



How to note:

Implementing the Bangalore Principles of Judicial Conduct

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Contacts:

Philipp Jahn
email: philipp.jahn@giz.de

Jana Schuhmann
email: Jana.Schuhmann@giz.de

Shalva Papuashvili
email: Shalva.papuashvili@giz.de

Lothar Jahn
email: lothar.jahn@giz.de

Jens Deppe
email: jens.deppe@giz.de

Nicolas Stötzel
email: nicolas.stoetzel@giz.de

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Foreword

An independent, effective and reliable judiciary is crucially important for any democratic state based on the rule of law. In a nation that aspires to the separation of powers, the judicial branch protects citizens from arbitrary acts by the state, it upholds human rights in the face of public institutions and it mediates in disputes between private parties in



Judicial Integrity Group Meeting 2012

accordance with the law. Corruption - a profound evil in many societies, which eats away at the institutions of the state, causing people to lose faith in their political system - can only be countered effectively if the judiciary itself is not caught up in a web of bribe-giving and bribe-taking.

In many states however people no longer believe in their judicial system. Besides overt corruption, other crucial factors include the choice of judges, their low standards of professional training and, above all, their conduct within and outside the duties of their office. Every state needs an efficient, incorruptible and completely fair judiciary. For this reason, the judicial systems of many countries today are in urgent need of far-reaching ethical renewal.

As early as in 1985, the United Nations presented its first judicial code of conduct in the shape of its *Basic Principles on the Independence of the Judiciary*. Fifteen years later, a group of chief justices and other high-ranking judges from various countries and continents came together to form the *Judicial Integrity Group* which is responsible for formulating standards for ethical conduct by judges. Known as the *Bangalore Principles of Judicial Conduct*, these principles build on six core values – independence, impartiality, integrity, propriety, equality and competence and diligence – to express a large number of demands that should help ensure the independence and integrity of the judiciary while strengthening people's confidence in their judicial system.

It is essential that the citizens of a community have recourse to a sound legal system, and that they can assert their rights through functional, independent and fast-acting courts. The efforts undertaken through German development cooperation to disseminate and mainstream ethical standards in keeping with the *Bangalore Principles of Judicial Conduct* should be highly praised. These activities serve to build up rule-of-law institutions, assert human rights and secure the reliability of legal systems.

Prof. Dr. h.c. Rudolf Mellinghoff
Member of the Judicial Integrity Group

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I. Introduction: Dual track approach 'Anti-corruption and Judicial Integrity'

German development cooperation supports the development of an effective, efficient and democratically legitimated justice sector¹ in the countries it works with. The projects and programmes designed to support judicial reforms promote access to justice, modernisation of the law, the proper functioning of relevant institutions, the protection of human rights and the professionalism of all legal practitioners. But in many cooperation countries, everyday and political corruption impedes the development of a democratic state under the rule of law.² In many cases, systemic corruption also extends to the judicial system.³ A lack of integrity means that parties to a legal dispute in court often see corruption as the only way to assert their claims. Another consequence of corruption is that it hampers economic development, since an unreliable legal and judicial system makes economic activity unpredictable.

A lack of integrity also leads to delegitimation of the judicial system, particularly of the judiciary, which draws its legitimation from the trust of the people in its ability to establish legal security.⁴

Promoting anti-corruption activities and integrity is therefore an important component of successful legal and judicial reform. What is often overlooked in this context is the significance of professional ethics which are an essential element of an efficient judicial system. Efficiency and fairness are complementary justice-sector goals. Without professional ethics, it is not possible to carry out successful judicial or anti-corruption reform in the long term. At the same time, the judiciary can only meet its own standards if it is organised efficiently. German development cooperation therefore promotes judicial integrity, especially that of judges, but also of other judicial staff.

Judicial integrity aims to protect the individual from arbitrary state action and to safeguard the rule of law. An integrity-based justice sector is professional, embedded in professional ethics and includes efficient integrity management.

Judicial integrity is one side of the dual -track approach 'Anti-corruption and Judicial Integrity', which was developed by the Rule of Law Cluster in Division 42. The other side is the utilization of the justice sector to combat corruption. Courts, public prosecutors, anti-corruption authorities and police forces that follow the principles of judicial integrity are able to contribute to anti-corruption activities in other sectors. Promoting efforts to fight corruption in the justice sector therefore has an indirect positive effect on other sectors such as extractive resources and health. The dual track approach taken by German development cooperation can serve as an inspiration for programming anti-corruption measures in individual sectors with the support of the justice sector.⁵

1 The term "justice sector" as utilized in the publication at hand encompasses all governmental actions that are designed to administer justice. The term 'justice sector' comprises judiciary and executive institutions (including courts, public prosecutors, prisons and the police force).

2 Falke, Mike: Die Deutsche Internationale Rechtsstaatsförderung zwischen Globalisierung und Nachhaltigkeit, E-Recht und Politik (2010), page 4.

3 World Bank: Anticorruption in Transition. A Contribution to the Policy Debate (2000), page 15.

4 Presentation by Elisabeth Kreth (member of the German Association of Judges) at the international symposium on judicial independence in Europe, Frankfurt am Main, 7 and 8 November 2008 (German only)

5 Ferguson, Johannes: Conceptual Foundation of the TWIN TRACK Approach: Enhancing Governance on Two Tracks, GIZ (2011).

To implement the dual track approach in its development measures, German development cooperation requires relevant expertise. In its third phase (2010-2013), the Anti-corruption and Integrity programme has therefore been commissioned by the German Federal Ministry for Economic Cooperation and Development (BMZ) to develop and process anti-corruption and integrity activities in the justice sector. The guideline at hand on promoting judicial integrity, based on the Bangalore Principles of Judicial Conduct, is one result of this work.

II. The Bangalore Principles of Judicial Conduct

The *Bangalore Principles* are one of the basic tools used by German development cooperation to promote judicial integrity.

Value 1:	Independence
Value 2:	Impartiality
Value 3:	Integrity
Value 4:	Propriety
Value 5:	Equality
Value 6:	Competence and diligence

These universal principles of judicial conduct were developed by the Judicial Integrity Group (JIG), an association of high-ranking judges⁶ from industrialised and developing countries and from diverse legal cultures. JIG aims to strengthen public trust in the court system. One important instrument for achieving this was the development of principles of judicial conduct; JIG therefore drafted such principles at its second meeting in Bangalore in 2001. This was followed by an extensive consultation process that led to the present Bangalore Principles of Judicial Conduct which have meanwhile been acknowledged as universal principles by the United Nations⁷ and are increasingly used by national courts⁸ as a reference for their judgements. As

The Bangalore Principles

an internationally recognised standard, they are important for cooperation countries since they can help to establish compliance with agreements under international law such as the UN Convention against Corruption (UNCAC), and serve to develop or improve standards

6 The group's members are Christopher Gregory Weeramantry, Michael Donald Kirby, Prafullachandra N. Bhagwati, Muhammad Lawal Uwais, Pius Nkonzo Langa, Benjamin Joseph Odoki, Barnabas Albert Samatta, Adel Omar Sherif, The Lord Mance, Christine Chanet and Rudolf Mellinghoff.

7 ECOSOC 2006/23, reference to the principles by the Commission on Human Rights of the United Nations General Assembly in 2006 A/HRC/4/25, Paragraph 19.

8 E.g. Scotland, Georgia, Afghanistan and Nigeria.

of judicial conduct for the countries’ own legal system. The Bangalore Principles constitute an important point of reference for German development cooperation and its efforts to implement UNCAC.

Meanwhile other documents have been produced on the Bangalore Principles. Judges can resort to a commentary (2007) to interpret and apply the principles. The Principles of Conduct for Court Personnel provide a basis for ethical standards for court employees, while the Measures for the Effective Implementation of the Bangalore Principles (Implementation Measures) recommend legal and institutional frameworks for a fair and independent judicial system. The Implementation Measures were adopted in January 2010 during the sixth JIG meeting in Zambia and are particularly important for German development cooperation and for programming development measures in the field of anti-corruption and integrity. The institutional and organisational standards conducive to the implementation of the Bangalore Principles are thus at the core of the guidelines at hand which spell out the conditions required to ensure judicial integrity from JIG’s perspective. The prerequisites for applying the Implementation Measures are the willingness of our cooperation countries to reform their judicial systems and the systems’ suitability for reform.

MEASURES FOR THE EFFECTIVE IMPLEMENTATION OF THE
BANGALORE PRINCIPLES OF JUDICIAL CONDUCT
(The Implementation Measures)

Responsibilities of the Judiciary

1. Formulation of a Statement of Principles of Judicial Conduct
2. Application and Enforcement of Principles of Judicial Conduct
3. Assignment of Cases
4. Court Administration
5. Access to Justice
6. Transparency in the Exercise of Judicial Office
7. Judicial Training
8. Advisory Opinions
9. Immunity of Judges

Responsibilities of the State

10. Constitutional Guarantee of Judicial Independence
11. Qualifications for Judicial Office
12. Appointment of Judges
13. Tenure of Judges
14. Remuneration of Judges
15. Discipline of Judges
16. Removal of Judges from Office
17. Budget of the Judiciary

Measures for the Effective Implementation of the Bangalore Principles

III: Context appraisal and will for reform in cooperation countries



Legal Advisory Service in Bangladesh

Depending on context, integrity and anti-corruption may play a different role, both in our interventions and at the national policy level. Cross-sectoral anti-corruption strategies or results from UNCAC Peer Reviews may contain special instructions. Therefore, when planning development measures, thought should be given to the priority the partner country accords to the theme of integrity as a whole and to the importance attached to the topic by other donors and the partners themselves. Also it is important to know which opportunities exist for addressing the issue when taking implementation measures. This raises several questions that are examined in more detail below.

When programming the measures, consideration should be given to the **legal and social context**. Countries with different legal cultures have **different approaches** to promoting integrity and fighting corruption. Given the **conflicting demands of judicial independence on the one hand and the responsibility and accountability of the judicial system** towards citizens as the ‘users’ of this system on the other, the executive branch may be equipped with more or less effective

supervisory and monitoring competencies right from the outset. The acid test here consists in the different approaches used to **select and appoint judges**, and the decisions taken on their promotion, demotion or even removal from office. The extent to which judicial independence is respected by the state is reflected in **disciplinary law** and the rules of professional **judicial conduct**. Incentive systems and remuneration rates in European countries wishing to join the EU differ from those of the transition countries of the South Caucasus or Central Asia. The **EU Acquis communautaire** (the body of EU law), the **Copenhagen Criteria**⁹ and the **Progress Reports of the European Commission** make high demands on the implementation of judicial independence and suitable measures to curb corruption. The **instruments of the Council of Europe** and the **activities of the Venice Commission**¹⁰ are less extensive in their reach. **Post-conflict states**, for example in West Africa, have to address completely different fundamental problems again when setting up their judicial systems, while Latin American states are already involved in the advanced processes **of the Organization of American States (OAS)** and the **Inter-American Court of Human Rights**. In other words, both the legal system and the context in which the intended reforms take place play an important role in assessing and handling these themes.

Our cooperation countries’ need to discuss and intensify the issue of justice sector integrity, professional ethics and anti-corruption, and to make these the subject of substantial reforms, may therefore take very different forms, which should be analysed in advance. Much depends on how this need is perceived by policy-makers. An assesment of the legal system and justice sector should take both aspects into account - the situation as it stands and the need for reform perceived by justice sector and government representatives in the partner countries themselves.

9 Criteria to be met by accession countries in connection with the EU’s Eastern enlargement.

10 European Commission for Democracy through Law with the mandate of advising states on constitutional law.

But how can balanced, objective information be obtained so that development interventions can accurately assess the real situation?

a) Firstly, extensive lists of relevant technical questions are available for assessing the judicial system. These range from the selection and appointment of judges to the practice of implementing ethical standards¹¹. Specific questions on judicial ethics can be taken from the *Bangalore Principles* and the *Implementation Measures*, and can then be used as a basis for discussion with members of the judicial system or directly with citizens. (see *Judicial Integrity Scans*).

Judicial Integrity Scans: An approach taken by German development cooperation to assess the integrity level of the judicial system.

This approach was developed by German development cooperation and piloted in Georgia in September 2012. The scans serve primarily to examine whether the situation in a given country conforms to the Bangalore Principles and the Implementation Measures. The scans focus both on the existing legal provisions, their actual implementation and the perception of the judiciary in the country. They proceed as follows: To start with, a local expert or local expert group is tasked with filling in a detailed questionnaire based on the Implementation Measures. The results provide an initial overview of the extent to which the Implementation Measures are enshrined in law and actually applied in the country. If a national code of conduct is already in place, it is compared with the Bangalore Principles in order to identify any gaps. Based on the findings of the written assessments, interviews are held with various stakeholders such as judges, other judicial staff, ethics commissions, lawyers, NGOs, private sector representatives and citizens. The aim is to verify the findings of the written assessments and to find out how the interviewed groups perceive the judiciary. The results of the interviews are analysed and put together with the findings of the written assessments. This provides an overall picture that can be used to design tailored measures to fill any possible gaps or remedy deficits.

b) Regularly updated international indices for assessing democracy, rule of law and good governance are also informative¹². Some of the corresponding country reports contain more accurate statements on corruption and the situation of the justice sector, for example:

11 In this context, see also: The Universal Charter of the Judge Adopted by the International Association of Judges in 1999; The European Charter on the Statute for Judges Adopted in 1998; Recommendation No. R (94) 12 of the Committee of Ministers of the Council of Europe on the Independence, Efficiency and Role of Judges, (1994).

12 With these worldwide indices, it should be borne in mind that they are based on various methods and indicators and are devised for different purposes. Some of them are highly aggregated, i.e. themselves refer to data and assessments from other sources. Cf. OECD Donor Approaches to Governance Assessments (2009), Sourcebook; UNDP Oslo Governance Center: Sources for Democratic Governance Indicators (2009).

- Worldwide Governance Indicators (World Bank): keywords ‘Voice and Accountability’, ‘Rule of Law’
- Bertelsmann Transformation Index with country reports that address the justice sector.

c) Measuring integrity and corruption raises the fundamental problem of recording something that, in the case of ‘grand corruption’, everyone concerned wants to keep secret and, in the case of ‘petty corruption’, at least the corrupted side does. For this reason, there is no ideal way to measure corruption. But various measurement concepts do exist.¹³ The three most common ones are:

- corruption perceptions indices based on assessments by experts and private-sector representatives
- surveys of the population’s experience with corruption
- measurements in individual fields of governance via Actionable Governance Indicators (AGI).

Meanwhile controversy reigns over the validity and utility of the various measurement concepts. Since these concepts meet different needs and also show weaknesses, users are faced with the challenge of identifying the right index for their specific purposes.

The best-known measurement concept, the corruption perceptions index, measures corruption in the public sector based on the subjective assessments and perceptions of experts and businesspeople. Examples of this kind of measurement are Transparency International’s Corruption Perception Index (CPI), the International Country Risk Guide (ICRG) of the PRS Group and the Subindex Control of Corruption of the World Governance Indicators. What is most frequently criticised about the subjective assessments is the general suspicion that the index is distorted by the experts’ individual perception and therefore reflects their consciousness of the problem rather than the corruption status itself.

To counter this criticism and reduce susceptibility to error, the CPI for example aggregates three to five individual surveys into a meta index. However, critics complain about the varying levels of precision and methodology of the underlying data. Also, the absolute CPI value is often misleadingly used, without mentioning that its significance is only relative to other country assessments. The CPI has been published every year since 1995 and covered 176 countries in 2012. The methods have been constantly adjusted and enhanced; however, this means that developments could not be presented across a timeline using the CPI. That is why in 2012, Transparency International revised its methodology enabling the comparison of developments across a timeline the future. The CPI’s important achievement and original intention must be seen in raising awareness of the corruption problem.

New approaches have been developed more recently in response to the justified criticism of measurement concepts based on the perception of individual business representatives or experts. TI’s *Global Corruption Barometer* (GCB) determines the level of corruption via the general public’s views and experiences. For this purpose, public views on and experiences with corruption are assessed through 100,000 interviews with citizens in 100 countries. The

13 Stumpf, Mathias: Die Ursachen von Korruption. Eine Analyse anhand multipler Regression und multi value-QCA mit Fokus auf Süd-, Ost- und Süd-Ostasien (2012).

2010/2011 assessment also explored the consequences of corruption for a country's people, the frequency of bribery, and people's willingness to report cases of corruption. The GCB enables comparison between countries and regions and over time. Also, it allows detailed analyses according to specific institutions or demographic criteria (age, gender, income). This enables reformers to identify specific problems, document the progress made in individual areas and determine champions or 'islands of integrity'.

But even the GCB has its weaknesses. The replies by interviewees may be influenced by specific circumstances in a country, such as access to information, the quality of the press or the extent to which freedom of speech exists. The data collection method and representativeness of the random sample also depend on the specific situation in the country. Moreover, GCB mainly records instances of 'petty corruption'.

The Actionable Governance Indicators (AGI) follow a different, broader approach. Simply put, they are a collection of different non-aggregated measurements of various governance dimensions that are provided by a number of organisations, for example the Global Integrity Report and the Open Budget Index. When using the AGIs it is crucial to select the measurement indicator that fits the respective purpose, i.e. the specific governance problem, as closely as possible. Provided this is done, this collection of measurement indicators offers a suitable toolbox for evaluating concrete reform steps by means of individual indices, or identifying specific country weaknesses in terms of governance. The condition for using this approach is therefore to be aware of the limits of the individual measurements and to interpret the index values correspondingly. If these conditions are met, the AGIs constitute a very good instrument for identifying or examining specific governance problems and challenges.

As a general rule, it can be said that the discussed approaches provide a useful toolbox because of their differences, but it is vital to bear these in mind during use and interpretation. The different indices offer opportunities and potentials for impact measurement, for assessing the level of corruption and for mainstreaming the corruption issue.

d) It is important in this context to consider international statements on the human rights situations in the partner countries¹⁴. Only if these are taken into account can we form a comprehensive picture of political instrumentalisation and the true capacities of the legal and judicial systems. Here are a few of the best-known sources:

- Amnesty International: Annual Reports
- Human Rights Watch
- Universal Human Rights Index (OHCHR of the United Nations)
- U.S. Department of State Human Rights Reports

Compliance with the ban on torture is particularly relevant in this context. Many states have signed conventions against torture (CAT) and the corresponding facultative protocol, but have not yet consistently prevented torture by members of the police force and justice sector. By comparing the results of the above-named reports and assessments with the official publications and statements of the cooperation countries, we obtain a realistic picture of the actual need for reform on the one hand and the official need for discussion on the other. All

14 In its rulings, the European Court of Human Rights in particular frequently underscores the need for impartiality in judicial systems.

available information should be obtained, starting with the speeches by heads of state, and going on to the reform and strategy papers published by individual ministries, professional interviews with members of the justice sector, and public opinion surveys. The focus is on asking who benefits most and who suffers most from corruption, who is a suitable cooperation partner and which social groups are the real veto players. The rhetoric of reform often stands in sharp contrast to the reform measures that have actually been introduced. In the respective national context, the following questions can help to assess the situation:

a) Strategies and obligations

- Is there a justice reform strategy?
- Is there an anti-corruption strategy?
- Are the two related? How are they implemented?
- Which conventions, especially UNCAC, has the relevant state ratified?
- What progress has been made in UNCAC compliance? Which UNCAC sections are especially relevant within the official review mechanism, e.g. prosecution, corruption prevention? Are gap analyses performed?
- What status do integrity and anti-corruption enjoy in the current judicial training system?

b) Governmental control mechanisms and public scrutiny

- Is there an anti-corruption authority? What powers does it have, and to what extent must it rely on courts and public prosecutors?
- Which relevant court procedures and rulings are in place?
- What role do other national institutions play (ombuds institutions, human rights institutes or councils)?
- Which committees or professional courts decide on disciplinary measures against judges? What role does the executive branch play?
- To what extent do other social forces have a say in the reform process, for example the bar, citizens' associations, NGOs, the media?

c) Political will fight corruption

- Is there a political will for reform?
- What triggered political will – the wish to comply with UNCAC and corresponding international recognition, or a corruption scandal in the justice sector?

These questions can be used to determine how German development cooperation can take a specific stand on these issues and conduct its own interventions when programming measures related to ethical standards, judicial integrity and anti-corruption. Measures that do not focus on anti-corruption and integrity should at least consider indirect approaches. Depending on the measure's objectives and approach, the opportunities for achieving sustainable change can be appropriately assessed by comparing its objectives with the reform plans of the partner country. Both national constitutions and reform strategies, and the conventions that have been ratified, provide valuable points of reference for advocating the inclusion of anti-corruption and integrity activities in project work.

IV: How are the Bangalore Principles applied and integrated into development cooperation intervention?

a) Planning an intervention to support anti-corruption and integrity reforms in the justice sector

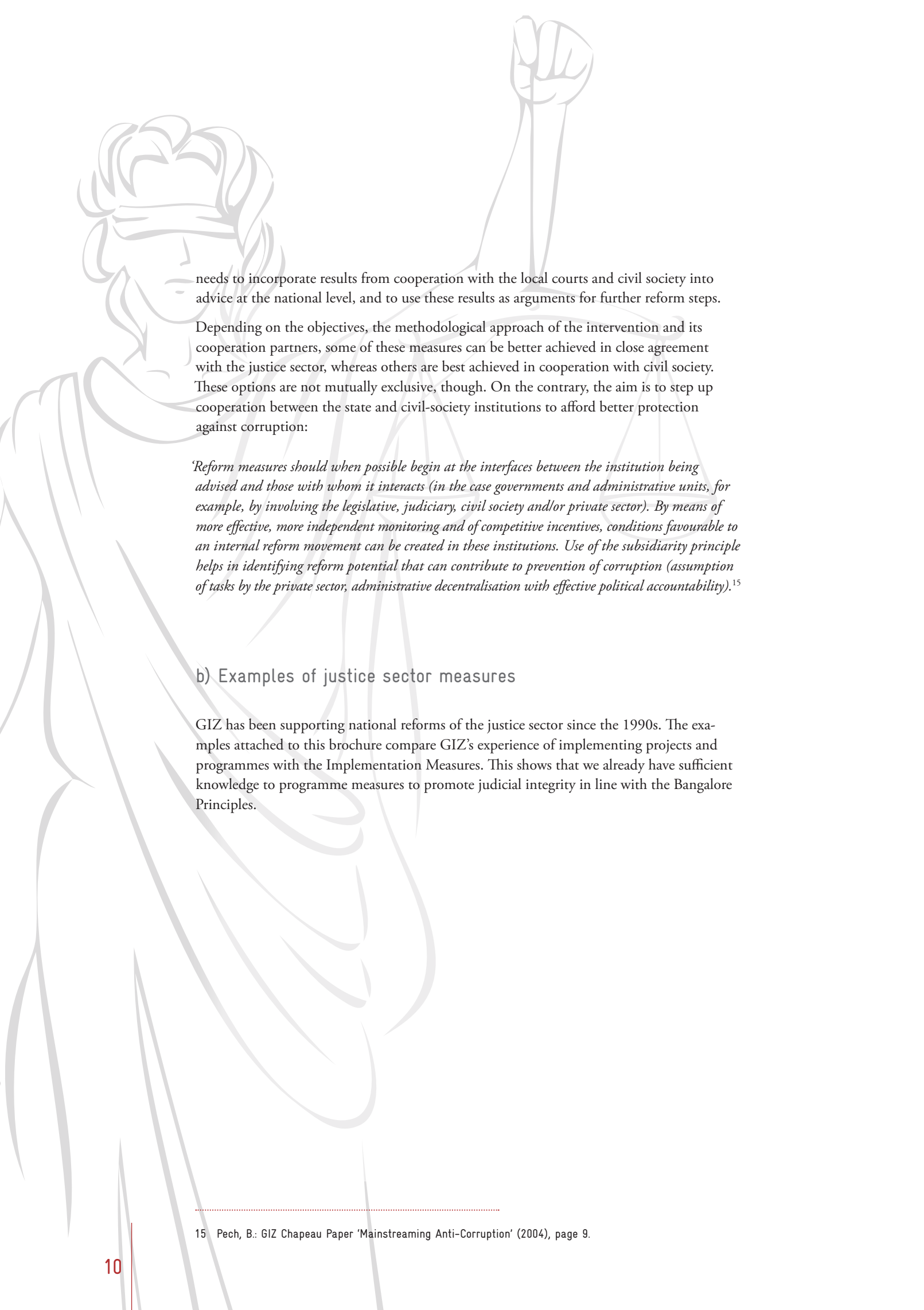
When development cooperation interventions are planned, this generally includes key issues such as human rights, gender and anti-corruption, but does not necessarily cover the subjects of professional ethics and judicial integrity. It should be decided at an early stage whether these themes play a key role when planning and implementing a measure, and this should be addressed at external or internal planning workshops.

When starting a judicial reform intervention or their follow-on phases, the first question to be answered is whether compliance with and/or further development of rules of conduct for judges (and possibly for other judicial staff and members of the bar) is the main or secondary objective, an important area of work or merely a component of the intervention's objectives. Even if it is a secondary objective or an important aspect of the intervention's implementation, the issue of judicial integrity requires special preparation and attention since it concerns a highly sensitive area.

Further important issues for developing strategies for new and ongoing intervention are their methodological approach and cooperation structure. If the intervention's priority is to provide governmental advisory services and legislative advice, and to cooperate closely with the country's higher courts of justice (top-down approach), this provides direct linkage points (judicial training, ethical principles and rules of professional conduct, organisational advice). But caution is generally advisable when addressing the issues of integrity and anti-corruption activities. Close cooperation with senior levels of the judicial system may restrict the subjects addressed and severely curtail the possibility of voicing criticism. If, however, the measure has a number of different partner institutions and also works at the level of the courts of first instance and civil-society institutions, and acts to improve access to justice, this offers many other entry points for addressing this subject.

Whereas it only makes sense to discuss and develop the theme of judicial ethics (in the sense of professional rules of conduct) with judges – if only for reasons of judicial independence – other actors in the justice sector, such as lawyers, can also be sensitised to the issue of compliance with ethical principles. Depending on where entry and leverage points for effective changes are identified, the strategy, forms of cooperation, processes and measures of the intervention can be appropriately designed at an early stage (see Capacity WORKS and BMZ's 2012 anti-corruption strategy).

If a focus is placed on the level at which local court rulings are made (bottom-up approach), support and political backing may be required from higher court judges, ministries of justice and government officials, or may at least be helpful. To be successful, a multilevel approach



needs to incorporate results from cooperation with the local courts and civil society into advice at the national level, and to use these results as arguments for further reform steps.

Depending on the objectives, the methodological approach of the intervention and its cooperation partners, some of these measures can be better achieved in close agreement with the justice sector, whereas others are best achieved in cooperation with civil society. These options are not mutually exclusive, though. On the contrary, the aim is to step up cooperation between the state and civil-society institutions to afford better protection against corruption:

‘Reform measures should when possible begin at the interfaces between the institution being advised and those with whom it interacts (in the case governments and administrative units, for example, by involving the legislative, judiciary, civil society and/or private sector). By means of more effective, more independent monitoring and of competitive incentives, conditions favourable to an internal reform movement can be created in these institutions. Use of the subsidiarity principle helps in identifying reform potential that can contribute to prevention of corruption (assumption of tasks by the private sector, administrative decentralisation with effective political accountability).¹⁵

b) Examples of justice sector measures

GIZ has been supporting national reforms of the justice sector since the 1990s. The examples attached to this brochure compare GIZ’s experience of implementing projects and programmes with the Implementation Measures. This shows that we already have sufficient knowledge to programme measures to promote judicial integrity in line with the Bangalore Principles.

¹⁵ Pech, B.: GIZ Chapeau Paper ‘Mainstreaming Anti-Corruption’ (2004), page 9.

Implementation Measures:

1. Formulation of a Statement of Principles of Judicial Conduct;
2. Application and Enforcement of Principles of Judicial Conduct;
15. Discipline of Judges;
16. Removal of Judges from Office;

Strengthening Judicial Independence Through National Codes of Conduct



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Court room in Georgia

In the 1990s, codes of conduct for judges were widely promoted in transition countries. The aim was to support ongoing judicial reforms, particularly in the CIS. However, in the first few years, GIZ confined itself to legal reforms related to legislative advisory services, focusing on themes covered by the Judicature Act (GVG) in Germany.

Promoting professional ethics was a particular challenge at the time because there were no existing codes of judicial conduct on which training could be based. In the end it was the advent of the Bangalore Principles of Judicial Conduct that gave many national jurisdictions an effective impetus for revising their codes of conduct or for introducing such codes in the first place.

Codes of conduct: The existence of a national code of judicial conduct, as a binding and specific standard for the decisions made in disciplinary procedures against judges, is an important prerequisite for strengthening judicial independence.

Such a code can prevent the abuse of disciplinary law by undemocratic governments, who use it as a tool for preventing the emergence of an independent judiciary. A national code of judicial conduct binds national disciplinary law more closely to the rule of law. Examples of codes of judicial conduct can be found here: <http://judind.50webs.com/judindnational.htm>

The decision as to whether an existing code of judicial conduct should be revised or, if lacking, is applicable to the relevant national judiciary, is an extremely political process. In this context, regional conferences designed to promote South-South learning have proved useful. Tools and assistance for designing such conferences (e.g. agendas, experts, target groups, etc.), and an insight into the art of follow-up, can be obtained from

- Shalva Papuashvili (shalva.papuashvili@giz.de)
GIZ advisor in Georgia, Armenia and Azerbaijan
- Philipp Jahn (philipp.jahn@giz.de)
GIZ advisor in the Anti-corruption and Integrity Sector Project
- Nicolas Stoetzel (nicolas.stoetzel@giz.de)
GIZ advisor in the Anti-corruption and Integrity Sector Project

Implementation Measures: 3. Assignment of Cases



Reforming Case Assignment



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File cabinet of an prosecution in Afghanistan

Case assignment at courts is highly relevant to fighting corruption. In many of our partner countries, cases are assigned by the court president instead of being based on a case assignment plan. Free assignment is an entry point to influence the allocation of cases to individual judges, enabling political interference and corruption. That is why GIZ provides advisory services on improving case assignment.

One example in the December 2009 evaluation report on the Legal and Judicial Reform in the South Caucasus project concerns an advisory process in Armenia which has the following case assignment indicator: Inspection of the case assignment plans of at least three courts from different cities shows that the competent judge was determined in advance.

Examination of the indicator showed that the Council of Court Chairs, in their Decision No. 12 of 21 January 2008 on the assignment of criminal and administrative cases to courts of first instance, decided to assign an equal number of cases to judges according to the rotation principle. Civil court judges are assigned cases based on the place of residence of the plaintiff (territorial principle). (...) The case assignment arrangements make it possible to discern in advance who the competent judges are for criminal, administrative and civil cases. This also applies to the Court of Cassation and local courts of first instance. There is no case assignment plan for courts of appeal.

In its rating, the evaluation report states: the indicator is (...) only partly met because there is no formal case assignment plan for the courts of appeal. However, one expert report (Reimers, 15 May 2008) did advocate the introduction of a case assignment plan. (...) Moreover, in practice, the president of the administrative court still freely allocates incoming cases. This too does not comply with the standard of determining the judge in advance.

More information on methodology, instruments and expert reports pertaining to advice on improving court case assignment can be obtained from:

→ Wartan Poghosian (wartan.poghosian@giz.de)
project manager and advisor in Armenia

Implementation Measures: 5. Access to Justice

Promoting Access to Justice

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Huquuq – advanced training in northern Afghanistan

The informal justice sector is the main legal services provider in many of our partner countries. This has major disadvantages because institutions in the informal legal system are generally neither independent nor do they comply with the public policy decisions of our partner countries.

In many cases, this means that the protection of human rights, especially those of poor population groups and women, cannot be guaranteed. Access justice by all sections of the population is therefore of fundamental importance for the rule of law.

The Judicial Integrity Group (JIG) thus stipulates that the state, that has the monopoly of power, should actively support people's access to justice. In keeping with this principle, GIZ has been promoting the Huquuq in Afghanistan since 2009. As an institution the Huquuq link the methods and objectives of the informal justice sector with the Afghan judiciary as the entity that applies law in accordance with human rights.

The so-called Huquuqs (Arabic for 'Rights') have existed in Afghanistan since the 1920s. They resolve disputes outside the courts on behalf of the Afghan judiciary and have offices both at the provincial and the district level. They represent a kind of first instance in civil-law disputes. When these occur, the law prescribes that the case should be registered by the Huquuq and if possible mediated there before the court is consulted.

The special feature of the Huquuq concept is that unlike a court, the Huquuq arbitrate within the context of local traditions and values. However, national law restricts its basis for decision-making.

The Huquuqs are significant for GIZ's work in that they reconcile specific aspects of local law with national standards. GIZ's role is to strengthen the judicial methods of the Huquuqs and to promote their public reputation.

With support from GIZ, Huquuqs organise events and training sessions for village elders and other decision-makers in the village communities. This ensures that disputes are actually registered with the Huquuq, thereby safeguarding access to justice.

Experience and information about the Huquuqs can be obtained from:

→ Malte Kirchner (malte.kirchner@giz.de)
Head of project in Afghanistan



Implementation Measures:

6. Transparency in the Exercise of Judicial Office



Improving Judicial Transparency I

© GIZ / Philipp Jahn



Public service hall Georgia

Internet:

The Judicial Integrity Group (JIG) sees court websites as one of several viable instruments for improving the transparency of the judicial system (No. 6.2 of the Implementation Measures). One prominent website is that of the African Court on Human and Peoples' Rights in Arusha, Tanzania (<http://www.african-court.org/en>).

GIZ provided support for creating, organising and maintaining the court's website as part of the project designed to improve access to the African Court on Human and Peoples' Rights.

→ Iris Breutz (iris.breutz@giz.de), senior advisor in Tanzania, is also on hand to support other courts with setting up their websites, as part of GIZ-assisted projects and programmes.

Court information:

JIG sees user-friendly organisation of the courts as another means of improving judicial transparency. This includes producing paper-work (court forms) that users can follow and distributing readily understandable information material, e.g. on the cost of filing a lawsuit and on legal procedures. Also useful are signposts showing the way to the courtrooms, etc. (Nos. 6.3 and 6.4 of the Implementation Measures).

In recent years, GIZ has helped to set up user-friendly administrative courts in Armenia, Azerbaijan and Georgia. Key measures within GIZ's organisational development to the administrative courts included drawing up forms and information material, installing signposts and information boards (when is the court hearing being held? In which room? On which legal dispute?).

→ Zeno Reichenbecher (zeno.reichenbecher@giz.de) has overall responsibility for matters related to setting up the administrative courts in the South Caucasus.

Implementation Measures:

6. Transparency in the Exercise of Judicial Office



Improving Judicial Transparency II



© GIZ / Bettina Ruigies

URP-Radioshow „My Rights“

Judgement databases:

Access to court judgements is one of the instruments for ensuring judicial transparency according to the Implementation Measures. Georgia, for instance, has set up a freely accessible online database of court rulings.

With support from the GIZ-assisted programme Legal and Judicial Reform in the South Caucasus, Georgia has created an online database of all rulings on criminal, civil and administrative cases by courts of first instance. Internet users can browse and read judgements by data, reference number, subject area, etc., free of charge. The creation of a database containing judgements by courts

of appeal is planned in the future. The existing database can be viewed at <http://info.court.gov.ge> (in Georgian only).

→ Shalva Papuashvili (shalva.papuashvili@giz.de), advisor in the South Caucasus, will be pleased to answer questions on the technical and content-related implementation of the measure.

Radio programme:

The Implementation Measures also recommend carrying out PR activities on the role and function of the judiciary (No. 6.5). In Kyrgyzstan GIZ has conducted an innovative and essentially radio-based programme to disseminate legal knowledge. This has made it possible to reach a large number of the country's citizens.

Talas in Kyrgyzstan is home to the Radiomost Community Radio that provides information from the people for the people. As well as entertainment programmes, it broadcasts a series of daily advice shows, information and news bulletins. The evening advice show 'My Rights' is aired once a week. GIZ has been supporting the radio programme since 2009.

The subjects are chosen beforehand by a group of 'citizen reporters' from Talas Province. These reporters hold meetings before the show to discuss specific cases of rights violation. They also liaise with the local community to collect questions for the legal experts to answer. Discussion topics include access to the courts (legal aid), the rights of elderly people, border law and customs law (related to the shuttle trade).

→ Jana Schuhmann (jana.schuhmann@giz.de), advisor in the Anti-corruption and Integrity Sector Project, will be pleased to answer any questions

Implementation Measures: 7. Judicial Training



Training Course for Judicial Staff



Judicial training in Zambia

Capacity Development:

Many national court systems do not have judicial training capacities. The Judicial Integrity Group (JIG) nevertheless stipulates that such training capacities be installed (No. 7.2 Implementation Measures). Capacity development is one of GIZ's core competencies. This is reflected in the support it provides for distinct judicial training institutions, for example in Sierra Leone, Liberia, the countries of the South Caucasus, Kosovo, Kyrgyzstan and Tajikistan.

In Kosovo, GIZ supports both the Kosovo Judicial Institute (KJC) and the Kosovo Institute for Public Administration (KIPA) in their efforts to improve legal frameworks, managerial workflows, administrative procedures and curricula. Furthermore, GIZ develops training materials and provides continuing training to KJC and KIPA trainers.

Judicial training:

JIG considers training for judges to be a key factor for improving judicial integrity (No. 7.3 of the Implementation Measures). GIZ supports continuing judicial training in a large number of countries, prioritising legal methods, to enable parties to a legal dispute, or the accused in criminal proceedings, to understand the legal basis for the court's final decision.

The objective of the project in China was: judges are enabled to conduct the proceedings in compliance with the applicable procedural law and to apply the correct judicial methodology.

The training courses for prospective judges were an integral component of basic training in the Chinese judicial system and focused on teaching techniques and methods for applying the law and conducting proceedings in judicial practice. The intention was to empower Chinese judges to obtain acceptable results in an objective, transparent and verifiable way, even when dealing with unfamiliar areas of the law.

Meanwhile, over 3,000 judges throughout China apply the knowledge they have acquired at GIZ training courses on judicial methodology in their daily work. The training material and training courses offered by the programme have become a firm component of the internal training system at the national judicial academy.

→ Volkmar Theobald (volkmar.theobald@giz.de), project manager in Kosovo, can provide information and experience related to capacity development at judicial and administrative training institutions.

→ Eberhard Siegismund (eberhard.siegismund@giz.de) is the officer responsible for the commission at the programme in China and is the person to contact with regard to the methods, instruments and organisation of the courses for judges.

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Deutsche Gesellschaft für
Internationale Zusammenarbeit (GIZ) GmbH

Registered offices
Bonn and Eschborn, Germany

Friedrich-Ebert-Allee 40
53113 Bonn, Germany
T +49 228 44 60-0
F +49 228 44 60-17 66

Dag-Hammarskjöld-Weg 1-5
65760 Eschborn, Germany
T +49 61 96 79-0
F +49 61 96 79-11 15

E info@giz.de
I www.giz.de

Imprint

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Dag-Hammarskjöld-Weg 1-5
65760 Eschborn, Germany
Telefon: +49 61 96 79-0
Fax: +49 61 96 79-11 15

E-Mail: info@giz.de
Internet: www.giz.de

Text:
Philipp Jahn, Lothar Jahn, Jens Deppe, Nicolas Stötzel,
Jana Schuhmann, Shalva Papuashvili

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Deutsche Gesellschaft für
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Registered offices
Bonn and Eschborn, Germany

Friedrich-Ebert-Allee 40
53113 Bonn, Germany
T +49 228 44 60-0
F +49 228 44 60-17 66

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65760 Eschborn, Germany
T +49 61 96 79-0
F +49 61 96 79-11 15

E info@giz.de
I www.giz.de