

ANTI-CORRUPTION HELPDESK

PROVIDING ON-DEMAND RESEARCH TO HELP FIGHT CORRUPTION

PROCEDURAL REFORMS IN THE JUDICIARY TO FIGHT IMPUNITY

QUERY

Please provide an overview of the literature on procedural reforms in the judiciary aimed at simplifying cases so that corruption risks throughout the judgement are reduced and those accused face justice.

CONTENT

1. Measures to address judicial delays
2. Case studies: backlog reduction programmes
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CAVEAT

This helpdesk report focusses on procedural and operational reforms in the judiciary rather than broader structural or legal reforms. As such it does not cover issues such as the appointment, dismissal and renewal of judges, independence and composition of judicial councils, and so on. Neither does it cover statutes of limitations for corruption offences as these are a legal, rather than a procedural, issue.



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Date: 07 June 2017

SUMMARY

Efforts to delay or otherwise complicate proceedings in high profile political corruption trials are a key contributor to impunity for corruption. Such efforts are often facilitated by procedural weaknesses that can provide opportunities for delay in the enforcement of judgements, including complex rules, broad discretion, excessive opportunities for appeals and inadequate access to information.

The literature offers some guidance on how such weaknesses might be addressed, as well as examples of reform initiatives from around the world. The key approaches include:

- specialisation of courts and judges
- improving case management systems
- introducing simplified procedures
- imposing strict timelines for different types of cases
- simplifying the appeals process
- imposing sanctions for unnecessary delays or frivolous appeals
- monitoring caseload assignment processes, decision-making timeframes and the reasons for delays.

A number of backlog reduction programmes, which incorporate many of the above elements have been introduced in judiciaries around the world (for example, in Kenya, Indonesia, Malaysia and the Philippines). Ensuring that such approaches are effective in reducing delays requires a sound understanding of the political economy in which they operate and, in particular, an appreciation of how the interests and incentives of judges, lawyers, clerks and litigants interact to create delays.

1 MEASURES TO ADDRESS JUDICIAL DELAYS

Delay tactics in corruption trials

Efforts to delay or otherwise complicate proceedings in high profile political corruption trials are a key contributor to impunity for corruption. Such efforts are often facilitated by numerous procedural weaknesses that can provide opportunities for delay in the enforcement of judgements, including complex rules, broad discretion of enforcement personnel, excessive opportunities for dilatory appeals and inadequate access to information (USAID 2009). Brazil and Guatemala offer good illustrations of how such tactics are employed in practice.

The case of Brazil

In Brazil, only 34 per cent of all public officials dismissed in connection with corruption ever face criminal charges. Such low conviction rates have been attributed to plain error, onerous procedural rules and corruption inside the courts (Albert et al. 2017). Of particular relevance is the fact that the constitution provides the judiciary with considerable administrative and financial autonomy and limited political oversight, ensuring that there is little known about the allocation of resources and the administration of the trial calendar (Albert et al. 2017).

Moreover, there is a marked imbalance between the number of lawsuits and the number of magistrates, and an overly generous system of court appeals, whereby almost any sentence can be appealed in the higher courts on constitutional grounds. When this occurs, one court will be held in abeyance until the other comes to a decision.

Even non-definitive, first-level court decisions can be contested by means of *agravo de instrumento* (interlocutory appeals) to the courts of appeal. While such appeals do not always suspend the course of action, delays still occur because judges rarely pass final decisions until the higher courts send a bill of review on the appeal in question (Zimmermann 2008).

The case of Guatemala

In Guatemala, meanwhile, the former Guatemalan dictator Efraín Ríos Montt escaped conviction for genocide mainly due to the use of delay tactics and procedural challenges. Between Ríos Montt's indictment and the end of his trial alone, his defence filed over 100 so-called *amparos* (the main mechanism for challenging alleged infringements of defendants' rights in Guatemala) (GAB 2016). Numerous judgements issued during the trial by the constitutional court, appellate courts and even a judge of first instance simply led to more legal challenges, rather than resolving issue (OSJI 2013).

Mismanagement of these challenges and a lack of clarity on the appropriate timing of their resolution delayed the trial multiple times, and eventually became a central reason for its collapse. (GAB 2016). The Inter-American Court of Human Rights has criticised the use of *amparos* as an "abusive" delaying tactic, including in Guatemala, where many unfounded *amparos* are left unresolved or not resolved quickly. The use, or abuse, of *amparos* is facilitated by limited penalties for frivolous *amparos*, weak oversight bodies for lawyers and inadequate management by the courts (OSJI 2013).

The following section offers some guidance on how such weaknesses might be addressed, as identified in the literature. While many of the measures are designed to reduce delays more generally rather than corruption cases specifically, they are nevertheless considered highly relevant here.

Specialisation

There has been a recent trend towards a specialisation of courts and/or judges to deal specifically with corruption offences. The rationale for specialisation is usually to address extensive judicial delays in corruption cases and to minimise the risk of undue influence on witnesses, evidence tampering and other forms of interference in the justice system (Schütte and Stephenson 2016).

While specialisation has sometimes involved wholesale restructuring of the justice system, in other cases reforms have been limited to more procedural matters which remain within the remit of the courts.

Thus, specialisation can take various forms, ranging from separate, standalone units within the judicial hierarchy to special branches or divisions within existing courts and individual judges with special authorisation to hear corruption cases.

Examples of countries which have implemented some form of specialisation include: Afghanistan, Bangladesh, Botswana, Bulgaria, Burundi, Cameroon, Croatia, Indonesia, Kenya, Malaysia, Mexico, Nepal, Pakistan, Palestine, the Philippines, Senegal, Slovakia, Tanzania, Thailand and Uganda (Schütte and Stephenson 2016). Brazil has created a set of federal-level special courts to deal with cases involving money laundering and related financial crimes (Schütte and Stephenson 2016), although not specifically for corruption.

The benefits of specialisation include a more favourable ratio of judges to cases, more capable judges assigned to corruption cases, and supposedly more impartial and independent tribunals, free of both corruption and undue influence by politicians or other powerful actors (Schütte and Stephenson 2016). Nevertheless, since judges, lawyers, experts and other actors involved in cases handled by specialised courts tend to be drawn from a small group, there is the risk that greater familiarity may result in more informal and potentially preferential engagement, thus increasing the danger of corruption (Schütte and Stephenson 2016; Gramckow and Walsh 2013).

Furthermore, in some countries, critics have alleged that the government is equally, if not more, able to manipulate specialised courts than is the case with standard criminal courts. Thus, the creation of specialised anti-corruption courts is no guarantee that these courts will not themselves be corrupted (Schütte and Stephenson 2016).

Another issue to bear in mind is that the success of any initiative to increase specialisation depends largely on the effectiveness of investigative and prosecutorial functions in bringing significant cases before the courts. Thus, it has been argued that corrupt elites may allow a specialised anti-corruption court to operate without interference so long as they can exert enough influence over prosecutors or law

enforcement to avoid any serious risk of prosecution (Schütte and Stephenson 2016).

Case management systems

Inefficient case management limits the judiciary's capacity to deal with cases, undermines citizens' trust in the judicial system and allows a supportive environment for corrupt practices (Martini 2014). Improved case management systems often involve the use of technology to manage data, records and documents in a way that increases transparency and reduces the opportunities for court staff to manipulate proceedings or tamper with documents. Technology can also ensure that cases are dealt with in a more reliable, efficient and timely manner. To achieve this, a comprehensive computerised system, covering the entire justice system, is considered preferable (Martini 2014; ENCJ 2013).

Turkey provides a good example of such an approach. The country established a single system available for all court staff, judges, prosecutors and users. Thanks to the new system, attorneys can file a case electronically, follow the proceedings in the case, get access to the files and be informed by SMS (Martini 2014; ENCJ 2013).

Ireland, meanwhile, has developed a system for the electronic transfer of summons applications between the police system and the Courts Service Criminal Case Management system and also for the transfer of the result of court cases, bail and warrant information. It handles around 90 per cent of all summons applications, all court outcomes and bails, and all warrants for execution. It has a daily success rate for data exchange of 99.7 per cent (ENCJ 2013).

Multi-track processing

Among the case management approaches most relevant for corruption cases is the increasing use of differentiated caseflow management (DCM) systems. DCM makes a distinction between different types of cases that may take different amounts of time for hearings and decisions because of varying levels of complexity. DCM also facilitates specialisation in specific legal fields among judges. DCM adopts

different tracks for different cases within the court organisation and allows some flexibility for judges to be able to work on those different tracks (RCC 2016).

An innovative example of DCM is the “Fraud and Corruption Track” adopted by Papua New Guinea’s national court, which has streamlined procedures to expedite the processing of corruption cases. The judges presiding in these cases are regular judges and, other than the special procedures, there is no institutional separation between the corruption track and the regular national court (Schütte and Stephenson 2016).

Simplifying procedures

Another approach to dealing with court delays is a reduction of the types of procedures in court cases. Common features of this approach include granting the judge tighter control of procedural decisions, limiting the repeated exchange of documents and the postponement of cases, and greater use of oral sentencing to avoid long written sentences. In response to the lengthy way lawyers present cases, Italy has opted for short, written decisions in which the judge does not have to respond to all of the lawyers’ arguments (ECNJ 2013).

Another important way to simplify procedures is to restrict the number of procedural steps in a case. This may involve requiring parties to supply the court with all relevant information up front instead of holding back information for strategic reasons (see below on pre-trial conferences), disallowing repeated exchange of arguments on paper, and introducing instead a swift hearing, immediately followed by an oral or written verdict. Under such approaches, when complications arise, more procedural steps may be introduced (ECNJ 2013).

Pre-trials conferences

The use of non-binding pre-trial conferences between the judge and lawyers is considered an effective way of structuring trials and avoiding procedural surprises, especially in complex cases. Issues addressed in pre-trial conferences may include: feasibility of court mediation, listing of evidence for the main hearing,

need for experts appointed by the court and setting the date of the main hearing (ECNJ 2013).

The Commercial Court of Ireland provides a good example of this approach. Every case has a pre-trial conference where the purpose is to ensure that proceedings are prepared for trial in a manner that is just, expeditious and likely to minimise costs. The conference seeks to ensure that issues of fact or law are defined clearly in advance of the trial and that all pleadings and statements of issues are served. At the conference, the judge definitively establishes what steps remain to be taken to prepare the case for trial, and what arrangements have been made for witnesses and the use of information technology for the trial (ECNJ 2013).

A useful feature in some other countries (for example, Romania and Italy) is that, after the procedure has been determined, the judge gives an estimate of how long the case will likely take (ECNJ 2013).

Reducing the size of presentations

Another approach is to restrict the size of presentations in court by defining reasonable limits to the length of any written act of the parties. Often parties with greater financial means abuse procedures by introducing procedural objections to prevail over their opponents. In some countries, courts have experimented with limits to lawyers’ presentations to, for example, 10 pages, as recommended by the Court of Justice of the European Union (ENCJ 2013). This limit generally suffices for simple cases but may need to be adjusted for more complex proceedings.

In some countries (for example, Hungary), the size of standard verdicts is also regulated. In such cases, the court has to provide a lawful basis for leaving out a detailed justification (ENCJ 2013). In other cases, standard and concise formats for written judgements, in the form of templates, have been introduced (CEPEJ 2006).

Imposing timelines

As well as simplifying court proceedings, some countries have also introduced strict timelines for some types of cases to minimise delays and reduce

backlogs. The reasonable time clause of Article 6 of the European Convention on Human Rights offers a useful basis for such policies (RCC 2016). Since the length of judicial proceedings is the result of the interplay between the different actors (judges, administrative personnel, lawyers, expert witnesses, prosecutors, police and so on), timeframes have to be jointly agreed (RCC 2016). Practices include (CEPEJ 2006):

- setting timeframes at the state, court and judge level in line with the “local legal culture”
- setting timeframes for the kind of procedure (civil, criminal, administrative, enforcement and so on)
- setting timeframes for the main stages of a procedure (pre-trial, indictment, trial and so on)
- setting timeframes for case complexity
- paying separate attention to standstill time due to inactivity on the part of the parties or the courts (as opposed to active pending cases)
- implementing a strict policy to minimise adjournments and excessive intervals between hearings (for example, to be allowed only if clearly justified and if a date for the next event has been established)
- taking internal action if the pending cases pass the timeframes (reallocation of caseload, disciplinary action and so on)

There are a number of examples that illustrate how some countries have put such approaches into practice:

In Norway, standards are set by law. A case should be decided within six months after an order has been issued or appeal declared. The verdict should be rendered within four weeks of the main hearing. If the deadline is not met, the judge must notify the delay – and the reason for it – in the verdict (ENCJ 2013).

In the Netherlands, standards do not apply to individual cases but instead are conceived as targets for the system as whole, based on an analysis of existing procedures (ENCJ 2013).

A number of countries also impose special deadlines for corruption cases. The deadlines vary a great deal across countries due to differences in the structure, function and organisation of the courts (Schütte and

Stephenson 2016). In Indonesia, the anti-corruption court is required to decide cases within 90 days of the case commencement. Courts of first instance and the supreme court also have 90 days to provide a sentence, while high courts are obliged to provide a decision within 60 days. (Martini 2014). Malaysia requires the anti-corruption courts to process cases within one year, a requirement that does not apply to judges in the regular courts (Schütte and Stephenson 2016).

The Corruption Crimes Court in Palestine is notable for its especially tight deadlines: courts are supposed to hear any case brought to them within 10 days and to issue a decision within 10 days after the hearing, with an allowable postponement of no more than seven days, although it has been suggested that these requirements may be too demanding (Schütte and Stephenson 2016).

Simplifying the appeals process

Unrestricted access to appeal has an adverse effect on the courts and ultimately the quality of justice. This is particularly true in high profile or complex corruption cases where defendants can often afford the best lawyers and will use all available legal means to challenge a guilty verdict.

In several countries, measures have been taken to simplify the appeals procedure and thereby reduce the number of unnecessary appeal hearings. In the European context, the tendency is to allow judges to determine themselves which cases merit appeal, instead of mechanically applying legal provisions, given that there are many cases in which it is immediately clear that the decision of the court of first instance will hold (ENCJ 2012).

Examples of action to reduce the number of appeals and simplify the appeals process include (ENCJ 2013):

- Use of filters: some countries limit appeals to the more important cases by setting thresholds for appeal, for instance, with respect to the sentence in criminal law. Time limits for appeals are also sometimes applied as filters in criminal, civil and

administrative cases. While there are different approaches to who decides whether a case is meritorious or not, the law should state that the decision is a judicial decision based solely on the merits of the case. Filters should be defined to provide criteria by which the judiciary can evaluate the merits of the appeal in each case and exercise judicial discretion in the final decision.

- Outstanding issues: procedures should be in place to avoid repetition and a re-hearing of the first instance trial and to require applications for appeal to focus on the outstanding issues. This can be achieved through pre-trial conferences to avoid a repeat of the first instance hearing and unnecessarily adding more evidence, as is the case in Norway. Sweden follows a more radical route by limiting the appeal to reviewing the video/audio recording of the first instance trial, thus reducing hearing parties in person to a minimum. It is open for debate as to whether this is an effective way of conducting appeals.
- Reduction in the number of appeal judges: it has also been suggested that another approach to reduce the burden of appeal procedures could be by reducing the number of appeal judges, for instance, from three to one, although this is not recommended as it can undermine the moral authority of the court.
- Restricting paper presentations and use of technology: some countries make use of information technology and out of court procedures to prepare and submit the application for an appeal.

As noted in the case of Brazil above, the issue of appeals when it comes to corruption cases in particular, may be somewhat complicated by the way in which constitutional questions are dealt with. In Botswana, for example, the regular lower courts lack the jurisdiction to resolve constitutional questions, which must be resolved by the high court. Because defendants in corruption cases are prone to making constitutional arguments, this feature of the Botswanan system was a frequent source of delay. Botswana's chief justice therefore created the specialised corruption court as a division of the high court, giving it jurisdiction over constitutional issues (Schütte and Stephenson 2016).

Similarly, in Uganda, the anti-corruption division of the high court has managed to keep the average time of first instance decisions to around one year, despite deliberate attempts by accused persons to delay their trials. Prior to 2010, if the defendant raised a constitutional objection, the trial would be automatically suspended and the issue referred to the constitutional court. However, an appendix to a constitutional court ruling in 2010 ruled that, before a constitutional objection is referred to the constitutional court, the anti-corruption division must first decide on its merit (Schütte and Stephenson 2016).

In Guatemala, meanwhile, a working group was set up in May 2015 to discuss judicial reforms, including amendments to laws regulating political immunity and *amparos* (discussed above). The proposed reforms would expedite legal procedures for lifting immunity and make proceedings more transparent. The filing of frivolous *amparo* petitions by defence attorneys to delay or derail judicial proceedings would be liable to fines or disbarment (ICG 2016; CICIG 2015).

Imposing sanctions

The Saturn Guidelines for Judicial Time Management, developed by the Council of Europe's Commission for the Efficiency of Justice, emphasise that all efforts should be made to avoid procedural abuses and "All attempts to willingly and knowingly delay the proceedings should be discouraged [and] there should be procedural sanctions for causing delay and vexatious behaviour [...] If a member of a legal profession grossly abuses procedural rights or significantly delays the proceedings, it should be reported to the respective professional organisation for further consequences" (cited in CEPEJ 2006).

One mechanism to prevent such delay tactics is the use of financial penalties on lawyers who cause unnecessary delays (ENCJ 2012). In some countries, judges who do not take responsibility for speeding up proceedings can also receive administrative sanctions, from a warning via a public reprimand to dismissal for failure of function (RCC 2016).

An additional approach that might be considered is the imposition of sanctions for so-called frivolous appeals.

An appeal can be frivolous either as filed (because the judgement is clearly correct and there is no legitimate basis on which to file the appeal) or as argued (because the defence fails to make any coherent argument, misrepresents facts or case law or fails to bring contrary evidence to the court's attention) (Kravitz 2002).

However, experience from the US suggests that, although courts possess the authority to impose sanctions for frivolous appeals, appellate judges have often shown reluctance to use it, or have imposed only meagre sanctions. It has been suggested that this may be because many judges see little value in adjudicating requests for sanctions and/or fail to appreciate the real costs of frivolous appeals on the justice system (Kravitz 2002).

Monitoring delays

Internal monitoring

Another approach to addressing systematic delays is to ensure that court documents (court orders, summonses, subpoenas, warrants of arrest) are served on time. To facilitate oversight, the body responsible for serving documents should maintain records and statistics on the reasons for trial delay or collapse. Many systems have automated court records that collect case information as well as receipt of filings, schedules, and summaries of proceedings and verdicts. (Schütte et al. 2015).

Management information and statistical systems that measure the productivity of judges and court personnel are also important. A pattern of excessive delays in processing cases could have a variety of causes, including corruption. Closed case surveys to review the actual functioning of the judicial process can be valuable in identifying corruption risks and needs for system changes that can reduce those risks (USAID 2009).

More generally, statistics may be collected on, for example, numbers of cases assigned to each judge as well as the timeframe for a judge to reach a decision. Courts can facilitate access to information about criminal trial and appeal processes as well as about

cases. Such data and access to information can allow oversight of judicial performance (Schütte et al. 2015).

Civil society/third party monitoring

Monitoring can also be carried out by civil society, the media and court users, assuming they have access to cases and court procedures. Online case tracking can increase transparency and accountability in the management of cases. In the Netherlands and Austria, such a system exists for lawyers who can monitor their cases online. In Romania, information on involved parties, procedural delays and judgements are available online and can be accessed by the wider public. In Brazil, information on corruption-related cases (the so-called administrative probity cases) is available on the National Council of Justice (CNJ) website (ENCJ 2012; Martini 2014).

The involvement of stakeholders, such as lawyers and court users, in the monitoring and decision making of courts also helps to enhance accountability. "Court users' committees" and public surveys can inform judges about public perceptions of their performance and areas in need of reform (Schütte et al. 2015). In Kenya, for instance, the government established court users' committees to foster public participation in the judicial process. Among their functions, the committees identify challenges that affect the efficient delivery of justice and propose solutions (Martini 2014).

2 CASE STUDIES: BACKLOG REDUCTION PROGRAMMES

A recent trend in a number of countries struggling to reduce the backlog of cases pending in their courts is the implementation of systemic backlog reduction programmes, which incorporate many of the elements discussed above. Findings from the United States, in particular, suggest that the critical factors of developing a successful backlog reduction programme include: i) judicial commitment, leadership and adequate accountability mechanisms; ii) involvement of different actors in the system; iii) court supervision of case progress; iv) definition of goals and standards; v) monitoring of cases by an information system; vi) a case management approach;

vii) a policy against unjustifiable continuances and a “backup judge” system for the assignment of trials; and viii) education and training (RCC 2016).

Kenya

Starting in 2011, the Kenyan judiciary implemented a number of reforms aimed at reducing judicial delays and tackling corruption in the courts. The judiciary adopted a nationwide case-tracking tool, the Daily Court Returns Template, to increase the proportion of reported cases, reducing case backlogs. At each level of the court system, registrars also worked to standardise and speed up the handling of case files and other administrative procedures, thanks to the development of procedural manuals for the high court, magistrates’ courts and the court of appeal. Each court also was required to set up a court users’ committee and create a customer care desk and service charter to distribute information about court processes and handle local-level problems. Pressure from monitoring and performance contracts and streamlined procedures contributed to gradual reductions in the judiciary’s backlog (Gainer 2016).

Arguably the most important backlog reductions came from special initiatives to clear old cases either by dismissing those no longer active or by prioritising hearings for those that still needed attention. Several other reforms made major contributions to efficiency in the judiciary, including the hiring of more than 200 new judges and magistrates, establishing 25 new courts, and training of judicial officers and staff to share local best practices (Gainer 2016).

Philippines

In the Philippines, the use of procedural manoeuvring by lawyers to delay judgement has long been a cause of significant delays in the justice system. This has been facilitated by constitutional provisions that mandate the strict observance of due process and the propensity of judges to accept such tactics.

To address the problem, the Supreme Court of the Philippines’ initiated a pilot project on case and caseload management (CFM) for trial courts in 2003. The approach revolves around the strict enforcement

of timelines and schedules for case events and the presentation of evidence. Significantly, it was decided that since rule-making power is vested in the supreme court, the amendment of rules of procedure to suit CFM needs could be undertaken by the court itself, without need for intervention by Congress. Another key feature of the approach was its emphasis on ensuring that procedural law be used solely as a tool for the attainment of substantive justice, with a focus on purpose-driven, as opposed to rule-driven, processing of cases (Elepano 2011).

The reforms also introduced differential caseload management (DCM) which: i) categorises cases into fast, complex and standard tracks depending on their needs for management; ii) uses case tracking and monitoring systems and other strategies such as referral of cases to mediation; and iii) employs modes of discovery and effective pre-trial techniques to reduce litigation (Elepano 2011).

Although there was some initial resistance to change, especially from older judges, court personnel and litigants who found adjusting to the new timeframes difficult, many of their concerns ultimately transpired to be based on misunderstandings which were redressed through participatory planning and communication.

As a result of the programme, 95 per cent of CFM civil cases and 90 per cent of CFM criminal cases were disposed of according to their designated timeframes in the metropolitan trial court level. However, only 24 per cent of cases at the regional trial court level were disposed of on time. This was attributed to a failure to strictly administer time limits, insufficient technical know-how and unexpected vacancies (Elepano 2011).

Experience from the Philippines suggests that such programmes can be effective but only if the court is genuinely committed and a broad range of stakeholders are actively involved, including bar associations, the prosecution, the office of the public defender, law enforcement and correction, and rehabilitation agencies (Elepano 2011).

Indonesia

In Indonesia, one of the main causes of judicial backlogs was the large number of cases and appeals coming to the supreme court. A key problem was the absence of mechanisms to filter the types of cases that can be heard on appeal, resulting in the court having to deal with all kinds of cases, from very minor to very serious. This is partly due to the fact that parliament, in a bid to reduce delays and backlogs, merely shortened the duration of each stage in the litigation process and reduced the number of steps required to obtain a final decision, resulting in more cases coming to the supreme court. It is exacerbated by the fact that specific legislation even allows appeals to be made directly to the court, bypassing the court of appeal (Lotulung et al. 2011).

The distribution of cases also contributed significantly to the creation of backlogs. Most of the time, civil and criminal cases were distributed on an equal basis to all judicial teams, regardless of their expertise.

To address these weaknesses, a comprehensive study on the status of cases at the supreme court was undertaken, to avoid repeating earlier mistakes. This was followed by the introduction of a simple multi-track caseflow approach which created a mechanism of prioritising criminal cases where defendants are under detention by processing them on a separate track from ordinary cases. In addition, a series of reforms have introduced a time limit for all courts, including the supreme court, in handling commercial, corruption and human rights cases (Lotulung et al. 2011).

Amendments were also made to the criminal procedures code to help accelerate corruption trials and the chief justice issued a circular to the judges, setting a target for all corruption cases being processed in a year or less.

Lessons from the Indonesia experience emphasise that a backlog reduction programme is not merely about reducing the number of pending cases, it is about establishing a caseflow management system which will avoid backlogs recurring in the future. Furthermore, solutions to manage case information do not have to be sophisticated. A generic spreadsheet

application can perform sufficiently well in helping the court to improve its capacity to manage case information. A clear definition of backlog is also essential for setting priorities, with a measurable and commonly accepted definition of what constitutes backlog (Lotulung et al. 2011)

As with the Philippines, wider consultation, both within the court and with its partners, is essential, as is supportive leadership from senior judges. Finally, showing the tangible benefits of reform initiatives encourages further organisational change (Lotulung et al. 2011).

Malaysia

In 2008, Malaysia began a justice sector reform programme with the aim of increasing pressure for productivity in the hope that this would drive out the less committed judges. The programme's main components included (World Bank 2011):

- an inventory of cases held in courtroom files throughout the country and the creation of improved physical filing systems
- the purging of "closed cases" and the separation of inactive ("hibernating") cases for rapid closure or further processing
- introduction of pre-trial processing of cases and the designation of "managing judges" to oversee the exercise
- introduction of a tracking system to facilitate the closure of older cases
- introduction of court recording and transcription (CRT) equipment for most of the courts in West Malaysia
- development of an automated case management system which automated some manual processes
- creation of high court commercial divisions to handle more specialised matters (intellectual property, Islamic banking and admiralty)

As a result of the programme, the total number of cases filed in 2009 or earlier still being processed dropped from 192,569 in December 2009 to 15,497 in May 2011. The programme has also been successful in discouraging some of the usual causes of delays – and especially the frequent adjournments of hearings.

Adjournments are not systematically monitored, although they are included in the daily reports. However, the pressure on judges to meet their quotas appears to be sufficient incentive for them to be firm on hearing and trial dates (World Bank 2011).

Critical to the programme's success are the setting and resetting of productivity targets, the use of manually collected statistics to measure progress, and their constant vetting by the senior members of the reform team (World Bank 2011).

Taking politics into account

While all the above-mentioned approaches can prove useful in reducing delays and backlogs, this can only happen with a sound understanding of the interests and incentives of judges, lawyers, clerks, and litigants, and how they interact to create delays. The success of such reforms depends, in particular, on support from senior judges and pressure from civil society (Messick 2015).

In the European context, such political economy factors are increasingly seen as critical in explaining the different records of prosecution of political corruption in the Western Balkans, despite the similar approach to rule of law promoted by the EU across the region. This is largely because the EU's incentive-based model of compliance has largely failed to take into account the complex strategies adopted by political elites, based on formal compliance with the EU rules on the one hand and informal stratagems that undermine promoted rules on the other (Elbasani and Sabic 2017).

Similar challenges are apparent in the Asian context. A study in the Philippines showed that much of the reason for delay lay with prosecutors' incentives. Prosecutors were reluctant to screen out cases where the evidence was weak, given pressure for speedy action and the fear of sanctions if they refused to file a case that later turned out to be meritorious. As a result, more than half of the criminal cases filed in trial courts across the country were dismissed before trial (Messick 2015).

In India, although judges are all-powerful on paper (they control the scheduling of cases and they can sanction or even jail lawyers who defy them), in reality they are at the mercy of lawyers and court staff. Lawyers can harm a judge's chances for promotion, which requires a judge to resolve a certain number of cases per month. If a judge disciplines a lawyer for delaying a case, the lawyer may persuade colleagues to boycott the judge's courtroom, halting all proceedings and preventing the judge from meeting his or her quota for the month. Judges also need the cooperation of court staff to ensure that the court runs smoothly. If a judge complains that a staff member is corrupt or incompetent, other staff members may retaliate by slowing down proceedings and preventing the judge from meeting the monthly quota (Messick 2015).

In Malaysia, on the other hand, the reform programme implemented from 2008 onwards provides judges with powerful incentives to process cases expeditiously. Each judge is required to observe strict rules governing requests for postponements of hearings or trials and to report daily on cases resolved and work accomplished. The chief justice and other senior judges conduct spot checks and surprise visits to ensure that judges are following the new rules. As a result, the backlog in the high court was cut from some 48,000 cases to just over 10,000 in one year (Messick 2015).

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