

ANTI-CORRUPTION HELPDESK

PROVIDING ON-DEMAND RESEARCH TO HELP FIGHT CORRUPTION

INITIATIVES TO REDUCE CORRUPTION IN THE JUDICIARY IN FRANCOPHONE WEST AFRICA

QUERY

Please provide examples of programmes, projects, and initiatives in French-speaking countries in West Africa that had a significant impact in tackling corruption in the judiciary. How do you leverage the willingness of the judiciary to prosecute cases of corruption?

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SUMMARY

The judiciary is a key pillar of good governance and a necessary element of anti-corruption efforts. Governments, donors, international organisations and civil society are working, together or separately, to address the issue of corruption in the judiciary.

Judicial corruption in francophone West Africa stems from the systematic interference of the other branches of the government and the politicisation of the affairs of the judiciary, combined with a lack of transparency and a distance from users that prevent citizens from holding magistrates to account. The initiatives presented here attempt to reduce corruption by addressing these issues and make the judiciary more transparent, independent and accountable. Social accountability initiatives as well as programmes focussing on the use of technology are featured as they have become increasingly popular methods of measuring accountability and transparency.

1 OVERVIEW OF CORRUPTION IN THE JUDICIARY IN FRENCH-SPEAKING WEST AFRICAN COUNTRIES

A fair and impartial judicial system is the cornerstone of anti-corruption efforts. Ensuring that the judiciary is independent, efficient and upholds high standards of integrity is therefore not only essential to curb corruption inside the judiciary, but also to fight corruption at all levels of society (Labelle 2007).

There are significant weaknesses in the judicial systems of West African states that prevent the judiciary from playing a more active role in the fight against corruption, while making it more vulnerable to bribery and undue influence. The judiciary was long considered a subordinate authority rather than a constitutional power, and courts have continued to be unduly influenced and weakened by the legislative and executive branches of government in many countries in the region (Freedom House 2013).

The lack of resources available for the administration of the judiciary and the low salaries and limited training of judges and judicial staff is a widespread problem all over the region. Financial scarcity together with the organisational structure (making judicial decisions overly dependent on the Ministry of Justice) led to the judiciary systematically being subjected to external interference (Freedom House 2013). Overall, discriminatory practices, polarisation of politics, opacity, backlog and corruption have contributed to the marginalisation of many people (Sossa 2010).

Corruption in the judiciary can occur at any stage of the judicial process. Cases can be affected by corruption even before they reach the court, if law enforcement agencies have been paid off or influenced to manipulate evidence. This is particularly problematic in countries where the public prosecution has a monopoly on initiating prosecutions, which is the case in most francophone West African countries. In this case, corrupting the public prosecutor can be enough to block a case from going forward. Judges might accept bribes to delay cases, to refuse appeals or to take decisions in the interest of one of the parties. Judicial staff might accept kick-backs to deliberately lose or alter files (Transparency International 2007).

The judiciary is perceived by citizens of many West African countries to be a very corrupt institution. In both in Senegal and Cameroon, respondents to Transparency International's Global Corruption Barometer, a representative household survey, placed the judiciary among the top three most corrupt institutions, with 73 per cent and 81 per cent of respondents respectively indicating that the judiciary was corrupt or extremely corrupt (Transparency International 2013).

Many measures can help mitigate corruption, including:

- improving access to justice
- implementing safeguards against external interferences to guarantee the independence of the judiciary
- strengthening integrity mechanisms to prevent corruption at the individual level
- putting in place accountability mechanisms to make detection of corruption more effective
- introducing more transparency to allow civil society and the media to scrutinise judicial activities and decisions
- providing decent working conditions for magistrates and judicial staff
- educating citizens about their rights and involving them in anti-corruption activities – increasingly through the use of new technologies (Labelle 2007)

This answer provides an overview of promising initiatives adopted in francophone West African countries, which may help curb judicial corruption and ensure the adequate prosecution of corruption cases.

2 INITIATIVES TO CURB CORRUPTION IN THE JUDICIARY IN FRANCOPHONE WEST AFRICA

The judicial system was structured under colonisation to mirror the French system. Some experts say that, after decolonisation, West African states inherited the poor status and meagre resources of the judiciary in France prior to 1960. The relative initial homogeneity of these judicial structures has since been challenged by the many reforms undertaken since decolonisation that have led to greater diversity between the organisation of judiciary in the countries of the region (Sossa 2010).

The literature on anti-corruption initiatives is limited. The initiatives analysed in this paper, however, suggest that promising practices are related to the involvement of civil society in rendering justice more accessible and accountable. They also indicate that adapting the judicial system to the specificities of the various contexts has proved rather efficient.

It is widely recognised that a transparent judicial system as well as procedures and initiatives that hold prosecutors and judges accountable help limit the systemic aspects of judicial corruption (Pepys 2007). Judicial corruption in the region is made possible partly by the distance between the institution and its users, combined with the general lack of transparency and the limited independence of magistrates and judicial staff.

Initiatives aimed at improving accessibility

One of the main sources of corruption in the judiciary appears to be the inaccessibility and distance between largely inherited institutions and the citizens, as well as severe inefficiency. Experts recognised that the judiciary too often appeared unable to satisfy the justice needs of its citizens (Sossa 2010).

Improving citizens' access to justice

A number of organisations in the region are addressing the issue of inaccessibility by attempting to render justice closer to its potential users and to contribute to the development of community-based and corrections-based paralegals (Walsh 2010).

In Côte d'Ivoire and Senegal, the World Bank has supported projects aiming at providing legal assistance to citizens by creating a public fund to pay the participating lawyers (Sossa 2010).

Similarly in Mali, a group of lawyers formed the association DEME SO to assist ordinary citizens, particularly women and children, in their interactions with the judiciary and to help victims of corruption and abuse of power through a legal clinic. The founding idea of the association is that empowerment and education is an important element of limiting the abuse of power. The success of the initiative allowed the association to diversify its activities, which now

include the publication of a bulletin on human and democratic rights, the organisation of public talks and workshops with administrative and political officials about the most serious problems faced in Mali. The association, together with other African organisations and supported by the NGO Juristes Solidaires, helped to boost the public recognition of *para-juristes*, (paralegals) in a number of countries in West Africa as important agents to help address the issue of the lack of legal assistance. They also set up a programme to train paralegals to raise awareness and help those in need of legal advice (Association DEME SO no date).

Transparency International in Cameroon, Niger and Senegal all have an Advocacy and Legal Advice Centre (ALAC) providing free and confidential legal advice to witnesses and victims of corruption. ALACs aim to empower citizens by offering them a simple mechanism to pursue their corruption-related complaints. The evaluation of the initiative confirms its success and relevance in these specific contexts. ALACs have been found to have a significant impact on the empowerment of citizens and on the political will to fight corruption (MDF Training & Consultancy 2013).

Simplifying and adapting the judicial structure to current contexts

Most countries in the region have addressed the issue of the distance between the institution and its users – both in geographic, cognitive and cultural terms – by simplifying the judicial system and adapting it to the local context or by diversifying and specialising courts (Sossa 2010).

The judicial system that was imposed during colonisation copied the French system by distinguishing between civil and administrative jurisdictions. Lawmakers in the region soon realised that the structure was overly complex and not fitted to local needs (Sossa 2010). Different options were then chosen by the region's governments to reduce the complexity and opacity that generate opportunities for corruption. Cameroon and Guinea opted for a reduction of the number of types of jurisdictions while Côte d'Ivoire, Niger and Senegal chose the suppression of their administrative

jurisdictions¹ (Sossa 2010). The literature is not sufficient to determine how effective these respective approaches have been at controlling corruption.

Alternative dispute resolution

Informal or alternative dispute resolution methods are becoming increasingly popular ways to improve the proximity of justice. More programmes are being developed to set up and regulate alternative dispute resolution mechanisms at the local level, combining traditional justice with modern law.

Alternative dispute resolution often relies on traditional figures or local leaders as mediators who are, in certain contexts, seen as more reliable and less corrupt. Being less expensive and sometimes more familiar to the people, these methods are an efficient way to improve access to justice (Ford, Seng 2007). Moreover, they can contribute to the fight against corruption and to the proper prosecution of corruption cases by making the judicial system more efficient since they help avoid excessive backlogs of cases, enabling the formal justice system to focus on high-level and complex cases.

In 2004, the *Maisons de justice* (houses of justice) were launched in Senegal as a means of improving proximity justice and unclogging the formal system. This project brings together traditional Senegalese justice and modern law to resolve commercial, familial and sometimes even criminal disputes. Retired magistrates or local figures serve as mediators. The *Maisons de Justice* play an important role in local communities, making the judiciary more accessible and comprehensible. The project has been financed by the French embassy since 2006 and is seen as a complete success, with a settlement rate of 70 per cent (RFI 2012).

Initiatives to strengthen the independence and integrity of the judiciary

¹ Many francophone African countries have a judiciary based on the French system, with administrative jurisdictions in charge of cases opposing a person to a public body and civil jurisdictions in charge of cases opposing private persons or entities. Eliminating the administrative jurisdictions can contribute to making the judicial system simpler and less multi-layered and costly.

Corruption within the judiciary most often stems from the weakness and lack of independence of the institution, enabling political interferences and undue influence from special interests. Measures to strengthen the independence and integrity of the judiciary can include clarifying appointment and promotion procedures, training magistrates and judicial staff and adopting codes of conduct. Some of the most promising approaches include a monitoring dimension, such as the establishment of observatories.

Recruitment, promotion and removal of magistrates

The importance of human resources should not be underestimated when it comes to the fight against corruption. The recruitment of ethical and qualified magistrates and judicial staff is essential to a fair, independent and impartial judiciary. Clear rules regarding appointment, promotion, tenure and removal from office based on objective criteria are key in preventing corruption and undue influence tainting the judicial system. A meritocratic system regarding salaries and conditions contributes to instilling a sense of accountability within the judiciary (Buscaglia 2007).

In many francophone West African countries the nomination of judges, after the successful completion of the judicial examination, is based on suggestions from *Conseil supérieur de la magistrature* (Judicial Council), composed of members of the executive and judicial branches of government as well as external individuals recognised for their intellectual and ethical authority. However, the strong influence of the executive power on these councils prevents them from guaranteeing the independence of the judiciary.

In Benin, despite the involvement of the executive in the judicial council, a number of rules seek to protect independence of the magistrates and of members of the judicial council, such as tenure of magistrates and the necessary consultation of judges before transfer (AfriMap 2007). Nonetheless, the management of human resources in the judiciary remains a significant problem across the region, as the appointment, promotion and transfer of magistrates continues to be a highly politicised exercise (Freedom House 2011).

Training of magistrates and staff

Ensuring that magistrates and judicial staff receive proper professional training and are fully aware of laws, rules and ethical standards significantly contributes to insulating the judiciary from political influence (Rose-Ackermann 2007). Judicial corruption and unethical behaviour can stem from a lack of education and from the ignorance of the regulations. Training programmes improve the quality and capacity of human resources and ultimately allow the judiciary to play its fundamental role and to gain legitimacy among the population.

Judicial training is common to assistance projects as it is necessary to ensure that the members of the judiciary are up to speed with reforms and ethical norms (World Bank 2004). The World Bank has supported such training programmes in Côte d'Ivoire and Senegal (Sossa 2010). No information could be found about these specific trainings. However, there is a strong consensus regarding the necessity to properly train judges, including on corruption issues, to be able to attain any success in reducing corruption in the judiciary and beyond (Rose-Ackermann, Yang, and Ehrichs 2007).

Codes of conduct and ethical standards

Fostering a culture of impartiality and accountability within the judiciary is a crucial step in ensuring its overall integrity. The judiciary is often perceived as an institution that, due to its mandate, needs to uphold the highest ethical standards to merit the legitimacy to enforce the law. Codes of conduct and ethical standards can provide guidance to members of the judiciary on how to actively strive for the independence, integrity and impartiality and reduce opportunities for corruption. Setting standards also helps the public understand what is expected of judges and what the related rights of citizens are (Mayne 2007).

In francophone West Africa, many governments have assigned disciplinary powers to the judicial council which sanctions judges for failing to comply with the code of conduct, provided the country has adopted one. The success of such a system depends on the composition of the judicial council and on its autonomy from other branches of government and external influences (Verougstraete 2007).

Most francophone West African countries do not seem to have adopted a code of conduct to prevent judicial corruption. In 2006, Burkina Faso adopted a *Code de déontologie des magistrats* (Code of Conduct for Magistrates to improve access to justice, strengthen the institution's integrity and fight judicial corruption. This code is addressed to magistrates, judicial staff and users and comprises chapters on judicial independence, impartiality, integrity, freedom of expression, judicial competence and incompatibilities (Lefaso.net 2006). There is, as of today, no assessment on whether the code has had any impact on corruption. In 2009, a group of lawyers and magistrates launched the *Centre d'éthique judiciaire* (Centre for Judicial Ethics) to monitor the conduct of the judiciary in Burkina Faso with the objective of reducing judicial corruption.. The centre's main activities are awareness/raising among citizens and members of the judiciary as well as ethical training of judicial staff and magistrates. The centre was still active in 2013 and its activities were diversifying (CEJ no date).

Initiatives to improve the accountability of the judiciary

Making the judiciary more accessible to citizens allows for civil society to have a more thorough oversight of its activities. Improving access to justice has been a focus of international development agencies for years. It generally implies the need to improve the understanding of how the law may be properly used, to increase the mechanisms for applying the law effectively and to increase the number of citizens who actually benefit from their legal system (Walsh 2010).

Successful anti-corruption initiatives in the judiciary often involve an element of social control. Civil society can play an active role in contributing to judicial integrity, transparency and accountability, reducing the opportunities for corruption (Martini 2014).

This requires efforts by the institution, to reduce opacity and closed doors politics, and by citizens, to ensure they are aware of their rights and receive expert assistance. The use of new technologies is increasingly put forward as a way to enhance

transparency and accountability in the judiciary and to ultimately reduce corruption.

Training of citizens and community leaders

While it is essential that judicial personnel are aware of rules and procedures, it is almost equally important for citizens to know what they should expect from the judiciary. Public understanding and confidence in the judiciary are important for the interaction between the state and the people to be effective and for the success of the fight against corruption (Transparency International 2007).

Many initiatives have focused on awareness raising and capacity building to promote good governance. The Ivorian NGO Transparency Justice trained and educated community leaders on the current judicial reforms being implemented. It organised workshops gathering approximately 50 community leaders and some prominent magistrates to discuss the new regulations, particularly regarding the commercial courts and the fight against corruption. This initiative was successful and participants indicated that it had deepened their understanding of the issues. The organisation relied on a cascading effect of the training for community leaders that would then trickle down to the whole group (Nord-Sud 2013).

Some countries organise open court days to improve transparency and access to information regarding judicial procedures and structure. The organisers of open court days invite the public to meet and have conversations with judicial personnel. While this initiative does not seem to have been implemented in francophone West Africa, experience from Kenya and Papua New Guinea suggests that such initiatives can play a significant role in making the judiciary and courts seem less intimidating and easier to comprehend (Menzies 2012).

Complaints mechanisms and social accountability initiatives

Giving citizens a means to express their concerns and lodge complaints against abuses they faced when interacting with the judiciary is an important part of the fight against judicial corruption. Formal complaints mechanisms as well as social accountability tools contribute to reinforce the accountability structure.

An independent body enjoying sufficient resources should be established to receive complaints about judicial personnel. A hotline can be launched to facilitate the lodging of complaints. Niger set up such a hotline allowing citizens to complain about corruption and abuses in the judiciary as well as in other institutions (RFI 2011). Some countries have set up a judicial ombudsman to deal with complaints related to the judiciary (Hatchard 2014).

Social accountability mechanisms can be a powerful tool to keep judges and court staff accountable. Participatory structures such as court user committees, inviting civil society representatives to meet members of the judiciary along with lawyers, offer a regular avenue for stakeholder oversight and collaboration. Experts say that these projects have had some success in the identification of recurring challenges and information exchange, especially when the local dynamics at a particular court were favourable (Menzies 2012).

Community report cards are used in some countries in the region to provide feedback to the judicial institution. These are often known as court user surveys or judiciary dialogue cards. Together with court user committees, they allow citizens to anonymously report abusive behaviour and corruption. The committees can be used to deal with these complaints on “judiciary dialogue boards” (Menzies 2012).

In Benin, the civil society organisation Centre Afrika Obota launched the project *L’Observatoire de la justice au Bénin* (Benin Judicial Observatory), with the support of the Open Society Initiative for West Afrika (OSIWA), with the aim of monitoring the activities of the judiciary with the collaboration of citizens. The observatory is composed of members of the judiciary, lawyers, notaries, a representative of the Ministry of Justice, academics, representatives of Benin’s private investors, a former convict and ordinary citizens. (La Nouvelle Tribune 2013). It is still too early to assess the organisation’s impact on corruption, but it has been successful in its objectives collecting statistics about judicial activities and informing the public through the publication of reports on the nature and state of the judiciary in the country (Nagnonhou 2014).

Initiatives to increase transparency

Opacity in the judiciary prevents civil society and the media from monitoring court activities and undermines even the possibility of exposing judicial corruption. Transparency is therefore an essential feature of any anti-corruption programme and requires better management and publicity of activities and decisions as well as the ability of people outside of the judiciary to be informed (Rose-Ackerman 2007).

Initiatives to reduce judicial corruption rely increasingly on information and communications technologies (ICTs). New technologies can be used in assisting judicial staff and magistrates in managing cases as well as facilitating communication and information exchange between courts and other stakeholders (European Network of Councils for the Judiciary 2013). ICTs should make the judiciary more accessible as they facilitate court monitoring and other transparency and accountability efforts.

Computerised case management

Improving case management systems can contribute to facilitating the work of judges, make judicial proceedings more efficient and prevent the manipulation of evidence and files. The simplification of procedures and the use of technology to manage and digitalise data helps to make judicial proceedings more transparent (UNDP 2011).

Mauritius was one of the first countries in sub-Saharan Africa to adopt a complete e-judiciary system with the aim of improving court administration, boosting judicial transparency and efficiency, promoting professionalism and facilitating citizens' access to justice (IT News Africa 2010). The programme was launched in April 2013 and experts consider [eJudiciary Mauritius](#) to be one of the most advanced electronic legal filing systems in the world and the very first in Africa (Bheenick 2013). Even though it is still early to fully assess the success of the programme, which has only been partially implemented, it seems to already have reduced backlogs and red tape, two significant sources of judicial corruption (Lemauricien 2013).

Donor interventions in Africa have increasingly focused on this aspect of technological progress to facilitate the work of the judiciary. Experts recognise

that there are some obstacles to the successful integration of technology in the judicial systems in Africa, first and foremost related to the available infrastructure. Given the necessary investment, both financial and in time, some suggest that a progressive integration of technology to improve case management, rather than an all-in-one solution, increases the chances of success (Beauchard 2014).

To illustrate this point, experts have compared the projects undertaken in Benin, where donor agencies injected significant funds to create a web portal for users to access information about their cases in real time that has so far not met expectations, and Ethiopia where a successful system to collect data and statistics was introduced and progressively computerised. They conclude that to be successful in contexts where the internet and communication infrastructures are not yet fully reliable, computerisation needs to be implemented step-by-step (Beauchard 2014).

Court monitoring and recording

Court monitoring and recording are ways to improve the transparency of the judicial system and reduce the opportunities for corruption through external oversight and reduced discretionary powers.

Several organisations advocate for the broadcasting of some of the most significant cases and those that would be relevant for the general public. However, recording court proceedings requires significant financial and technical means and can prove inefficient, if such resources are not sufficient (Martini 2014).

The monitoring of court proceedings by the media and civil society has been facilitated by new technologies, allowing access to information and the wide communication of the results of the monitoring exercise. Court monitoring appears as an efficient way to track occurrences of corruption or undue influence in the judiciary.

Some of Transparency International's national chapters in Slovakia and Rwanda launched the open court project, a web application that publishes data on the judiciary's in-court activity and out-of-court behaviour. This project aims to enable the public to observe and discuss decisions of individual judges,

ultimately making the judicial system more accountable through people engagement and decreased politicisation and impunity (Transparency International Slovensko 2013).

3 POLITICAL WILL AND PROSECUTION: HOW TO ENSURE PROPER PROSECUTION OF CORRUPTION CASES

Impunity and the absence of prosecution of corruption cases is very often related to the lack of political will, as demonstrated by the many related cases in Transparency International's 2007 Global Corruption Report: Judicial Systems (Ayine, Ruenger, and Batidam 2007; TI Mongolia 2007; Bhandar 2007).

The literature on political will to prosecute corruption is scarce, but there are a number of reforms and initiatives that can be implemented to encourage prosecutors to fight corruption. Methods to improve the judiciary's performance and strengthen its role in the fight against corruption have evolved over time and depend on the specific context. Generally, improving transparency and citizen oversight as well as creating a sense of competition around the prosecution of cases can contribute to make prosecutors more inclined to act upon corruption cases as it reduces secrecy, opacity and discretionary power.

Establishing specialised anti-corruption law enforcement bodies with adequate resources and incentives

International organisations and conventions, such as the United Nations Convention Against Corruption (UNCAC), have been advocating for the establishment of specialised law enforcement agencies for years. According to the Organisation for Economic Co-operation and Development (OECD), a specialised anti-corruption body is particularly useful when "structural or operational deficiencies within an existing institutional framework do not allow for the effective preventive and repressive actions against corruption" (OECD 2013).

Establishing such specialised agencies contributes to granting investigators and prosecutors special

investigative powers and better access to relevant information, helping to build stronger evidence and making it harder for courts to dismiss cases or acquit defendants (Martini 2014).

Only a few countries in the region have established an anti-corruption commission with investigative powers and a law enforcement function. Senegal, under its new government, reinstated the dormant *Office Nationale de Lutte contre la Fraude et la Corruption* (OFNAC, National Office against Fraud and Corruption), a law enforcement agency whose mission is to fight corruption, embezzlement of public funds and fraud. The international community welcomed this initiative, especially since this body has the power of self-referral, meaning that it can launch its own investigations without referring them to the president's office or any other public agency (US Department of State 2013). National and international experts think that the OFNAC is an efficient tool against corruption and a number of judicial cases have been reactivated since its re-establishment (US Department of State 2013).

As highlighted by the OECD, to ensure proper prosecution of corruption cases, such law enforcement bodies should have a clear mandate, delimited functions and competence. They need to have the necessary means and resources – financial, human and technical – to safely, effectively and independently undertake their duty. Internal organisational rules as well as rules regarding prosecutorial discretion should be in place to prevent corruption, undue influence and unethical behaviour (OECD 2013).

Training of magistrates and judicial staff is all the more important in specialised courts since the issues are particularly complex and sensitive, and the investigative techniques used can be different than for other offenses. Experts recognise that investigating corruption cases might require the use of special investigation techniques such as undercover methods, tapping of phones, video observation and monitoring of accounts and internet usage.. It is crucial that the use of such methods remains strictly within the boundaries of the rule of law and the right to a fair trial, which in turn requires highly qualified and trained judges (OECD 2010).

For more details regarding anti-corruption law enforcement bodies, please refer to the previous

helpdesk answer, [Anti-Corruption Specialisation :Law enforcement and Courts](#):

Specialisation of courts

In countries where the judicial system is generally seen as corrupt and inefficient, experts recognise that, beyond law-enforcement bodies, the establishment of specialised courts, especially with regard to corruption, can be an effective way to accelerate certain procedures and ensure that cases are fairly prosecuted and judged. The existing literature highlights that specialised courts have been established to “insulate corruption cases from existing corrupt systems and to build special expertise in the handling of complex cases” (Schutte and Butt 2013). There is however too little literature and evidence on the subject to assess the impact of anti-corruption courts.

This has been the approach taken in some countries in the region. For example, the government of Cameroon established a Special Criminal Tribunal to deal with economic crimes, particularly cases of corruption and embezzlement of funds involving sums of FCFA 50 million (US\$96,600) and above (Trust Law 2012). The special court seems to have successfully tackled high-level corruption and embezzlement cases (Che 2013; Menounga 2013). It is important however to note that critics point to a certain politicisation of the institution (Nguini Effa 2011) and to a strong influence by the president himself on the decisions and outcomes (Nsoesie 2011).

The success of specialised anti-corruption courts will indeed depend on the level of resources allocated, on the procedure to appoint judges and on their technical training, necessary for the institution to be fully independent and not a political weapon.

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