Within the framework of its Global Programme against Corruption, UNODC has provided support in strengthening judicial capacity and integrity in countries as diverse as Nigeria, Indonesia, South Africa and Iran. Comprehensive assessments of the status of the judiciary were conducted in each country, looking at:

- Access to justice
- Timeliness and quality of justice delivery

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

http://www.unodc.org/pdf/crime/corruption/nigeria/Progress_Report_2.pdf

Experience with monitoring judicial progress shows that that there are many challenges involved when using judicial performance indicators. For example, there need to be sufficient resources and capacity at the country level for every court with respect to staffing, material resources, and caseload. In developing countries, attempts to assess judicial performance and integrity are often challenged by the lack of required information and the insufficient quality of available data.

The choice of appropriate indicators must also be the result of a process undertaken in each country and reflect the specific local circumstances, constraints and opportunities.

In 2003, the Vera Institute of Justice published a guide designed to explain the principles that should inform the choice of indicators, and provides examples of possible indicator. This guide highlights a series of key principles for developing justice indicators, stressing that the simplest solutions are often the best, even in data-rich environments:

1. Start with the outcome not the indicator.
2. Use a balanced basket of indicators rather than single indicators.
3. Test the indicators for their sensitivity to the intended change.
4. Use indicators which promote and reinforce positive activities that move system closer to the desired outcome.
5. Use the simplest and least expensive indicator possible.

http://www.vera.org/publication_pdf/207_404.pdf

Part 3: Further Reading

Supporting Zambian Judicial Capacity to Handle Corruption Cases (2008)

This U4 expert answer provides examples of initiatives that have supported the capacity of the judiciary in handling corruption cases and fast tracking corruption cases in court. It stresses that as corruption cases are more likely to be effectively handled by a well-functioning and independent judiciary with adequate resources and capacity, reforms progress should address both judicial independence and accountability and judicial inefficiencies.

<http://www.u4.no/helpdesk/helpdesk/query.cfm?id=169>

Global Corruption Report on corruption in judicial systems (2007)

This report examines how, why and where corruption mars judicial processes and reflect on remedies for corruption-tainted systems. Two problems are analysed in-depth: political interference and petty bribery involving court personnel.

http://www.transparency.org/publications/publications/global_corruption_report/gcr_2007

Justice indicators (2005)

This Vera Institute of Justice's guide on performance indicators was written for programme managers responsible for improving the delivery of justice and provides a framework for developing a comprehensive system of performance measurement.

<http://www.undp.org/oslocentre/docs05/cross/Justice%20Indicators%20Background%20Paper.pdf>

Trial Court Performance Standards Desk Reference Manual (2003)

The Trial Court Performance Standards were developed by a commission of US judges and programme managers. They identify five major performance areas, including access to justice; expedition and timeliness; equality, fairness and integrity; independence and accountability; public trust and confidence. This manual provides examples of court programmes to address each of the performance standards.

http://www.ncsconline.org/D_Research/TCPS/TCPSDeskRef.pdf