

Judicial Officers—Appointment and Accountability

Overview

Judicial officers – including judges, magistrates, and other officials with powers to facilitate and decide legal disputes – have the authority to protect human rights, make wrongs right, and resolve intractable conflicts. As such, their appointment (or election where applicable) must be transparent, based on objective criteria, and free of corruption so that the public has faith in their independence, impartiality, and integrity. Transparent appointments also help the public hold appointing authorities accountable in selecting qualified judicial officers.

Once judicial officers have assumed their role, their conduct and track record matter. Justice systems can make judicial officers’ decisions or rulings publicly available (except in cases when privacy must be considered) to ensure the fairness and predictability of the system.¹ More generally, judicial officers must abide by relevant standards of professional conduct and act with independence, impartiality, and integrity. If they fail to meet these standards, judicial officers should be accountable through a complaints procedure that allows for a review of their conduct by an independent oversight authority capable of fair proceedings and discipline, including removal. The outcomes of complaints and any disciplinary proceedings should be made publicly available and transparent.

Importantly, countries considering reforms in this area should take into account that accountability mechanisms for judicial officers should not in any way threaten judicial independence and should therefore differ from accountability mechanisms for other branches of government. In particular, promotions, terminations, and disciplinary actions should never be determined on political grounds and must be shielded from undue influence by the executive branch (see Principles 11–20 of the *Basic Principles on the Independence of the Judiciary* referenced later in this chapter).

Recommendations and Sample Reforms

OGP members can take the following actions to improve meritorious, transparent judicial appointments:

- **Publish necessary qualifications and examination standards.** If recruitment occurs via examinations, they should be established by the state with common, [transparent standards and given anonymously](#).² Ensure that standards are nondiscriminatory and gender and ethno-culturally neutral.
- **Publish term limits and appointment terms.** Transparent term limits, mandatory retirement ages, or lifetime appointments insulate the judiciary from political purging.
- **Require transparent nominations.** If recruitment occurs via nomination and appointment, the [procedure](#) should be fully transparent to reveal the candidate’s qualifications vis-à-vis other publicly announced candidates to avoid political favoritism.³
- **Publicly vet candidates.** Consider publicizing interviews of candidates. Allow feedback on candidates from the legal profession and civil society to hear external evidence of a candidate’s fitness. Publicize reasons for final appointments.
- **Require judicial officials to declare assets and financial interests.** This includes outside activities, employment, investments, assets, and substantial gifts and benefits from which a conflict may result.⁴
- **Publicize and report on measures to diversify judicial officers, through recruitment, retention, and training.** Take measures so that judicial officials reflect the [gender balance and social diversity](#) of the country.⁵

The following are actions judiciaries and governments can take to improve judicial accountability and independence:

- **Publish a judicial code of conduct.** Write and publish codes that support a learned, independent, and impartial judiciary. Making these codes publicly accessible allows citizens to hold the judiciary accountable by filing suit for egregious errors. See the Global Judicial Integrity Network’s “Guide on [Resource Guide on Strengthening Judicial Integrity](#)”⁶ for more guidance.
- **Involve justices in developing standards.** Invite judicial involvement in creating and updating codes of conduct. Ownership of ethical standards promotes compliance.

The Chief Justice of Kenya David Maraga confers with Mexican Elections Tribunal Head of International Relations Alberto Guevara Castro. Photo by: International Development Law Organization

- **Perform comprehensive evaluations.** The United Nations Office on Drugs and Crime (UNODC) provides a list of [data that should be collected](#)⁷ to assess a court system, including which sources can provide pertinent information and what questions should be asked when analyzing this information. Note: Evaluations should not include successful appeals against judicial officials' rulings, as this might affect their decision-making.
- **Implement and publish court self-evaluations.** Self-assessment mechanisms, such as the one offered by the [UNODC Implementation Guide and Evaluative Framework for Article 11 of the United Nations Convention against Corruption](#)⁸ and the [International Consortium for Court Excellence](#),⁹ can help courts maintain accessible, efficient, and innovative services.
- **Use and publish disciplinary measures.** Facilitate accountability by accepting feedback from both judicial members and the public. Ensure that disciplinary standards address all judicial integrity issues, including cases of gender bias, sex discrimination, and sexual misconduct. [Disciplinary measures](#) should be proportionate to the offense and might range from internal written warnings to public acknowledgment of ethical deviations to removal from office.¹⁰

- **Adopt continuing education programs.** [Programs](#) can discuss legislative developments, judicial ethics, docket management, technology use, and international developments. This education should be accessible to all judicial officials and include various learning methods (e.g., self-learning, in-person, or interactive learning).¹¹
- **Facilitate judicial integrity networking.** For example, the Global Judicial Integrity Network offers networking opportunities at the local, regional, and global level. Limit initial meetings focusing on judicial integrity to only judicial officials to allow for free and open peer-to-peer discussion before inviting public participation.
- **Publish judicial decisions.** Access to the country's laws and [judicial decisions](#) should be free. Some decisions may need to be withheld or anonymized to protect privacy concerns, including the identity of juveniles.¹²

LESSONS FROM REFORMERS

Kenya initiates judicial vetting

In 2010, Kenya approved a new democratic constitution by public referendum. In response to years of government corruption, including at high levels of the judiciary, the framers sought to enshrine democratic institutions and the rule of law in the new constitution. To do so, they included a provision that stipulates all judicial officials and magistrates appointed under the previous constitution undergo vetting by an independent board. The details of this provision are affirmed in a [2011 law](#) that the judicial official and magistrate vetting board would comprise nine members, including six citizens, three of whom must be lawyers. Following this legislation, Kenya made an [OGP commitment](#) in 2012 to implement the newly required processes. Throughout 2012, the board vetted dozens of judicial officials at various levels of the judiciary and determined that several officials were unfit to serve. Putting the judiciary under the microscope in this way helped restore citizen trust in and legitimacy to the institution in a new era. However, while innovative, this approach was not without controversy, and civil society raised [concerns](#) that lawyers on the board were too lenient on some judicial officials alleged to have engaged in corruption while removing other judicial officials without legitimate reasoning.

LESSONS FROM REFORMERS

Slovak Republic legislates transparent selection of judicial officials

The Slovak Republic used its [2017 action plan](#) to help address weak judicial independence and a lack of public trust in judicial decisions.¹³ Among other reforms, the country passed legislation that standardized selection procedures for judicial officials and established a committee that will oversee such processes in the future. Information about these procedures – including lists of candidates and their résumés – is now publicly available online, which allows for public scrutiny of the candidates as well. Over time, reforms like this one can help build public trust in judicial institutions.

LESSONS FROM REFORMERS

Denmark establishes whistleblower portals for justice system employees

Following [revelations](#) in 2018 that senior justice officials had withheld key documents in an investigation of police misconduct during a 2012 protest against Chinese President Hu Jintao's state visit, Denmark made an [OGP commitment in 2019](#) to improve accountability for justice system officials.^{14,15} The commitment seeks to establish a whistleblower scheme in the Ministry of Justice, prosecutor service, police, and prison service, among other justice system institutions. The new procedures will provide mechanisms through which employees or partners of any of these institutions can report individual or systemic wrongdoing. The online portal will also allow whistleblowers to file their complaints anonymously and enable the authorities investigating the complaints to communicate with whistleblowers while maintaining their anonymity. This system could allow for great accountability for justice system officials and, ultimately, the provision of fairer justice services.

Other OGP commitments

Argentina: Publish information about selection processes, complaint mechanisms, and disciplinary procedures for judicial officials ([2017–2019](#)).

Costa Rica: Develop an online “judicial observatory system,” which enables citizens to monitor how long open cases take to be concluded ([2019–2021](#)).

Jalisco, Mexico: Implement safeguards to avoid judicial officials' conflicts of interest by working with citizens to review and update the system for selecting expert witnesses during trials ([2019–2021](#)).

Paraguay: Publish accusations and disciplinary procedures against judicial officials more transparently for citizens through an online digital system ([2018–2020](#)).

GUIDANCE AND STANDARDS

The United Nations – Basic Principles on the Independence of the Judiciary

The [UN Basic Principles on the Independence of the Judiciary](#),¹⁶ adopted by the UN Congress on the Prevention of Crime and the Treatment of Offenders and endorsed by the UN General Assembly in 1985, lays out 20 principles to secure and promote the independence of the judiciary.

- Principle 10, related to qualifications, selection, and training, provides the following:
 - 10. Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall safeguard against judicial appointments for improper motives. In the selection of judicial officials, there shall be no discrimination against a person on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status, except that a requirement, that a candidate for judicial office must be a national of the country concerned, shall not be considered discriminatory.
- Principles 17–20, related to discipline, suspension, and removal, provide the following:
 - 17. A charge or complaint made against a judicial official in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure. The judicial official shall have the right to a fair hearing. The examination of the matter at its initial stage shall be kept confidential, unless otherwise requested by the judicial official.
 - 18. judicial officials shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties.
 - 19. All disciplinary, suspension, or removal proceedings shall be determined in accordance with established standards of judicial conduct.
 - 20. Decisions in disciplinary, suspension, or removal proceedings should be subject to an independent review. This principle may not apply to the decisions of the highest court and those of the legislature in impeachment or similar proceedings.

The United Nations – Bangalore Principles of Judicial Conduct

The [Bangalore Principles of Judicial Conduct](#),¹⁷ developed in 2002 by the Judicial Integrity Group and endorsed by the Economic and Social Council of the United Nations in 2006, establish standards for the ethical conduct of judicial officials and revolve around six values necessary for an effective and principled judiciary: independence, impartiality, integrity, equality, propriety, and competence and diligence. The Bangalore Principles are accompanied by a detailed Commentary published in 2007, which, among others, touches upon the issues of qualifications, selection, and training (paragraph 10) or conditions of service and tenure (paragraph 11).

The Global Judicial Integrity Network

Officially established in 2018, the [Global Judicial Integrity Network](#)¹⁸ was launched by the UN Office on Drugs and Crime. The network aims to promote peer learning and support activities, facilitate access to relevant tools and resources related to judicial integrity, and support the further development and effective implementation of principles of judicial conduct and the prevention of corruption within the justice system. Among its outputs, the Global Judicial Integrity Network has developed several knowledge products and tools addressing pertinent integrity-related topics, such as [the development and implementation of codes of judicial conduct](#),¹⁹ [gender-related issues](#),²⁰ [judicial officials’ use of social media](#),²¹ and [judicial ethics training](#).²²

Endnotes

¹ For more on this point, see the “Open Court Data” chapter of this paper.

² *UNODC Resource Guide on Strengthening Judicial Integrity* (New York: United Nations, 2011), https://www.unodc.org/documents/treaties/UNCAC/Publications/ResourceGuideonStrengtheningJudicialIntegrityandCapacity/11-85709_ebook.pdf.

³ *UNODC Resource Guide on Strengthening Judicial Integrity* (New York: United Nations, 2011), https://www.unodc.org/documents/treaties/UNCAC/Publications/ResourceGuideonStrengtheningJudicialIntegrityandCapacity/11-85709_ebook.pdf.

⁴ Judicial Integrity Network, “Strengthening judicial integrity through financial disclosure systems for judges,” United Nations Office on Drugs and Crime (UNODC), accessed October 30, 2020, <https://www.unodc.org/dohadec-laration/news/2017/02/strengthening-judicial-integrity-through-financial-disclosure-systems-for-judges.html>.

⁵ *UNODC Resource Guide on Strengthening Judicial Integrity* (New York: United Nations, 2011), https://www.unodc.org/documents/treaties/UNCAC/Publications/ResourceGuideonStrengtheningJudicialIntegrityandCapacity/11-85709_ebook.pdf.

⁶ The Global Judicial Integrity Network, *How to Develop and Implement Codes of Judicial Conduct*, (Vienna: United Nations Office on Drugs and Crime (UNODC), 2019), <https://www.unodc.org/ji/en/knowledge-products/drafting-codes-of-conduct.html>.

⁷ UNODC, *Access to Justice: The Independence, Impartiality, and Integrity of the Judiciary* (New York: United Nations, 2006), https://www.unodc.org/documents/justice-and-prison-reform/cjat_eng/2_Independence_Impartiality_Integrity_of_Judiciary.pdf.

⁸ *UNODC Implementation Guide and Evaluative Framework for Article 11 of the United Nations Convention against Corruption* (New York: United Nations, 2015), https://www.unodc.org/ji/en/resdb/data/2015/_220_/the-united-nations-convention-against-corruption-implementation-guide-and-evaluative-framework-for-article-11.html.

⁹ The International Consortium for Court Excellence Framework, “Home,” accessed on September 1, 2020, <http://www.courtexcellence.com/>.

¹⁰ The Global Judicial Integrity Network, “The Main Factors Aimed at Securing Judicial Independence,” February, 2020, <https://www.unodc.org/e4j/en/crime-prevention-criminal-justice/module-14/key-issues/1-the-main-factors-aimed-at-securing-judicial-independence.html>.

¹¹ *UNODC Resource Guide on Strengthening Judicial Integrity* (New York: United Nations, 2011), https://www.unodc.org/documents/treaties/UNCAC/Publications/ResourceGuideonStrengtheningJudicialIntegrityandCapacity/11-85709_ebook.pdf.

¹² The Global Judicial Integrity Network, “The Main Factors Aimed at Securing Judicial Independence,” February, 2020, <https://www.unodc.org/e4j/en/crime-prevention-criminal-justice/module-14/key-issues/1-the-main-factors-aimed-at-securing-judicial-independence.html>.

¹³ “Draft Legislation to Ensure Public Scrutiny of Judges (SK0114),” (OGP, 2017), <https://www.opengovpartnership.org/members/albania/commitments/sk0114/>.

¹⁴ Søren Poulsen, “Denmark to Re-open Inquiry into Authorities Conduct over Tibet Demonstration” *The Local Denmark*, June 7, 2018, <https://www.thelocal.dk/20180607/denmark-to-re-open-inquiry-into-authorities-conduct-over-tibet-demonstration>.

¹⁵ “Anonymous Whistleblower Portals for Justice System Employees (DK0070),” (OGP, 2019), <https://www.opengovpartnership.org/members/denmark/commitments/DK0070/>.

¹⁶ *UNODC, Basic Principles on the Independence of the Judiciary*, (Milan: UNODC, 1985), <https://www.ohchr.org/en/professionalinterest/pages/independencejudiciary.aspx>.

¹⁷ *The Bangalore Principles of Judicial Conduct* (The Hague: UNODC, 2002), https://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf.

¹⁸ “The Judicial Integrity Network,” UNODC, <https://www.unodc.org/ji/en/about.html>.

¹⁹ The Global Judicial Integrity Network, “Guide on How to Develop and Implement Codes of Judicial Conduct,” (Vienna: UNODC, 2019), <https://www.unodc.org/ji/en/knowledge-products/drafting-codes-of-conduct.html>.

²⁰ The Global Judicial Integrity Network, “Gender-Related Issues in the Judiciary,” (UNODC, 2020), https://www.unodc.org/documents/ji/knowledge_products/Gender_Paper_FINAL_DOHA.pdf.

²¹ The Global Judicial Integrity Network, “Non-binding Guidelines on the Use of Social Media by Judges,” (UNODC, 2019), https://www.unodc.org/ji/resdb/data/2019/non-binding_guidelines_on_the_use_of_social_media_by_judges.html?lng=en&match=social%20media%20guidelines.

²² “Judicial Ethics Training Package,” The Global Judicial Integrity Network, accessed September 1, 2020, https://www.unodc.org/ji/en/judicial_ethics.html.



Resources and Partners

Resources

- The International Consortium for Court Excellence publishes the [Court Excellence Self-Assessment Questionnaire](#), which enables courts to evaluate their performance in seven areas.
- The National Center for State Courts produces resources for using [technology in courts](#) and [case flow management](#).
- USAID’s [Designing and Implementing Court Automation Projects](#) outlines key considerations for court modernization.
- UNDP’s [Judicial Integrity Self-Assessment Checklist](#) is a useful tool to help judiciaries assess their courts.
- The Global Judicial Integrity Network’s resources include a guide on [How to Develop and Implement Codes of Judicial Conduct](#).
- UNODC’s [Resource Guide on Strengthening Judicial Capacity and Integrity](#) outlines best practices for a variety of court processes, including court transparency, judicial official recruitment, evaluation, selection, and disciplinary measures.

Organizations

- [Center for Court Innovation](#)
- [Global Judicial Integrity Network](#) (established by [UNODC](#))
- [International Consortium for Court Excellence](#)
- [National Center for State Courts \(NCSC\)](#) (United States) and [NCSC International](#)
- [United Nations Office on Drugs and Crime \(UNODC\)](#)

This module is part of the Justice Policy Series Part II, Open Justice paper which can be found [here](#).

