

ENHANCING JUDICIARY'S ABILITY TO CURB CORRUPTION

A practical guide

Transparency International is a global movement with one vision: a world in which government, business, civil society and the daily lives of people are free of corruption. Through more than 100 chapters worldwide and an international secretariat in Berlin, we are leading the fight against corruption to turn this vision into reality.

On behalf of the Transparency International movement, Transparency International Romania is leading the global Integrity, Independence and Accountability of the Judiciary initiative.

www.transparency.org.ro

Authors: Victor Alistar, Iulia Coșpănar

Contributors: Victoria Jennette, Doris Basler, Andreea Gușă, Miruna Maier, Diana Cuc, Cristian Ciotloș, Laura Ștefănescu, Vlad Obuzic, Wendla Beyer, Larissa Schuurman, Cristina Slovineanu

We are thankful for their feedback to: Jose Ugaz – Chair of Transparency International, Hon. Michael Kirby - member of TI Advisory Council, Lawrence Moss - Director, Human Rights Programme – Roosevelt House/ Hunter College, Michael Maya - director of North America Office of IBA; Ronald Berenbeim - ASK expert; Victoria Esquivel-Korsiak - Knowledge Management Consultant within the Justice, Rights and Public Security Unit of Governance Global Practice of World Bank, Craig Fagan - Head of TI Global Policy, Doris Bäsler - Director of TI Network Services, Gillian Dell - Head of TI Conventions, Mechtild Lauth – TI Legal Counsel, Michael Sidwell - Manager of TI Editorial and Publishing, Rachel Beddow - Officer of TI Editorial and Publishing, Alic Saiciuc – Board member of TI Romania, Prosecutor – Member of the Judicial Inspection for Prosecutors, under the authority of the Romanian Judicial Council

Cover photo: © Jank1000 | Dreamstime.com - International Criminal Court In The Hague Photo

Every effort has been made to verify the accuracy of the information contained in this report. All information was believed to be correct as of January 2015. Nevertheless, Transparency International Romania cannot accept responsibility for the consequences of its use for other purpose or in other contexts.

Enhancing judiciary's ability to curb corruption - A practical guide

ISBN: 978-973-0-19247-6

© 2015, Bucharest, Transparency International Romania. All rights reserved

ENHANCING JUDICIARY'S ABILITY TO CURB CORRUPTION

A PRACTICAL GUIDE

This Guide provides judicial officials and decision-makers with a reference framework for consolidating integrity within the judiciary and for judicial reform, where this is required. It also provides civil society with a set of benchmarks against which they can hold their national judiciaries accountable, and that help drive their advocacy efforts.

To strengthen the rule of law, judiciary shall be “independent, impartial and adequately empowered to adjudicate the law with integrity and ensure its equal application to all within its jurisdiction”.

*Guidance note of the Secretary General:
UN Approach to Rule of Law Assistance*

TABLE OF CONTENTS

INTRODUCTION	4
1. THE PROBLEM OF JUDICIAL CORRUPTION	5
1.1 CORRUPTION AND JUDICIARY	6
1.2 IMPACT OF JUDICIAL CORRUPTION	7
1.3 CAUSES AND REMEDIES TO JUDICIAL INEFFICIENCY IN DETERRING CORRUPTION	9
2. PRINCIPLES AND MINIMUM STANDARDS FOR AN EFFECTIVE JUDICIARY	11
2.1 PRINCIPLES FOR AN EFFECTIVE JUDICIARY	12
2.2 MINIMUM STANDARDS TO MEET THE PRINCIPLES FOR AN EFFECTIVE JUDICIARY	15
3. GAPS AND LOOPHOLES AFFECTING THE PERFORMANCE OF THE CRIMINAL JUSTICE SYSTEM	23
ANNEX I : MATRIX ON THE INTERNATIONAL GROUPS FOR JUDICIAL STANDARDS	31
ANNEX II : TI MOVEMENT EXPERTISE IN STRENGTHENING THE JUDICIARY	43
ANNEX III : INTERNATIONAL JUDICIAL STAKEHOLDERS INVENTORY	48

INTRODUCTION

This Guide provides judicial officials and decision-makers with a reference framework for consolidating integrity within the judiciary and for judicial reform, where this is required. It also provides civil society with a set of benchmarks against which they can hold their national judiciaries accountable and to help drive their advocacy efforts.

The **judiciary** can be defined, in the broad sense, as the system of courts of law and the people who operate within it, as well as, the prosecution service and the people who operate within it, irrespective of their formal status in a certain jurisdiction.

Over the past decades, corruption has proven to be the invisible enemy of modern democracies. Bad governance, abuses of state power, endemic corruption and the inability of poor and marginalized to remedy injustices are threatening peace, security and sustainable development all around the globe. The judiciary itself has faced corruption in two different ways – corruption of its own members, and detecting, prosecuting, adjudicating and sanctioning corruption by others.

Functioning judiciaries can effectively safeguard the rule of law and limit the devastating societal impacts of corruption. For this reason the Transparency International movement's global strategic priority is to recognize the urgent need for robust judicial systems to prevent and punish corruption. A judiciary committed to integrity, independence and accountability is more likely to listen to the marginalized, uphold individual rights, and sanction corruption than those who are stealing public money to enrich themselves.


Building on the already existing international consensus, this Guide references several international, regional and global standards and principles to ensure a broad application to a variety of judiciary models. It also builds on Transparency International's 2007 'Global Corruption Report: Corruption and Judicial Systems' and its accompanying 'Diagnostic Checklist for Assessing Safeguards against Judicial Corruption'¹, as well as on Transparency International's National Integrity System paradigm². The Guide also circulated among reputable TI and non TI experts and institutional partners to whom we would like to thank for their invaluable contribution.

As such, this Guide synthesises existing standards and principles regarding the composition of judiciaries and the conduct of its members to encourage independence, transparency and accountability. Annex I provides a detailed inventory of international documents in which the principles and standards provided by this Guide have their roots.

Bringing to fruition the existing TI knowledge, this Guide is the initial step of a broader TI global initiative on the 'Integrity, Independence and Accountability of the Judiciary', through a dedicated Centre of Expertise. Building on the experience gained by TI in many countries, as well as on the expertise of its individual members or other organisations, the Centre aims at further developing a second generation of practical tools and approaches to facilitate the work in this sector and support the existing advocacy efforts.

Our approach is to engage a diverse spectrum of actors - judicial practitioners, executive and legislative officials, representatives of international donors, leaders of the business community, civil society and regular citizens - at both the national and international level, to collectively demand change within the judiciary and to hold it accountable for successes and failures in sanctioning corruption. Annex II of the Guide provides an inventory of the work done by TI Chapters with regard to the judiciary, while Annex III contains a non-exhaustive inventory of the international judicial stakeholders.

1. Transparency International (2007). Global Corruption Report 2007: Corruption and Judicial systems. http://www.transparency.org/whatwedo/pub/global_corruption_report_2007_corruption_and_judicial_systems
Transparency International Diagnostic Checklist (2007). Diagnostic Checklist for Assessing Safeguards against Judicial Corruption, Combating Corruption in Judicial Systems: Advocacy Toolkit, pages 23-32. <http://www.u4.no/recommended-reading/transparency-international-advocacy-toolkit-combating-corruption-in-judicial-systems/>
2. <http://www.transparency.org/whatwedo/nis>



THE PROBLEM OF JUDICIAL CORRUPTION

1.1 CORRUPTION AND JUDICIARY

What is judiciary?

The specific purpose of this Guide has been informed by the model developed by TI as part of the Advocacy Toolkit that accompanied the Global Corruption Report 2007³. This model identifies three interconnected spaces – the judiciary, the wider justice system and the societal context in which they operate.

The **judiciary**⁴ is the branch of the state powers tasked with ensuring equal justice through **interpreting and applying the law** in the name of the state through effective dispute resolution. It includes the judicial branch responsible for administering justice through a system of courts of law and the people who operate within it and who have an active role in the management of corruption cases, namely judges and court officials. In some jurisdictions, prosecution services and people who operate in it, namely prosecutors, judicial police and judicial experts, are also part of the judiciary, whereas, in other jurisdictions the prosecution service is not part of the judiciary but enjoys independence or operational guarantees similar to that of the judicial service⁵.

This Guide will focus on the judiciary as being the system of courts of law and the people who operate within it, as well as the prosecution service and the people who operate within it, irrespective of being formally part of the justice system or just enjoying similar operational guarantees.

What is judiciary related corruption?

Transparency International defines corruption as “the abuse of entrusted power for private gain”⁶. “Private gain” must be interpreted broadly to include gains not only accumulated by the person in question, but also by his/her family members, close friends, political party, favourite charity, hometown, corporation or other entity in which the official or the official’s family or close friends have a financial or social interest. Judiciaries face corruption in two different forms.

Judicial corruption

Judiciaries at large are themselves vulnerable to two forms of corruption, irrespective of the cases they deal with - civil, administrative, labour, family or criminal ones.

(1) One form of judicial corruption comes in the form of bribery or intimidation of official actors such as judges, court staff or prosecutors. Examples of such situations may range from paying off court clerks to misplace documents in order to derail court proceedings, bribing the police to lose evidence, blackmailing prosecutors to prevent them from initiating proceedings or threatening judges or their families to influence decisions.

(2) Political interference in the judiciary by political actors is manifest through, for example, manipulation of judicial and prosecutorial appointments and removals, manipulation of judicial, court staff and prosecutors’ salaries and conditions of service or reassigning judges and prosecutors perceived as problematic away from politically sensitive cases and allocating those cases to more pliable judges or prosecutors. Political interference can also occur when judges or prosecutors are permitted to hide behind outdated immunity provisions or distorted notions of collegiality, displaying obvious contempt of the law.

3. Combating Corruption in Judicial Systems Advocacy Toolkit, p. 59 <http://www.u4.no/recommended-reading/transparency-international-advocacy-toolkit-combating-corruption-in-judicial-systems/>

4. Combating Corruption in Judicial Systems Advocacy Toolkit, p. 19, http://archive.transparency.org/global_priorities/other_thematic_issues/judiciary/tools; <http://www.britannica.com/EBchecked/topic/307555/judiciary>

5. Art. 11, UN Convention against corruption

6. Transparency International, The Anti-Corruption Plain Language Guide, 2009, p. 14, http://www.transparency.org/whatwedo/pub/the_anti_corruption_plain_language_guide

Although extremely difficult to prove, judicial corruption can be identified through analysing the behaviour of judges or prosecutors in conducting cases, such as finding bias in the gathering, hearing and judging of arguments and evidence, committing intentional procedural errors that void trials or exclude significant evidence, or improperly sentencing those convicted of crimes.

Corruption pursued, prosecuted, adjudicated and effectively sanctioned by the judiciary

Corruption crimes include a wide range of criminal offences, from bribing public or private officials, trafficking in influence and abuse of positions of authority to more subtle forms such as distortion of competition, access to privileged information during public procurement processes, 'revolving doors' arrangements where political and business interests are aligned due to actors moving between the public and private sectors, and crimes concerning illicit political donations.

The role of the judiciary is to investigate, prosecute, adjudicate and sanction equally those who abuse their positions of authority for personal gain, whether they are politicians, civil servants, private business, foreign officials or even judicial officials. Judiciary's ultimate goal is to sanction corruption in all the branches of the government and society overall.

1.2 IMPACT OF JUDICIAL CORRUPTION

When judicial corruption occurs it fundamentally annuls the basic human right to a fair trial and denies citizens an impartial settlement of disputes with their neighbours, service providers or the authorities. A corrupt judiciary becomes captive to political and economic interests and bends judgements to serve the interests of a few, favouring inequality above delivering justice to all. The victims of injustice are encouraged to do justice by themselves, outside the limits of the law, threatening peace and the respect for human rights. Moreover, when a person is convicted for real corruption acts or deeds, but in an unfair trial, he/ she will be perceived as a hero, by the public opinion, instead of being socially punished for corruption.

In addition, a corrupt judiciary condones corruption in every other branch of government and economic activity in which it may have taken root. A culture of tolerating corruption develops and this enables the bypassing of the law in favour of doing politics, governance and business through a network of informal channels. As a result black markets, trafficking, money laundering and tax evasion schemes flourish thus impacting public budgets and causing responsible companies to close their operations due to the very high costs associated with surviving in a corrupt market.

Formal development is abandoned to the detriment of the poor and marginalized who are deprived of basic services such as health care, education or food and water supply. Citizen morale is corroded and governance is hollowed out.

A culture of impunity fed by a systematic failure to sanction those found to be in breach of relevant laws sends a blunt message to the people: that corruption is tolerated. Thus corruption becomes the most frightening enemy of democracy, peace and development.

The following chart summarises the impact of judicial corruption on society.

IMPACT OF JUDICIAL CORRUPTION

PEOPLE'S LIVES



- Limits access to justice
- Violates the rights to non-discrimination and a fair trial
- Affects fundamental rights such as: the right to life, liberty, freedom of speech and expression, property, freedom of association, thought and religion
- Prevents victims from receiving appropriate remedies
- Allows for public money to be misused, depriving the tax-paying majority of proper state services and investments



ECONOMIC

- A judiciary vulnerable to financial temptations
 - Limited judicial taxes to the public budget
 - No money recovered from the corrupt
- Public money embezzled and limited resources for the state to fulfil its obligations towards the citizens
 - Prevents investments in a country, especially foreign investments
 - Increase economic gaps

SOCIAL CONTRACT



- Lack of check and balance system between branches of government
- No rule of law
- No supremacy of the constitution
- No democracy



SOCIETY

- Prevents development and innovation
 - Generates poverty and inequality
 - Prevents social justice
- Erodes public trust in judiciary
 - Prevents fair competition
- Erodes the social values and the democratic values
- Corrupt behaviour by judicial officials or tolerance of corrupt behaviour encourage bad practices by state powers, companies and people
 - Leads to people taking the law into their own hands, with additional violation of others' rights
- Prevents citizens from participating in democratic processes
 - Generates social segregation

JUDICIAL INSTITUTIONS



- Affects the independence of the judiciary, and makes it susceptible to political interference
- Limits the judiciary's capacity to uphold individual rights, lawfulness and constitutionalism
- Affects the impartiality of judicial decision makers
- Makes the judicial process unfair and leads to an improper administration of justice

1.3 CAUSES AND REMEDIES TO JUDICIAL INEFFICIENCY IN DETERRING CORRUPTION

The global fight against corruption depends upon the effectiveness of judicial systems. Only an independent, accountable, impartial judiciary, adequately empowered to adjudicate all the cases in its jurisdiction⁷ is able to uphold individual rights and prevent abuse of power by state and non-state actors. Yet, TI Chapters' work, as well as that of other organizations, has shown that the judiciary is often unable or unwilling to fulfil its mandate effectively. Corruption continues to distort judicial processes in many countries and effective interpretation and application of anti-corruption laws and standards is often still lacking.

Causes

The causes for judiciary's failures in sanctioning corruption are extremely diverse and range from lack of independence, integrity and accountability, to lack of courage, will, appropriate instruments or adequate resources. Yet, these causes can be structured into two major categories:

Core vulnerabilities that hamper the effectiveness of the judiciary as a whole, irrespective of the legal nature of the cases.

The core vulnerabilities are those aspects that affect the due process and overall functioning and performance of the judiciary the result of an improperly established rule of law in the country. In these cases, the constitutional safeguards for the judiciary are not sufficient to secure its independence, transparency, accountability or institutional capacity, or they are not implemented into a comprehensive legal framework that ensures their adequate application in practice. For instance, the appointment of judicial officials creates biases that affect the independence and impartiality of the newly appointed judges. Or the separation of powers is not adequately ensured and political interference by the Parliament affects the independence and impartiality of the judiciary. Or conflict of interest laws are not adopted further compromising the integrity of the judiciary. Or the lack of accountability mechanisms allows judicial officials to abuse their decision-making power in favour of a few. The core vulnerabilities must always be assessed against the national context where they happen, in order to determine their real scope and appropriate solutions.

Structural and functional gaps and loopholes that affect the phases of the criminal justice system

Loopholes exist when regulations or institutional instruments are missing. Gaps exist when there is a discrepancy between existing legal provisions and current judicial practices. Both loopholes and gaps prevent corruption cases from being effectively processed by criminal justice systems. Loopholes are usually the result of a poor legislative process or the lack of executive allocation of resources. Gaps are often the result of little judicial accountability in practice, despite the existence of the formal framework. If occurring, either gaps or loopholes prevent cases from following the normal course of the criminal justice system and are usually left unsanctioned due to procedural trickiness. It is important to note that the judiciary may still fail to effectively accomplish its role in sanctioning corruption caused by gaps and loopholes, despite the existence and enforcement of constitutional safeguards.

7. Guidance Note of the Secretary-General, UN Approach to Rule of Law Assistance, April 2008, page 6

Remedies

Implementing international principles and standards

Aware that the protection of all human rights depends upon the proper administration of justice, the international community has recognized in “international and regional human rights instruments as fundamental the right of everyone to due process of law, including to a fair and public hearing by a competent, independent and impartial tribunal established by law”⁸. Knowing that human rights protection is a global challenge reliant upon upholding national judiciaries, the international community has also developed a series of guiding principles and standards that should endow Governments with a sound foundation for building robust judiciaries.

If these standards were appropriately implemented into the national legal framework and judicial practice, judiciaries around the world would become more independent, impartial and accountable. Judiciaries would also become more efficient both in up-holding individual rights and in sanctioning corruption⁹. However, it is important to note that international organizations’ experiences in promoting such standards and encouraging judicial reforms have proven that long term change is elusive if the process does not incorporate meaningful participation and support of the national stakeholders¹⁰ or fails to adapt national standards to recognize more local legal traditions¹¹.

This Guide’s Second Chapter compiles principles and standards incorporated from many global or regional legal instruments, drawing on their common denominators. The Second Chapter is intended to outline the requirements for a national judiciary to become robust enough to effectively sanction corruption, while also observing the human rights of the perpetrators.

Considering the variety of national judiciary models, whether they are rooted in a common law, civil law, customary law or a hybrid system, these standards have the role of providing a reference and inspiration for national advocacy efforts, to which Transparency International encourages as many stakeholders as possible to contribute. Civil society may also use these standards as benchmarks against which they can hold their national judiciaries accountable. Where the standards here listed are not convergent with the national judiciary model, complying with the principles will ensure the robustness of the judiciary, while national stakeholders will have to identify the appropriate solutions to satisfy the requirements of the principle.

Collective efforts to close the gaps and loopholes

As already mentioned, meaningful participation and support by national stakeholders are crucial for reforming judiciaries and keeping them accountable for their successes and failures in sanctioning corruption. To substantiate stakeholder participation in an effort to strengthen their national judiciaries, a coherent analysis of the types, levels, locations and **remedies** of the gaps and loopholes affecting the performance of the criminal justice systems is essential. Stakeholder participation in this analysis is also part of their contribution to the advocacy efforts: changes determined by the judicial officials themselves and peer monitoring are key to sustainable changes.

Building on TI’s experience in working with the judiciaries, the Third Chapter of this Guide provides an inventory of gaps and loopholes that may affect each of the phases of the criminal justice system, together with recommendations for possible remedies, showing that they usually exceed the international reference framework. TI aims at developing a dedicated Scorecard tool to provide the national judicial stakeholders with an instrument to design knowledge based advocacy plans, with concrete advocacy targets to close the identified gaps and loopholes in their jurisdiction. This instrument will be part of the second generation of practical tools and approaches to facilitate the work in the sector and support the existing advocacy efforts.

8. Strengthening Judicial Integrity against Corruption, Global Programme against Corruption Conferences, Vienna, March 2001, page 3

9. Guidance Note of the Secretary-General, UN Approach to Rule of Law Assistance, April 2008, point B – Framework for strengthening the rule of law

10. Guidance Note of the Secretary-General, UN Approach to Rule of Law Assistance, April 2008, point A 5

11. Strengthening Judicial Integrity against Corruption, Global Programme against Corruption Conferences, Vienna, March 2001, page 7



PRINCIPLES AND MINIMUM STANDARDS FOR AN EFFECTIVE JUDICIARY

2.1 PRINCIPLES FOR AN EFFECTIVE JUDICIARY

Over the last 40 years international organizations, as well as professional bodies, have agreed to a range of international standards and principles regarding the conduct of judicial actors and the performance of judicial institutions. These international documents¹² set out the overarching principles that should guide the operation of an effective judiciary and list the detailed standards that ought to be in place to achieve these principles. Some of these international documents deal specifically with corruption, such as the United Nations Convention against Corruption; others focus on the ethical conduct of particular judicial sector actors, such as the Bangalore Principles of judicial conduct 2002¹³ which is concerned with standards to ensure the ethical behaviour of judges. Still others set out system requirements for the effective functioning of the different institutions of the judicial system that include, but are not limited to, anti-corruption measure, such as, the UN standards on prosecutors and judges.

This section sets out the principles that should guide efforts meant to strengthen judicial institutions and improve the behaviour of judicial actors. The principles that guide judicial systems are: lawfulness, independence, impartiality, integrity, accountability, transparency and proper administration of justice. What follows is an explanation of these seven principles, drawn from international documents.

LAWFULNESS

Lawfulness requires judiciaries to be empowered by the constitution¹⁴, to adjudicate the law, to competently apply the law and to follow only the laws and procedures emanating from the legislative body rather than from the executive.

The ‘separation of powers’ or the system of ‘checks and balances’ is a doctrine under which each of the three powers of state, the legislative, the executive and the judiciary, balances and censures the behaviour of the other two branches. The legislative body elaborates the rules, including those governing the constitution and functioning of the judiciary. The executive applies the rules and provides the lawmakers and the judiciary with the means for functioning. The judiciary checks the constitutionality and legality of the rules elaborated by the legislative body and the actions taken by the executive in applying those laws and rules. The judiciary upholds the rule of law and protects the fundamental rights of the people of a state.

INDEPENDENCE

Independence of the judiciary ensures that neither the legislative nor the executive, or any other outside actor, controls nor influences judicial decisions¹⁵. Judicial independence means that courts must not be subordinate to executive or legislative powers. Lower courts are entitled to make independent decisions, subject only to review by higher courts.

Judicial and prosecutorial independence helps establish an impartial judiciary and improves public trust in the courts. Prosecutorial independence, even in those jurisdictions in which they are not formally part of the judiciary, occurs when the decision-making of prosecutors is free from interference by any other state entity, including higher prosecutorial offices or courts.

12. A list of international standards is provided in Annex 1.

13. E/CN.4/2003/65, Annex, page 18

14. Guidance Note of the Secretary-General, UN Approach to Rule of Law Assistance, April 2008, point B – Framework for strengthening the rule of law, 1 Constitution or equivalent

15. See Value 1 of the Bangalore principles of Judicial Conduct

IMPARTIALITY

Impartiality of judges and prosecutors refers to their independence to make decisions in cases free from interferences or considerations such as personal interests, undue influence from peers or political actors, public pressure, fear of reprisals, concerns about career prospects, political affiliations, bribery or other corruption-related issues¹⁶.

Impartiality requires fair, objective conduct by the judge or prosecutor. A judge or a prosecutor can be independent, but not impartial, while in most cases the lack of independence leads to lack of impartiality as well. Impartiality of the court also means the equal treatment of all persons before the court, without discrimination on grounds such as gender, political affiliation, religion, race, colour, national origin, caste, disability, age, marital status, sexual orientation, social and economic status, and citizenship.

INTEGRITY

Integrity¹⁷ refers to the “behaviours and actions consistent with a set of moral or ethical principles and standards, embraced by individuals as well as institutions that create a barrier to corruption”¹⁸. It requires judges not to place themselves under any financial or other obligation to individuals or organizations that might influence them in the performance of their duties. The integrity of a judge derives from his or her conduct being above reproach and requires that justice is not only done, but it is also seen to be done”¹⁹.

The integrity of the judiciary implies compliance with relevant legal provisions and, more specifically, is characterized by three conditions: incorruptibility of decisions, abidance by the principles of transparency and competitiveness, good management of courts with regards to economy, efficiency and effectiveness²⁰.

ACCOUNTABILITY

Accountability is the concept that individuals, agencies and organizations (public, private and civil society) are held responsible for exerting their powers properly²¹. Judges and prosecutors must be accountable for their conduct to appropriate institutions established to maintain judicial standards, which are themselves independent and impartial. The judiciary must also be held accountable by the media and public opinion. Judicial officials are not above the law. Judges’ decisions are subject to appeal and review by higher courts.

Independence and accountability should be seen as the check and balance system of the judiciary and considered as inseparable. If there is independence with no accountability, then discretionary and abusive power can be exerted. But if there is accountability with no independence, there is no due process. Therefore, the standards for accountability shall always be seen as instruments to secure a fair independence.

16. See Value 2 of the Bangalore principles of Judicial Conduct

17. See Value 3 of the Bangalore principles of Judicial Conduct

18. Anti-corruption Plain Language Guide, Transparency International, July 2009, page 24

19. Art. 3.2 of the Bangalore Principles of Judicial Conduct

20. Transparency International Romania, Integrity Guide for the Management of the Judicial System, 2008, p. 19, <http://www.transparency.org.ro/publicatii/publicatiiti/2008/GhidManagementInstanteTI.pdf>

21. Anti-corruption Plain Language Guide, Transparency International, July 2009, page 2

TRANSPARENCY

Transparency is the characteristic of governments, companies, organizations and individuals being subject to disclosure of information, rules, plans, processes and actions. As a principle, public officials, civil servants, managers and directors of companies and organizations, and board of trustees have a duty to act visibly, predictably and understandably to promote participation and accountability²².

For the judiciary, transparency means that laws, regulations, institutional structure, judgments and decisions are available to the public. Transparency also incorporates the right to a fair and public hearing by a competent, independent and impartial tribunal established by law, as prescribed by the Universal Declaration of Human Rights. Moreover it implies the right of the parties to receive a decision including reasons for the decision, written in an accessible language, easily understandable by those who have no legal background, thus also performing an educational role. If it is a court decision, it should be pronounced in a public hearing. Transparency is also a safeguard against judicial retaliation targeting political or economic opponents and against unequal treatment before the law.

PROPER ADMINISTRATION OF JUSTICE

The proper administration of justice observes individual rights, provides victims with adequate remedies, applies proportional sanctions to the guilty, upholds constitutionalism and the rule of law, performs its duties in a timely manner with professionalism, and secures the best use of the available resources ensuring predictability of its decisions and restoring trust in the judiciary.

22. Anti-corruption Plain Language Guide, Transparency International, July 2009, page 44

2.2 MINIMUM STANDARDS TO MEET THE PRINCIPLES FOR AN EFFECTIVE JUDICIARY

Minimum standards are informed by regional and international regulatory frameworks. Some standards are the output of inter-governmental debates, while others are the result of judicial professionals who have turned their national experiences into international standards²³. Development of these frameworks over the past few years has encouraged states to align their principles with these higher standards and to encourage their judiciaries to fulfil their responsibilities with the utmost integrity.

The most comprehensive and widely ratified international anti-corruption convention – the United Nations Convention against Corruption (UNCAC) at art.11 asks member states to take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary, in accordance with the fundamental principles of their legal system and without prejudice to judicial independence. Individual references as well as a detailed matrix on the standards below and their international grounds are provided in Annex 1.

Where international standards were not explicit or comprehensive enough to satisfy the strengthening of the judicial anti-corruption capacity, proposed standards have been developed as an outcome of Transparency International's expertise worldwide.

LAWFULNESS

The principle of lawfulness requires the judiciary to operate in accordance with the following standards:

1. The procedural framework in which the courts and prosecutors' offices operate is provided for by legal provisions adopted by the legislative body. (A1)
2. (In countries where there is a written constitution) the fundamental rights and freedoms of individuals are stipulated by the constitution and elaborated in legal provisions adopted by the legislative body²⁴. (A2)
3. Criminal offences are established by laws adopted by the lawmakers and cannot be altered by the executive, nor extended to similar facts through extrapolation. (A3)
4. Criminal sanctions are applied only to criminal offences stipulated by law. (A4)
5. Criminal offences and guilt are demonstrated only through evidence obtained in accordance with procedural rules that have been applied in harmony with fundamental rights. (A5)
6. Judgments and decisions shall be grounded in the law and the legal provisions applicable should be indicated as such in the decisions²⁵. (A6)
7. Judges, prosecutors and court officials shall be consulted when new legislation affecting the functioning of the judiciary or fundamental rights is developed. (A7)

23. A detailed matrix on the minimum standards and their international grounds can be found in Annex 1.

24. Guidance Note of the Secretary-General, UN Approach to Rule of Law Assistance, April 2008, point B – Framework for strengthening the rule of law

25. MAGISTRATES ETHICS AND DEONTOLOGY, Council of Europe, http://www.coe.int/t/dghl/cooperation/lisbonnetwork/themis/Ethics/Paper2_en.asp

INDEPENDENCE

Safeguards

1. The constitutional and legal framework of a country provide sufficient safeguards on the separation of powers, thus ensuring the judiciary is independent from the executive and the legislative. (B1)
2. The legal status of judges and prosecutors, as well as their independence, are clearly established by the constitution and laws, (in case of prosecutors and only where the law stipulates it). (B2)
3. An independent and impartial Judicial Council shall be established by law, with the aim of overseeing and protecting the independence of the judiciary, its reputation, and standing against any interference. Its members shall be elected by their peers, based on objective criteria. Where there are representatives from the executive and legislative branches they should not form a majority, nor have decisional powers. The Judicial Council shall manage the appointments of the judicial officials and their careers, as well as perform the role of a disciplinary body. Representatives of civil society should be allowed to participate in the Council's meetings as observers. (B3)

Appointment of judicial officials

4. The appointment/election procedure should be publicized, contain clear and objective criteria, allowing candidates and the public to have a clear understanding of the requirements and should also allow for monitoring by independent civil society groups. (B4)
5. Judicial appointments should be merit-based and take into account the integrity, as well as, the professional ability of the appointee. Candidates should be required to demonstrate a record of competence and integrity. (B5)
6. The appointment/election procedure should contain sufficient safeguards to ensure that after the appointment, no links or bondage will be maintained between the appointee and the appointing committee, such as to influence his/ her further performance. (B6)

Evaluation and promotion of judicial officials

7. The Judicial Council should ensure that the promotion system, in countries where it exists, is based on clear and objective criteria, on merit and performance, and is transparent. (B7)
8. Professional evaluations should be grounded on objective criteria regarding the performance of duties. Candidates should be required to demonstrate a record of competence. (B8)
9. Judges and judicial officials shall have access to ongoing trainings and professional development programs. (B9)

Security of tenure

10. Judges should not easily be removed from office: they should be appointed/elected for a determined period of time and should not be removed from that position unless found responsible of severe misconduct or criminal offences, particularly corruption. (B10)
11. Judicial officials should not be moved from the position they have been appointed to unless they expressly request removal. (B11)
12. Judicial officials should benefit from special pension conditions. (B12)
13. Mechanisms to remove judges and prosecutors should be transparent and fair and every removal should be justified. Appeal mechanisms shall be put in place in order to allow for decisions to remove a judge from office to be appealed. (B13)
14. High level protection from threats and intimidation, including security guards and physical protection should be available to judicial officials and their family members. (B14)

Disciplinary and criminal investigations

15. A special code of conduct shall be designed for judicial officials and its application monitored by an independent Judicial Council. (B15)
16. The Judicial Council should have a disciplinary role as well as provide assistance and advice on ethical issues faced by judicial officials. (B16)
17. Disciplinary procedures regarding judicial officials should be undertaken only with regard to their conduct or breaches of the code of conduct, and not with regard to the content of the cases they judge: claimants, respondents or defendants cannot bring administrative complaints against judges who have heard their cases in lieu of an appeal. (B17)
18. Disciplinary sanctions cannot be applied for divergent decisions in different cases, or for decisions diverging from the ones of the superior court, if they are properly motivated. (B18)
19. The investigation of judges and prosecutors shall be subject to special rules in order to avoid misuse motivated by revenge of those affected by the judge's decisions. Such rules shall not grant judicial officials immunity from prosecution for corruption and shall not interfere with the timely conclusion of a case. (B19)
20. The decisions issued by the Judicial Council in disciplinary matters shall be the subject of review by an independent court. (B20)
21. Judges and prosecutors cannot be civilly or criminally liable for the decisions they issue, unless there is proved corruption. (B21)

Financial independence

22. Judicial official salaries should be established by law issued by the legislative and shall not be subject to adjustments unless there are major fiscal reforms. (B22)
23. Judicial official salaries cannot be subject to adjustments by the executive. (B23)
24. Judicial salaries and pensions should be proportionate to the serious responsibility tasked to them. They should also be proportionate to the experience, performance and professional development of judges. Changes regarding the level of salaries and pensions, as well as regarding the pension age shall be done on a gradual system, in order to avoid hidden removal of undesirable judges or prosecutors. (B24)
25. The judiciary shall have its own budget, ideally a fixed portion of GDP, which it administers independently. (B25)
26. The judiciary shall have a sufficient budget in order to ensure the appropriate number of competent judicial officials and a digitalized system that allows for speedy resolution of judicial cases and for dealing efficiently with heavy caseloads. (B26)
27. The budget shall be sufficient to ensure the judiciary's independence to engage any mechanism necessary to establish the truth – the need for expertise or experts' opinions, witnesses hearings, valuations, seizure of assets, interpretation etc. (B27)

Independence of the judicial proceedings

28. Cases should be distributed to different panels randomly, observing the specialization rules for each court. (B28)
29. The manager of the court or prosecutors' office should mostly have administrative competences regarding the organization and functioning of the court, and shall not have any undue interference with the management of the cases. (B29)
30. Case removal from a judge or prosecutor shall be made only in limited situations expressly stipulated by law. These limited situations will include the inability of a judge or prosecutor to perform his/her duties for a period which could potentially affect the proper administration of justice (for health, personal or professional reasons), and severe misconduct or corruption. (B30)
31. Judges and prosecutors should perform their duties without undue interference. (B31)
32. Decisions of court panels shall be taken by a majority of votes, allowing for separate opinions. (B32)
33. Judges shall be free to express their dissenting opinions which shall be recorded as such. (B33)

34. Hearings shall be recorded for later appeals of the case. (B34)
35. Judges, including lay judges and jurors cannot receive any instructions regarding the resolution of the case, except that jurors may be instructed by the main judge with regard to the applicable law. (B35)
36. The decisions of the courts are binding for all parties and public institutions and must be enforced as long as they are no longer subject to any appeal. (B36)
37. The case load shall be such as to give judges enough time to have a thorough understanding of each case and to allow for analysis of all evidence. (B37)

Rights and obligations

38. A judge shall exercise his/her freedom of speech and freedom of association, always conducting himself/ herself in such a manner as to preserve the dignity of the judicial office and avoid the appearance of undue influence, in the judicial act, thus preserving the impartiality and independence of the judiciary. (B38)
39. Judicial officials cannot be politically affiliated and cannot perform duties in the executive or other official body if these affect their independence. (B39)

IMPARTIALITY

1. The composition of the court or judicial panel has to be determined using objective criteria. (C1)
2. There should be specific rules to enable judges and prosecutors to avoid conflicts of interests and appropriate procedures for judges and prosecutors to withdraw from cases. (C2)
3. Situations in which a judge or a prosecutor must step down from a case must include, but not be limited to: (C3)
 - a. Personal, interest in a case, be it direct or through close relatives
 - b. Previous contractual relations with one of the parties
 - c. Hierarchical links with one of the parties or his/ her close relatives
 - d. Political linkages to one of the parties
 - e. Where one and the same person has the successive exercise of functions and has already expressed an opinion on the guilt of the accused (e.g. the investigative and trial judge)
4. The law contains special provisions that entitle parties to ask for a judge or a prosecutor to withdraw from a case in situations that must include, but not be limited to: (C4)
 - a. Hostility with the parties during the case ruling
 - b. Ill will
 - c. General conduct of the judge that may raise an objective suspicion of partisanship – i.e. refusal to accept evidence
 - d. Public declarations of the judge about his/ her opinion on the guilt of the accused, when these public declarations have in any way breached the confidentiality of the case
 - e. All the situations mentioned under point 3
5. The judge and the prosecutor conducts the proceedings always observing that all the parties enjoy the same rights and have the possibility to exercise them. (C5)
6. All the parties are allowed to respond to the evidence and are treated equally. (C6)
7. The judges shall apply the same analysis system of the evidence to all similar cases and impose the same sanctions to similar crimes, irrespective of the position or quality of the parties. Corruption cases must be investigated, tried and sanctioned using the same standard in order to avoid that corruption sanctioning is a political weapon of the parties in power against the opposition. Sentencing guidelines should be elaborated to rule out reasonable suspicions of partiality. (C7)
8. The judicial decisions are always reasoned and the reasoning includes sufficient arguments to convince the parties and any independent reader that all the evidence has been heard and analysed on the legal grounds on which each of them has been accepted or dismissed. The sentence must be impartial and be seen to be impartial by any objective and independent observer. (C8)

INTEGRITY

1. Judicial officials shall not request, nor accept directly or through close relatives or any other middlemen, any gift or financial or non-financial reward for performing their duties. (D1)
2. Undue influence and corruption of judicial officials are subject to prosecution and sanctions. Prosecution and sanctions apply both to the judicial official being corrupted and those exerting the influence. (D2)
3. A detailed code of conduct for all judicial officials should be in force. (D3)
4. Conflicts of interests are forbidden²⁶. (D4)
5. Declarations of interests and wealth are mandatory for the judicial officials and shall be checked by the Judicial Council. (D5)
6. Corrupting judicial officials should be a criminal offence. (D6)
7. The judicial officials shall not accept, nor hold any other office, except for academic positions, as long as they do not create a bias which affects his/her impartiality and independence. (D7)
8. Judicial officials shall not enjoy any immunity regarding corruption offences. (D8)
9. Parties shall have the right for an exceptional appeal against a decision issued by a judge who has been sanctioned for corruption in connection with that case. (D9)
10. Specific regulations against revolving doors shall be adopted with regard to judicial officials to prevent situations in which even the appearance of impartiality of the court is challenged, such as former judges performing as attorneys and representing their clients in front of their former colleagues. (D10)

ACCOUNTABILITY

Regarding the judicial process

1. Decisions are reasoned and indicate both the facts and the applicable law²⁷. (E1)
2. Decisions must include consideration of all evidence. (E2)
3. Reasons are provided in writing so that parties can read and understand them (E3)
4. The reasons are written in plain language and accessible to laypersons. (E4)
5. In legal systems where the lay judges or jurors are not requested or not permitted to provide reasons for their decisions, the proper administration of the case shall allow the accused to determine the factual and legal basis on which he / she is convicted on (E5)
6. Prosecutors' decisions are subject to hierarchical or court review (E6)
7. Any party has the right to an effective appeal against a first instance decision. (E7)
8. The appeal is heard by a panel of judges, whose number is fixed by law (E8)
9. The grounds for appeal are provided by law (E9)
10. The proceedings are recorded and their transcripts are kept available. (E10)
11. In common law systems, the judicial precedent is always considered by the court before a sentence is issued, in order to ensure equal treatment for the same crimes. In civil law systems, where judicial precedent is not mandatory, the courts shall always look for unitary practice in order to ensure predictability and equal treatment for the same crimes²⁸. (E11)

26. For details see point 3 and 4 at Impartiality

27. See also point 6 at Lawfulness

28. Where the legal framework is disputable, in order to ensure unitary practice, the Supreme Court may issue an interpretation decision mandatory for the lower courts in terms of the understanding of the law.

Regarding the behaviour of the judicial officials ²⁹

12. Judicial officials are criminally liable for corruption and disciplinarily liable for severe misconduct. Limited immunity for judges should be granted in order to ensure they deliver justice free from fear of civil suit. (E12)
13. An independent body must investigate complaints against judges and prosecutors and motivate every decision in this regard. (E13)
14. Parties and civil society may submit disciplinary complaints against judicial officials. (E14)
15. Parties can effectively ask a judge or a prosecutor to withdraw from a case if he/ she has a personal or professional interest in it³⁰. (E15)
16. Judges and prosecutors can be removed for severe misconduct based on a fair and transparent procedure. (E16)
17. Judges, prosecutors and judicial officials are requested to disclose their wealth and incomes³¹. (E17)
18. If an administrative or criminal procedure is initiated against a judicial official, he/ she cannot end his / her tenure upon request, nor retire or resign in order to avoid sanctions, until the procedure is closed. If tenure ends because of severe misconduct or corruption, judicial officials cannot enjoy the special pension. (E18)
19. Confidential whistleblower complaint procedures should be available. (E19)
20. Sanctions for corruption of judicial officials shall be effective, proportionate and dissuasive, and include financial and criminal penalties, including confiscation of illicit gains³². (E20)

Judiciary's public accountability

21. Confidential The Judiciary shall publish annual statistics about the cases brought before it/ handled, the length of the procedures, the amount of judicial taxes received, the total budget used, the number of staff, the costs of its operations and the total amount of the proceeds of crimes recovered. (E21)
22. Civil society shall be able to challenge the reports of the courts and to request additional information. (E22)

29. See also standards at Independence

30. See also standards at Impartiality

31. See also standards at Integrity

32. Art. 3 of OECD Anti-Bribery Convention: http://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf; Parties must take such measures necessary to provide that the bribe received by a government official and profits received by the giver as a result of the bribe are either confiscated or their value reflected in monetary sanctions

TRANSPARENCY

Regarding the functioning of the judiciary

1. The public shall have access, through an open web portal, to information regarding the following: existing laws and bylaws governing the judiciary, proposed changes in legislation, judicial vacancies, recruitment criteria, judicial selection procedures and proving documents, candidate' information and results, management plans (if any), and reasons for judicial appointments calendar, etc. (F1)
2. The public shall have access to information regarding the members of the commissions appointing, evaluating, carrying out disciplinary procedures and deciding upon removal of judges. (F2)
3. The public shall have access to annual statistics about the cases handled, the sanctions applied, the length of the procedures, the amount of judicial taxes received, the total budget used, the number of staff, the costs of its operations and the total amount of corruption proceeds that have been confiscated. (F3)
4. The public shall be constantly informed, in an impartial manner, about pending cases and eventual resolutions, especially those of public interest such as corruption cases. Dissemination of this information shall not compromise confidential data and shall be done with utmost discretion to respect the presumption of innocence.. (F4)
5. Information about public hearings and decisions shall be made available through an open web portal that centralizes data from all the courts and organizes it by levels of jurisdiction and geographic areas. (F5)
6. The media should be allowed to comment on legal proceedings and report suspected corruption or bias. However, the media shall not misuse the information to create a false public impression about the innocence or guilt of a person, nor shall it attempt to influence the judges or prosecutors involved in the case. (F6)

Regarding judicial process

7. Parties shall have access to a public hearing before an independent and impartial court. (F7)
8. The parties are entitled to be present at hearings in person and not only through representatives. (F8)
9. Civil society and media shall have access to the hearings. (F9)
10. Decisions shall be pronounced in public hearings, together with their reasons. (F10)
11. Parties shall have access to the court rulings. (F11)
12. Parties shall have access to an interpreter, if they do not understand the language the court uses. (F12)
13. The defendant, as well as the civil parties shall have the right to see the entire file in order to properly prepare his/ her/ their defence. (F13)
14. The defendant's rights can be restricted only for reasons justified by national security and protection of witnesses. (F14)
15. The reasons of the decisions are written in an accessible language so that the defendant can understand them. (F15)

PROPER ADMINISTRATION OF JUSTICE

1. Judicial proceedings have to be expeditious, according to the complexity of the case, and should always observe the procedural rules and the protection of fundamental rights. (G1)
2. A judge's caseload shall ensure sufficient time for him / her to understand the case, analyse all the evidence submitted and make decisions in good faith. (G2)
3. Judicial officials must always observe fundamental rights and procedural rules when gathering evidence, in order to avoid obtaining evidence unlawfully. Using unlawful evidence may render the whole process unlawful and thus grant impunity to the guilty due to violation of his/ her human rights. (G3)
4. The defendant shall enjoy the presumption of innocence until a final conviction is issued. (G4)
5. All sanctions and measures applied by the judiciary must be proportional. (G5)
6. Immunity rules for members of parliament or judicial officials shall respect their independence, but not prevent justice. (G6)
7. Courts or other public institutions should provide information regarding pending cases with discretion and circumspection to avoid public speculation as to the defendant's guilt or innocence. The court should avoid any suggestion to indicate its ruling beforehand. (G7)
8. Media campaigns that can influence public opinion, jurors or lay judges are strictly prohibited. (G8)
9. The legal framework, particularly in criminal cases, shall only be altered by amendments adopted by the legislative body. (G9)

GAPS AND LOOPHOLES AFFECTING THE PERFORMANCE OF THE CRIMINAL JUSTICE SYSTEM

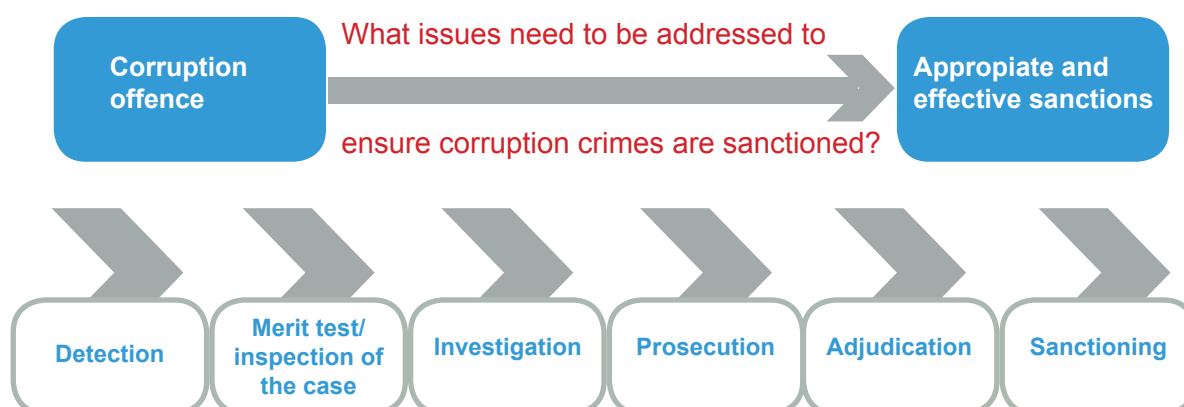


3. GAPS AND LOOPHOLES AFFECTING THE PERFORMANCE OF THE CRIMINAL JUSTICE SYSTEM

The standards detailed in Chapter 2 may be successfully implemented, but a judiciary may still fail to efficiently sanction corruption due to gaps and loopholes that prevent a case from successfully proceeding through the different phases of the criminal justice system: detection phase, merit test, investigation, prosecution, adjudication and final sanctioning.

This Chapter lists the most commonly met gaps and loopholes affecting each of the phases of the criminal justice systems, as resulting from the National Integrity System Assessments and the experience of the Advocacy and Legal Advice Centres established by TI around the globe. They are also informed by publications and recommendations issued by several international organisations, such as the United Nations and its branches, the International Commission of Jurists, the World Bank, the Judicial Group on strengthening Judicial Integrity convened by the Centre for International Crime Prevention, the TI Global Corruption Report 2007 and GRECO, among others.

For each identified gap or loophole a corresponding recommendation for remedy has also been listed to inform users of this Guide about the possible next steps. TI encourages governments and judiciaries, as well as civil society representatives, to carry out a careful analysis of particular gaps and loopholes affecting the performance of their national judiciary, phase by phase, and formulate relevant solutions to advocate for, in order to sustainably strengthen the capacity of the judiciary to curb corruption.



DETECTION

Before a crime reaches the first phase of the criminal justice system (the investigation phase) it needs to be detected. The 'detection' stage refers to how a state and society uncovers or reports corruption, prior to judiciary engagement. In the following table, common gaps and loopholes are listed in the column on the left. In the right-hand column anti-corruption measures or standards that could be implemented to plug the loopholes and counter the corruption risks are listed.

GAPS AND LOOPHOLES

- Limited awareness regarding the meaning of corruption
- Limited and discretionary access to complaint mechanisms
- Limited professional capacity to detect corruption
- Limited competencies and capacity to secure evidence
- No institutional or international cooperation
- Limited accountability of the authorities with regard to their performance in detecting corruption due to limited transparency concerning the solutions provided in the detected corruption cases
- There are jurisdictions in which protection of reporting persons is not provided.
- Across the national or federal jurisdiction there is no log recording and monitoring of the unique numbers assigned to each reported or identified case of corruption.

RECCOMENDATIONS TO COUNTER THEM

- Regular citizens and companies have unrestricted rights to report cases
- NGOs are recognised as public interest litigants
- Administrative bodies and other public entities, as well as public officials have legal obligations to report corruption and are legally liable if they do not report it
- Anticorruption bodies and antifraud institutions should report all cases they investigate and the follow-up of those cases
- Judicial authorities have legal competence to start investigating / prosecuting cases revealed by media reports and by any other sources, through ex-officio undersigning the case procedure
- The statistic data on the results of the case detection performance are transparent and provide grounds for keeping public entities accountable for their capacity in detecting corruption
- Administrative, anticorruption and antifraud bodies, as well as other public entities with investigative powers have the legal and the practical means to preserve the evidence they have found and which have led to their reporting of corruption cases
- Regular citizens and companies can record evidence of the corruption they report (such as documents, photos or audio / video recordings of the bribe request) and are admissible to be analysed by the court
- Adequate witnesses and whistleblowers' protection
- A 'Single Record of Corruption' system to facilitate monitoring of the progress of the case

MERIT TEST

This phase is dedicated to matching the alleged facts with the applicable legal provisions to make an initial determination as to the commission of a crime. By the end of the inspection of a case, each of the facts presented will get a legal meaning and the respective legal treatment applicable will be determined.

GAPS AND LOOPHOLES

- Limits of the legal texts, which prevent real facts from being legally qualified (lack of up-dated legislation in accordance with the actual corruption practices)
- Restrictive legal requirements regarding the gathering of evidence or proof relating to corruption crimes (i.e. to be charged with corruption, the defendant must be caught in the act of committing the alleged offence *ie bribery- in flagrante delicto*)
- Lack of common understanding and equal treatment of corruption cases and procedural requirements
- Discretionary power regarding the solutions adopted
- Limited accountability for the solutions adopted

RECCOMENDATIONS TO COUNTER THEM

- Clear definitions of corruption crimes, corruption related crimes and jurisdictional abilities
- Un-fragmented judicial practice regarding the admissibility of evidence in corruption cases.
- Legal obligation for judicial decision makers to provide complete explanation of decision. Sentencing guidelines should be drawn up.
- The possibility for appeal against / review of the dismissal / rejection first decision of the case – before it becomes final
- The possibility for public interest litigants, such as NGOs to challenge dismissal/ rejection decisions
- Appropriate and long statute of limitations
- Inapplicability of the opportunity principle in cases of corruption

INVESTIGATION PHASE

The investigation phase consists of the collection of evidence, interviewing the involved parties and witnesses and compiling a case to be sent to the prosecution for consideration of whether to bring charges. In those jurisdictions where a case may be directly referred to the prosecution office, the investigation is conducted under the prosecutor's supervision.

GAPS AND LOOPHOLES

- The investigative authorities do not have appropriate or sufficient legal empowerment to perform their activities in a non-mediated way.
- Selective and insufficient collection of evidence
- Collection of evidence, in breach of the procedural rules and human rights protection, affecting their admissibility in court
- The work of gathering evidence is not always done in a proactive way. Therefore the right to propose evidence collection, mandatory for the investigation, is not sufficiently granted for the claimant
- Limited access of the judicial authorities to information and data
- Immunity of public officials
- Limited or vitiated right to defence
- Unsupported dismissal of evidence by the investigation organization
- Infringement of the innocence presumption through misuse of public communication
- Lack of channels for challenging the solutions

RECCOMENDATIONS TO COUNTER THEM

- The investigative authorities have appropriate legal powers to carry out their activities
- Investigative bodies have access to key data-bases and/or information they need, including information protected in other circumstances by the banking secrecy
- Investigation is fulfilled in a timely and legal manner
- The collection of evidence is done in a proactive way, involving the knowledge of complainants who should have a right to propose ways to collect evidence
- The rejection of evidence by investigating authorities is subject to appeal before a prosecutor or an independent judge
- The decisions taken are justified in detail, providing the parties with an adequate understanding of the reasons
- The decisions regarding the dismissal of the case are subject to appeal/ review, upon request from the interested parties/ victims of corruption (natural or legal persons) – before they become final
- The confidentiality of the investigation is ensured and guaranteed
- Indirect information are adequately verified to accept or dismiss them as proofs

PROSECUTION PHASE

The prosecution phase involves prosecutors receiving a case file and evidence from the investigating authority and considering whether to proceed with charges. However in some jurisdictions prosecutors will have already been involved at the investigation stage.

GAPS AND LOOPHOLES

- Public officials enjoy immunity from prosecution
- Limited access of prosecuting authorities to information and data
- Undue influence or pressure regarding the management of a determined case, particularly through hierarchical mechanisms
- Unjustified case removal
- Preferential treatment of the cases, depending on the position of the defendant or his / her political affiliation
- Lack of channels for challenging decisions
- Limited accountability and transparency of the performance of prosecutors
- Short statutory limitations
- Lengthy procedures
- Public prosecutors' monopoly over raising charges in corruption cases.

RECCOMENDATIONS TO COUNTER THEM

- Prosecutors have full investigative powers for corruption cases without any preliminary approval from a side body
- The prosecutors can collect evidence without restrictions
- All decisions regarding collection of evidence are legally enforceable and mandatory for all entities and persons without restrictions (no secrecy boundaries, national security and so on)
- The case is managed by prosecutors without hierarchical or outside undue interference
- The case assigned to a given prosecutor may not be redistributed to another prosecutor without a preliminary analysis of whether the removal represents an interference with case management
- The prosecutors' decisions of withdrawing or ending the case can be the subject of appeal or review, upon request from the interested parties
- The prosecution must ensure equal treatment for all investigated persons, irrespective of their political affiliations
- Prosecution offices are publicly accountable for their performance, being required to disclose the evaluation of the casework both as a detailed statistical report and as case by case (with respect of individuals' rights).
- Undue interference with the judicial investigation or attempts to interfere with prosecutors' or judges' independence is a regulated criminal offence.
- The criminal procedural code provides the interested parties with the right to submit amicus-curiae petitions and to follow the case.
- Legally stipulate the possibility to reopen a dismissed corruption case if new evidence is discovered.

ADJUDICATION

The court trial – and any subsequent appeals - of a case consist of a number of steps in which a judge or court officials, such as clerks or jurors, may exert discretionary power in the decision-making process. Discretionary power entails corruption risks: decisions may not be made in accordance with the interests of justice but rather judges or court officials may be bribed or pressured to decide in a certain way. There are numerous areas in which judges and court officials may exercise discretionary powers, for example in the admission of evidence, including whether to admit witness testimony; imposing interim judicial measures, deciding on the facts of a case, applying the law to the facts, deciding whether to convict the accused and deciding whether to use international legal cooperation and legal mutual assistance mechanisms.

GAPS AND LOOPHOLES

- Limited access of the parties to the case file
- Case allocation based on subjective criteria
- Judges must limit the analysis of the case to the file submitted by the prosecutor
- Court hearings are not public
- Limited access of the judge to evidence or data held by third parties
- Sanctions applied are not proportional to the gravity of the facts, nor are effective and dissuasive
- Extensive confiscation rules are not in place
- The arbitrary interpretation of rules of procedure by judges, during the trial of the corruption case.

RECOMMENDATIONS TO COUNTER THEM

- Cases are randomly distributed to court judges
- Cases assigned may not be removed and re-assigned to another judge without guarantees that such decision is not an undue interference
- Criminal procedural code provides the interested parties with extensive rights to follow a court case
- Criminal procedural code provides the interested parties with rights to submit intervention requests or amicus-curiae submissions to cases, as well as the right of strategic litigants to actively participate in the case trial
- Judges have unrestricted access to all evidence and can order mandatory disclosure to all public and private entities
- All the decisions made by the court during a trial or appeal should be fully reasoned and justified by the judge or court official.
- Objective instruments are available to quantify the impact of a criminal action in order to establish the appropriate extent of the punishment
- Civil compensation may be one of the sanctions for corruption offences
- Those who benefit indirectly from the proceeds of corruption should also be subject to sanctions
- Guidelines on unitary interpretation of the law are provided by the Supreme Court in civil law systems, in order to ensure the predictability of the decisions.
- Sufficient and satisfactory legal guarantees and physical protection are provided to judges adjudicating highly sensitive corruption cases

SANCTIONING PHASE

Sanctions should not be limited to a declaration of guilt, but should also include appropriate and effective civil and criminal sanctions, as well as the enforcement of those sanctions.

GAPS AND LOOPHOLES

- Decisions are not enforced by the competent bodies
- Lack of objective criteria for the identification of corruption proceeds/ assets to be recovered/ confiscated.
- Limited international cooperation in matters of extradition of persons convicted for corruption and in tracing, freezing and confiscating assets pertaining to persons convicted for corruption in a different jurisdiction.
- Lack of information regarding the enforcement of sanctions
- Off-shore, safe heavens and banking secrecy are used to hide the proceeds of corruption

RECCOMENDATIONS TO COUNTER THEM

- Legal framework for extended confiscation is in place
- The sanction is enforced immediately and all cross-jurisdictional arrangements are in place for international legal assistance
- The respective authority in charge with enforcing the criminal sanctions periodically reports enforcement statistics
- The national legal framework recognizes decisions sanctioning corruption made by other jurisdictions and enforces them properly
- Amnesty, reprieve and commutation of sentence shall have dedicated legal framework for corruption cases
- Sanctioning decisions regarding corruption are made publicly available to allow for social sanctioning as well
- Denial of entry for people convicted for corruption in a different jurisdiction.



ANNEX I

MATRIX ON THE INTERNATIONAL GROUNDS FOR JUDICIAL STANDARDS



Anexx © Andreyuu | Dreamstime.com - Set Of Law Photo



[illegible]

[illegible]

CENTRE OF EXPERTISE IN JUDICIARY @ TRANSPARENCY INTERNATIONAL ROMANIA

37

CENTRE OF EXPERTISE IN JUDICIARY @ TRANSPARENCY INTERNATIONAL ROMANIA

TRANSPARENCY
Regarding the functioning of the judiciary

[illegible]

Universal Declaration of Human Rights	UNCAC	UNCAC - Technical guide	Bangalore principle for judicial conduct ¹³	Basic Principles on the Independence of the Judiciary ²⁴	Procedures for Basic Principles ²⁵	Strengthening Judicial Integrity against Corruption ²⁶	Guidelines on the role of prosecutors ²⁷	UN Convention Against Transnational Organized Crime	GRECO Evaluation	International Covenant on Civil and Political Rights	Montreal Declaration ²⁸	Ibero-American Summit ²⁹	American Declaration of the Rights and Duties of Man	Mt. Scopus Standards ³⁰	IBA Minimum Standards ³¹	Beijing Statement ³²	European Charter ³³	Recommendation No. R (94) 12 ⁴⁴	CM(2010)147 ⁴⁵	Option no. 3 of CCJE ⁴⁶	Option no. 1 (2000) of CCJE ⁴⁷	Limassol Conclusions (CMJA) ⁴⁸	Council Framework Decision 2001/220/JHA ⁴⁹	New Delhi Standards ⁵⁰	Straus Principles ⁵¹	The Cairo Declaration ⁵²	Commonwealth principles on the three branches of Government	African charter on human and peoples' Rights	Plan of action for Africa on ⁵³	African union convention on preventing and combating corruption	Combating corruption in Judicial Systems	Asian Human Rights Charter	EC Green Paper ⁵⁴	The Universal Charter of the Judge	Beirut Declaration	European Convention of Human Rights	ECHR - Civil Limb ⁵⁵	ECHR – Criminal Limb ⁵⁶	GCR 2007 ⁵⁷	Advocacy Toolkit ⁵⁸																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																											
PROPER ADMINISTRATION OF JUSTICE																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																			
31. Judicial proceedings have to be expeditious, according to the complexity of the case, and should always observe the procedural rules and the protection of fundamental rights						pg. 9			A. 14, 3 (a)								P. 6, p. 1.5	P. 3, p. 1, V; P. 3, p. 3 (b), V	P. 4, p. 26	P. 3, p. 13; P. 5, p. 24																	Pg. 50-55	Pg. 41																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																													
32. The caseload a judge has to deal with shall ensure sufficient time for him / her to understand the case, analyse all the evidence submitted and make decisions in good faith			R3: Q2: Point 6									P. 3, p. 1, p. 42, III (d)	P. 5, p. 26		A. 10 (ix), (xi)																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																				
33. Judicial officials must always observe fundamental rights and procedural rules when gathering evidence, in order to avoid obtaining evidence unlawfully. Using unlawful evidence may render the whole process unlawful and thus grant impunity to the guilty due to violation of his/her human rights.	A. 11																	P. 3, p. 1, V; P. 3, p. 3 (b), V	P. 3, p. 13; P. 4, p. 17; P. 5, p. 24																				Pg. 24-25																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
34. The defendant shall enjoy the presumption of innocence until a final conviction is issued	A. 11																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																		
35. All sanctions and measures applied by the judiciary must be proportional.	A30																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																		
36. Immunity rules for members of parliament or judicial officials shall respect their independence, but not prevent justice		Value 2.4						R1: Part 2: GPC3	Art 14, 2.	4									P. 3, p. 14	P. 4, p. 2.2.2.																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																															
37. Courts or other public institutions should provide information regarding pending cases with discretion and circumspection, and avoid public speculation as to the defendant's guilt or innocence.								R2: Part 2: 2.1											P. 4, p. 26			Art. 8 (i)		A. 33, 35																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																											
38. Media campaigns that can influence public opinion, and influence jurors or lay judges are strictly prohibited								R1: Part 2: GPC3			Ch.1	6.3							P. 7, p. 40					A. 33, 35																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																											
39. The legal framework, particularly in criminal cases, shall only be altered by amendments adopted by the legislative body.		II.3. pg.116					A 8 A 9	R1:Part 1: 3.1; 3.2.; R2: Part3: A14, 19; R3: Q1: Art.2, 5, 3, 19;		P. 1							P. 5, p. 1.2	P. 1, p. 2 (a)		P. 6, p. 34									P. 9. Objective																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																						</



ANNEX II

TI MOVEMENT EXPERTISE IN STRENGTHENING THE JUDICIARY

Anexx © Andreyuu | Dreamstime.com - Set Of Law Photo

TI MOVEMENT EXPERTISE IN STRENGTHENING THE JUDICIARY

Many Chapters across the TI Movement have gained significant experience in working on and with the judiciary. This section does not attempt to provide an exhaustive list of all work that has been done, but seeks to capture in a brief overview the diversity of approaches pursued by TI Chapters around the world. It also serves as evidence that stakeholder engagement in strengthening the judiciary's capacity to curb corruption is already happening by demanding that national judiciaries comply with international standards.

1. ASSESSING JUDICIAL CORRUPTION

TI has conducted researches in many countries to assess the extent of judicial corruption in those countries, thereby opening the way for further engagement and advocacy. For example:

- **TI Romania** carried out three annual research projects on judicial independence between 2005 and 2007, with a regional replica in South-East Europe in 2009. Findings from these studies allowed the Chapter to develop a range of specific recommendations for policy reform, such as regulating the status of prosecutors, reforming the system of promotions within the judiciary, justifying judges' decisions and making them accessible to the public.
- In 2014, five Chapters in **South Asia** (*Bangladesh, Maldives, Nepal, Pakistan and Sri Lanka*) completed NIS assessment in their countries, providing insight into judicial weaknesses at national and regional level.
- **25 European countries** (*Belgium, Bulgaria, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland and the UK*) undertook NIS assessments in their countries in 2012, identifying specific weaknesses in the judicial sector and issuing recommendations for reform.
- **TI Vanuatu** integrated the judicial monitoring of court cases into its National Integrity System assessment. The project used ALAC case files to examine court cases and investigate the existing case backlog. The Chapter was subsequently invited to join a national steering committee for improvement of the judiciary.
- **TI Kyrgyzstan** conducted an assessment of corruption risks in the country's judiciary with the aim of assessing the extent of corruption, and identifying the causes and systemic factors that engender corruption in the judiciary.
- A Judiciary Project in **Chile** supports the strengthening of transparency, accountability, and integrity in the Judiciary; in 2013, a consultancy project funded by the Institutional Development Fund (IDF) identified related gaps and made recommendations to the judiciary.
- In the context of the **Yemen** NIS, the Yemeni Team for Transparency and Integrity (YTTI) carried out an assessment on the judiciary to identify areas for improvement and proposed recommendations for reform.
- **TI Kosovo** developed indicators for assessing the prevalence of corruption in Kosovo's judicial system. This tool can be used periodically to assess the impact of reform efforts in Kosovo's justice sector. By analysing court cases, judicial capacity and functioning of the general court system, the report provides insight into the remaining gaps and corruption risks.
- **TI Kazakhstan** launched a "Courts without Corruption" initiative. The project conducted in 2001 aimed at increasing public awareness of corruption in the country's judicial system, raising standards through research and analysis of both the country's legal system and the informal practices that surround it, and applying other countries' experience in Kazakhstan.
- **TI Chapters** worldwide have examined the judiciary as a key pillar in their country's national integrity system (NIS).

2. RAISING AWARENESS AND FACILITATING MULTI-STAKEHOLDER DIALOGUE

Using evidence from research, numerous Chapters have led awareness campaigns and engaged in different forms of multi-stakeholder dialogue to promote a transparent and accountable judiciary. For example:

- **TI Bosnia-Herzegovina** used the negative findings from an analysis of corruption cases in the country to launch a campaign to raise awareness about the issue and to advocate for a more independent and efficient judiciary.
- **TI Georgia** organised a series of campaigns calling for an end to executive interference in the judiciary.
- Various “Justice Fora” were organised by **TI Czech Republic** to promote a more transparent judiciary and less dependence on political will. In 2013 the Chapter held a Justice Forum on the preparation of the law on the State Prosecutor’s office.
- In 2013 in cooperation with the International Commission of Jurists (ICJ), **TI Zimbabwe** organized two workshops that provided a space for discussion on best practices in the judicial system.
- **TI Hungary** organised a conference on integrity in cooperation with the State Prosecutor’s office in 2012.
- **TI Latvia** is planning to engage with various authorities, such as the Latvian Chamber of Commerce and Industry, the Employer’s Confederation of Latvia and others, to address their goal of strengthening the independence of the judiciary by reducing corruption risks.
- **TI Romania** led in 2009 the NGO coalition that mediated between the state powers (including parliamentary parties), in order to end a one-month strike of the judiciary through a Pact for Judiciary signed by all. It also coordinated the largest civil society coalition in Romania (bringing together the main NGOs and trade unions) in a joint campaign (“Stop the Codes!”) to ask for substantial reform of the country’s Civil and Criminal Codes.
- **TI Chapters worldwide** cooperate with relevant institutions and other civil society representatives to advocate for judicial reforms based on TI 2007 Global Corruption Report on Judiciary and its Advocacy Toolkit.

3. FACILITATING ACCESS TO JUSTICE

In addition to raising awareness of the problems and advocating for reform, TI in several countries have facilitated citizens’ access to justice and have provided opportunities for them to voice complaints and concerns. For example:

- **TI Bangladesh** has used report cards to assess citizen satisfaction with court services, and has advocated for corruption complaints box to be present in the office of Supreme Court Registrar.
- Following engagement by **TI Guatemala** (Acción Ciudadana), the Guatemalan Ministry of Justice pledged to create specific mechanisms for investigating corruption and introduced its first formal complaint procedure for citizens who experience abuses within the judiciary.
- The TI Chapter in **Palestine** (AMAN) engaged and advocated for the introduction of a court complaint system; today all courts in the country are equipped with permanent signs, complaint boxes for citizens and brochures explaining how to make a complaint.
- **TI France** has recently lead a strategic litigation effort to recover assets stolen by corrupt officials in Africa and laundered in France.
- In 2009, **TI Zambia** published a guidebook on how to avoid corruption when accessing judicial services, which aimed at explaining court processes and informing individuals of their rights when dealing with the judiciary.
- More than 50 **TI Chapters worldwide** support victims and witnesses of corruption through Advocacy and Legal Advice Centres (ALACs), the Romanian ALAC is one of the founders in 2003.

4. MONITORING JUDICIAL DECISIONS AND PROCESSES

TI Chapters across regions have also developed mechanisms to allow citizens and civil society to more directly observe, monitor and discuss judicial decisions and processes. For example:

- **TI Lithuania** has developed a website to promote judicial transparency and accountability by giving citizens the opportunity to monitor and evaluate the work of Lithuanian courts.
- **TI Slovakia** is planning to create a web application that will visualise various data on judges' in-court activity and out-of-court behaviour; this portal will enable the public to observe and discuss decisions of individual judges.
- Coalición Elección Visible (Coalition for visible/open election) is a programme run in **Colombia**; it follows the process of nomination and election of high court judges and other senior officials and advocates for high standards of transparency in these processes.
- Following a 2011 campaign by **TI Bangladesh** to increase transparency in the judiciary, today all judges are required to publicly submit statements of wealth.
- **TI Macedonia** is working on the 'Establishing Corruption Trial Monitoring programme', aimed at identifying criminal cases of corruption, as well as at strengthening the cooperation with public prosecutors' offices, the Anti-Corruption Commission and other relevant institutions whose goal is to fight corruption.
- In 2012, **TI Indonesia** developed a new tool, called Merdeka, with the purpose of monitoring public courts. It displays information of currently running cases and allows users to watch the progress of cases and then rate and give their opinions on the verdicts.
- **TI Serbia** developed a project in partnership with the Serbian's Judges Association, which aims at monitoring and assessing the results of the judiciary in the fight against corruption. In addition, it monitors the overall implementation of the country's anti-corruption legislation. Based on the assessments conducted, the project will help identify weaknesses in the system and actions to be taken in order to overcome them.
- **TI Armenia** developed in 2012 a project called "Monitoring of Law Enforcement and Justice Administration". This project has the goal of strengthening law enforcement in the country, through encouraging the civil society's participation in policy-making, monitoring the performance of law enforcement and other oversight institutions, and the analysis of the findings stemming from these activities. The analysis of these findings, together with an assessment of internationally accepted standards in the field, was then used to develop recommendations for change.
- The Judiciary Watch Project (JWP) is a project implemented by **TI Ghana** in 2007. The project was launched by the late Chief Justice of Ghana, working together with the Ghana Integrity Initiative (GII), TI Ghana and the German Technical Cooperation (GTZ). It was developed with the aim of monitoring the performance of the judicial branch of the government, as well as analyse the key problems of corruption that hamper the effective and efficient performance of the judiciary.
- Starting in 2003, **TI Norway** regularly monitors court decisions regarding corporate corruption cases. They have recently published an updated report on this.
- **TI Rwanda** is currently working on an EU-funded project on court monitoring. The overall objective of the project is to contribute to strengthening the rule of law in Rwanda by achieving a more professional, effective and accountable justice system. In order to achieve this, TI Rwanda will gather evidence on the strengths or weaknesses of courts and tribunals, promote a culture of accountability in the justice system, and formulate policy solutions to tackle the identified weaknesses.

5. BUILDING THE CAPACITY OF THE JUDICIARY

Finally, TI Chapters have also been interested in supporting the judiciary to build their capacity to become more transparent and accountable, by offering training support and developing academic curricula. For example:

- The TI Chapter in **Palestine** (AMAN) prepared a code of conduct and trained both judges and prosecutors in the country to enhance integrity in the judicial system.
- The TI Chapter in **Yemen** (YTTI) advocated for the UNCAC to be part of the High Judicial Institution curriculum, an institution that those who want to become judges have to attend. YTTI has also organised training on strategic litigation for judges.
- TI Chapters in **Honduras** and **Jamaica** have conducted training with prosecutors on anti-corruption legislation.
- TI **Venezuela** together with the British embassy and Universidad Metropolitana (Metropolitan University) have developed an academic programme focused on capacity development in issues related to corruption, money laundering, and organized crime.
- Between 2009 and 2010, **TI Bulgaria**, in partnership with the World Bank and the Prosecutor of the Republic of Bulgaria, implemented a project aimed at strengthening the capacity of anti-corruption Prosecutor's Office to monitor and combat corruption, including among prosecutors. As part of the project, the chapter conducted a survey with prosecutors and citizens, developed a training program and held a series of training workshops, focusing on issues of professional ethics.
- Since 2012, **TI Senegal** has been conducting a national campaign against impunity. The idea is to mobilize people across the country and put pressure on the government to take action to tackle corruption in public institutions, particularly with regards to the politicization of the judiciary.
- **TI Morocco** launched an advocacy campaign in 2009 to raise awareness on the lack of judicial independence and to mobilise civil society, the private sector, donors, and the media for reforms to strengthen judicial power.
- Building on the conclusions of the NIS assessments, **TI Chapters worldwide** have initiated advocacy efforts to strengthen their judiciaries and keep them accountable.

6. SHARING AND MULTIPLYING BEST PRACTICES

- The **TI Centre of Expertise** will facilitate knowledge sharing between TI Chapters and anticorruption activists willing to engage into strengthening the judiciaries' ability to curb corruption through a dedicated wiki, and will support Chapters in multiplying existing best practices at national level.
- The **TI Centre of Expertise** will develop adequate tools for empowering National Chapters to lead knowledge based advocacy efforts and to engage a wide range of judicial actors and stakeholders into supporting these efforts to reform judiciaries.



ANNEX III

INTERNATIONAL JUDICIAL STAKEHOLDERS INVENTORY



Anexx © Andreyuu | Dreamstime.com - Set Of Law Photo



INTERNATIONAL JUDICIAL STAKEHOLDERS INVENTORY

This is an overview of a range of key stakeholders and other organisations with judicial reform or related interest and expertise, that could become potential partners in the implementation of this Guide, including civil society organisations, global associations and inter-governmental organisations, academic institutes and donors supporting judicial reform programmes.

1. GLOBAL ASSOCIATIONS AND INTER-GOVERNMENTAL ORGANISATIONS

- The **United Nations Office on Drugs and Crime (UNODC)** promotes the enforcement of UNCAC.
- The **United Nations Democracy Fund (UNDEF)** is a United Nations General Trust Fund with the goal of supporting democratization throughout the world. UNDEF finances projects that build and strengthen democratic institutions, promote human rights, and ensure the participation of all groups in democratic processes.
- The **World Bank** is an international source of financial and technical assistance to developing countries. It provides low-interest loans, zero to low-interest credits, and grants to developing countries, for projects in areas such as education, health, public administration, infrastructure, financial and private sector development, agriculture, and environmental and natural resource management. Some of the projects are co-financed with governments, other multilateral institutions, commercial banks, export credit agencies, and private sector investors.
- The **ICJ – International Commission of Jurists** seeks to advance the independence of the judiciary and legal profession to ensure that justice is administered in full compliance with standards of international law.
- The **Global Organization of Parliamentarians against Corruption (GOPAC)** is an international network of lawmakers dedicated to good governance and combating corruption throughout the world; since its inception, GOPAC has provided information and analysis, established international benchmarks, and improved public awareness through a combination of global pressure and national action.
- The **Office of the High Commissioner for Human Rights (OHCHR)** provides assistance to governments, including expertise and technical trainings in the areas of administration of justice, legislative reform and electoral process.

2. REGIONAL ASSOCIATIONS AND INTER-GOVERNMENTAL ORGANISATIONS

- The **Council of Europe** includes 47 member states and promotes democratic standards and human rights and the enforcement of European conventions against corruption.
- The **Venice Commission** or the European Commission for Democracy through Law is the Council of Europe's advisory body on constitutional matters. Its role is to provide legal advice to its member states and, in particular, to help states wishing to bring their legal and institutional structures in line with European standards and international experience in the fields of democracy, human rights and the rule of law.
- The **Consultative Council of European Judges (CCJE)** is an advisory body of the Council of Europe on issues related to the independence, impartiality and competence of judges; it addresses topical issues and, if necessary, visits the countries concerned to discuss ways to improve the existing situation through developing legislation, institutional framework and/or judicial practice.
- The **European Commission for the Efficiency of Justice (CEPEJ)** aims to improve the efficiency and functioning of justice in Council of Europe Member States, and promote international cooperation between jurisdictions to design standards for the judiciary and to share experiences among judicial authorities.

- The **European Network of Councils for the Judiciary (ENCJ)** unites the national institutions in the Member States of the European Union which are independent of the executive and legislative to promote international cooperation between jurisdictions and design standards for the judiciary.
- **Magistrats européens pour la démocratie et les libertés (MEDEL)** is an association of European magistrates and associations of magistrates, established in 1985, promoting independence of justice, transparency of the judiciary and ethical standards for magistrates.
- The **International Bar Association** is the world's leading organization of international legal practitioners, bar associations and legal societies, which influences the development of international law reform and shapes the future of the legal profession throughout the world.
- The Rule of Law initiative supported by the **American Bar Association**, one of the world's largest voluntary professional organizations, works with seven thematic areas which include anti-corruption and public integrity, access to justice and human rights in the judicial reform area.
- The **Centro de Estudios de Justicia de las Americas** provides technical assistance for judiciary reforms, developing standards and solutions to address judiciary gaps.

3. INTERNATIONAL CIVIL SOCIETY ORGANISATIONS

- The **World Justice Project (WJP)** is an independent organisation working to advance the rule of law by increasing public awareness about the crucial importance of the rule of law, stimulating government reforms and developing practical programs at the community level; its annual Rule of Law Index measures how the rule of law is experienced in everyday life in countries around the globe, and assesses adherence to the rule of law in eight key dimensions.
- **Global Rights** works through local partners to build grass roots movements that help the poor and marginalized access legal systems, thereby increasing governmental accountability and public trust in the rule of law.
- The **International Centre for Transitional Justice (ICTJ)** works to help societies in transition address legacies of massive human rights violations and build civic trust in state institutions as protectors of human rights by providing technical assistance for judiciary reforms and developing standards and solutions to address judiciary gaps.
- The **Due Process of Law Foundation** is a regional organisation whose mandate is to promote the rule of law in Latin America through analysis and recommendations, cooperation with public and private organizations and institutions, sharing of experiences, and advocacy.
- The **International Federation for Human Rights (FIDH)** is a non-governmental federation of human rights organizations that promotes the protection of human rights at national, regional and international level. Through its work on international justice FIDH has acquired unique experience in fighting impunity.
- The **International Foundation for Electoral Systems (IFES)** works in four areas: Election management, Electoral Integrity and Transparency, Citizen Participation, Inclusion & Empowerment.
- The **Cambodian Centre for Human Rights** has been systematically monitoring court activities in Cambodia since 2009. As part of this initiative, trained monitors attend criminal trials on a daily basis. Their purpose is to assess, based on a check list, the adherence to international and domestic fair trial standards. Whatever they find is then analysed and discussed with the Ministry of Justice and court officials. Following this, their findings are made available to the public.
- The **Centre for Public Information Issues** in Albania has conducted a court monitoring project in early 2014. For this project, the CPII designed a monitoring instrument to track delays in court decisions and they used to monitor the District and Appeal Court of Tirana and the Supreme Court (specifically, its unifying court decisions), as well as the decisions of the Constitutional Court of Albania from 2013.
- **Integrity Watch Afghanistan** has a Court Trial Monitoring Program, the first of its kind in Afghanistan. The initiative, which began in 2011, aims to increase the citizens' participation in Afghan courts and monitor compliance to Afghan procedural laws. It also promotes transparency in judicial decision-making, increases awareness of the official rule of law system, and empowers citizens to monitor trials and generate valuable data that can help promote higher integrity in the judiciary.

4. ACADEMIC INSTITUTES:

- The **Max Planck Institute for Comparative Public Law and International Law** serves as a resource centre for civil society and judicial experts, including through the 'Minerva Research Group on Judicial Independence'.
- The **Academy of European Law (ERA)** is a non-profit public foundation that provides training in European law to legal practitioners, organises conferences and seminars, has an e-learning platform and publishes a legal journal ERA Forum.
- The **Hague Institute for the Internationalization of Law (HIIL)** is an advisory and research institute for the justice sector whose impact areas comprise 'effective courts and procedures' and 'rule of law strengthening' (including a 'Guardians of Justice' (GoJ) programme aimed at improving the delivery of justice by empowering local civil society organisations).
- **Brandeis University** provides research programs on judiciary capacity.
- **University of Glasgow** has a specialized Law School of Research as well as several research groups on various law topics.

5. FOUNDATIONS SUPPORTING JUDICIAL REFORM PROGRAMS AND RELATED CIVIL SOCIETY INITIATIVES:

- The **Open Society Foundations** are working to secure legal remedies for bribery, the theft of public assets, and money laundering arising from the exploitation of natural resources.
- The **King Baudouin Foundation** supports projects and citizens who are committed to create a better society and to contribute towards greater justice, democracy and respect for diversity.
- The **Wallace Global Fund** promotes an informed and engaged citizenry to fight corruption.

6. BI- AND MULTILATERAL DONORS SUPPORTING JUDICIAL REFORM PROGRAMS:

- The **World Bank** supports projects worldwide that engage in judicial reforms and the strengthening of the judicial systems in developing countries.
- The **Transparency Trust Fund** of the **Inter-American Development Bank** supports the design and implementation of policies, mechanisms and practices to promote access to information.
- The **European Commission Directorate General for Justice** focuses on the development of EU policies in the areas of justice and rule of law and on funding projects in these areas.
- **Norwegian** supports the strengthening of South-based civil society actors' ability to influence international, regional and national decision-making processes.
- The **DFID Arab Partnership Participation Fund** supports projects in the Middle East and North Africa region that promote good governance, such as better access to justice and support for civil society initiatives to strengthen the rule of law, transparency, integrity and tackling corruption.
- The **Irish Aid Civil Society Programme Funding** supports civil society by promoting participation and good governance. It also to build a constituency for development, human rights and social justice.
- The **Austrian Development Cooperation** supports work that promotes the protection of human rights such as participation, transparency, non-discrimination and accountability in all measures.
- The **Swiss Agency for Development and Cooperation (SDC)** through its department for cooperation with Eastern Europe seeks to strengthen human rights and pluralistic democracy by building political institutions that ensure the rule of law and citizens' rights.

Transparency International Romania

21 Nicolae Bălcescu Boulevard
2nd floor, 1st district, 010044, Bucharest, ROMANIA

phone: +40 316 606 000, fax: +40 316 606 006
office@transparency.org.ro, www.transparency.org.ro

Enhancing judiciary's ability to curb corruption - A practical guide
ISBN: 978-973-0-19247-6