



United Nations Development Programme

# A TRANSPARENT AND ACCOUNTABLE JUDICIARY TO DELIVER *JUSTICE FOR ALL*



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# A TRANSPARENT AND ACCOUNTABLE JUDICIARY TO DELIVER *JUSTICE FOR ALL*





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## Authors

Sofie Arjon Schütte (U4 Anti-Corruption Resource Centre at the Chr. Michelsen Institute)  
Paavani Reddy and Liviana Zorzi (UNDP)

## Managing editor

Elodie Beth-Seo (UNDP)

## Copy-editor

Jose Ibarra A. Angeles (UNDP)

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## Kenya

Simon Ridley (UNDP Regional Service Centre in Addis Ababa); David Maina and Wambua Kituku (UNDP Kenya)

## Latin America and the Caribbean

Maria Eugenia Boza (UNDP SIGOB - Sistema de Gestión para la Gobernabilidad)

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## Philippines

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## Somalia

Abdisalam Yusuf Farah (UNDP Somalia)



## Foreword

The integrity, independence, and impartiality of the judiciary are preconditions for fair and effective access to justice and for the protection of human rights. However, discrimination and corrupt practices often prevent citizens—especially the poor and marginalized—from equitable opportunities and protection of their rights.

There are numerous initiatives to strengthen judicial systems being implemented around the world and many are supported by the UN system and its partners. Corruption remains however a major impediment to the success of these reforms. Recognising this challenge, UNDP together with the U4 Anti-Corruption Resource Centre at the Chr. Michelsen Institute (U4) and the UNDP/UNODC-supported Asia-Pacific Integrity in Action Network (AP-INTACT) initiated an e-discussion in 2013 on “Assessing Challenges and Results of Capacity Development Interventions” in the area of judicial integrity. The e-discussion showed the limitations of existing reform efforts and called for more analysis on specific country experiences to understand what works, what does not, and why.

This report by UNDP and U4 highlights experiences from Afghanistan, Bosnia and Herzegovina, Colombia, Indonesia, Kenya, Kosovo,\* Nepal, Nigeria, Paraguay, Philippines, and Somalia in promoting transparency and accountability within the judiciary. It looks at codes of conduct and internal oversight mechanisms for strengthening integrity and accountability, such as judicial councils, and the vetting of judges as an instrument of last resort in contexts of transitional justice. The report also explores the potential of inclusive approaches and the use of new technologies to involve the broader community in judicial reform processes.

The report also discusses the opportunities and limitations of existing judicial assessments as an entry point for judicial reforms. Existing assessments rarely include evidence-based information on corruption. Also efforts in this area are too often externally driven, with the evaluated judiciary feeling little sense of ownership of the results and recommendations. One notable exception was the

development of the *Bangalore Principles of Judicial Conduct* by the Judicial Integrity Group that set standards of conduct for judges. However, implementation of these principles remains a major challenge in many countries.

The report calls on judiciaries to undertake capacity assessments to strengthen institutional integrity and effectiveness based on peer learning with judiciaries from other countries. It calls on Chief Justices to promote transparency and accountability by engaging in critical self-assessments, opening up their institutions to peers from other countries and developing action plans for strengthening judicial integrity. By undertaking such capacity assessments involving members of the judiciary from other countries, they will help strengthen integrity mechanisms in their courts, develop capacities of their own institutions, and build public trust. The United Nations is ready to support these efforts, building on its well-tested methodologies for capacity development and corruption risk assessment.

The judiciary has a vital role to play as an anchor of the integrity infrastructure in countries. The recently adopted 2030 Sustainable Development Agenda includes new emphasis on promoting justice, defending human rights, and tackling corruption. This report provides a fresh perspective on ways to develop integrity plans as part of broader judicial reforms, by illustrating inspirational experiences that countries can adopt to deliver justice for all.

Patrick Keuleers  
Director/Chief of Profession,  
Governance and  
Peacebuilding,  
UNDP Bureau for Policy and  
Programme Support

Phil Matsheza  
Regional Practice Leader,  
Governance and  
Peacebuilding,  
UNDP Bangkok Regional Hub

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## List of acronyms

<b>16IACC</b>	16 <sup>th</sup> International Anti-Corruption Conference
<b>AP-INTACT</b>	Asia-Pacific Integrity in Action Network
<b>CA</b>	Capacity assessment
<b>CBM</b>	Community Based Monitoring [Afghanistan]
<b>CBM-T</b>	Community Based Monitoring of Trials [Afghanistan]
<b>CD</b>	Capacity development
<b>CSO</b>	Civil society organization
<b>CTM</b>	Court Trial Monitoring [Afghanistan]
<b>EISP</b>	Enterprise Information Systems Plan [Philippines]
<b>EU</b>	European Union
<b>GIZ</b>	Deutsche Gesellschaft für Internationale Zusammenarbeit
<b>HJPC</b>	High Judicial and Prosecutorial Councils [Bosnia and Herzegovina]
<b>ICT</b>	Information and communications technology
<b>IJPC</b>	Independent Judicial and Prosecutorial Commission [Kosovo]
<b>IT</b>	Information technology
<b>IWA</b>	Integrity Watch Afghanistan
<b>JIG</b>	Judicial Integrity Group
<b>JSCC</b>	Justice Sector Coordinating Council [Philippines]
<b>JTF</b>	Judiciary Transformation Framework [Kenya]
<b>JUDISOFT</b>	Sistema de Gestión Jurisdiccional [Paraguay]
<b>KJC</b>	Kosovo Judicial Council
<b>NGO</b>	Nongovernment organization
<b>NHRI</b>	National Human Rights Institution
<b>ODIHR</b>	Office for Democratic Institutions and Human Rights
<b>OSCE</b>	Organization for Security and Cooperation in Europe
<b>SDG</b>	Sustainable Development Goal
<b>SIGOB</b>	Sistema de Gestión para la Gobernabilidad
<b>SIGOBius</b>	Sistema de Gestión de Correspondencia y Archivo de Documentos Oficiales [Colombia]
<b>TI</b>	Transparency International
<b>U4</b>	U4 Anti-Corruption Resource Centre at the Chr. Michelsen Institute
<b>UN</b>	United Nations
<b>UNCAC</b>	United Nations Convention against Corruption
<b>UNDP</b>	United Nations Development Programme
<b>UNODC</b>	United Nations Office on Drugs and Crime



# A TRANSPARENT AND ACCOUNTABLE JUDICIARY TO DELIVER *JUSTICE FOR ALL*



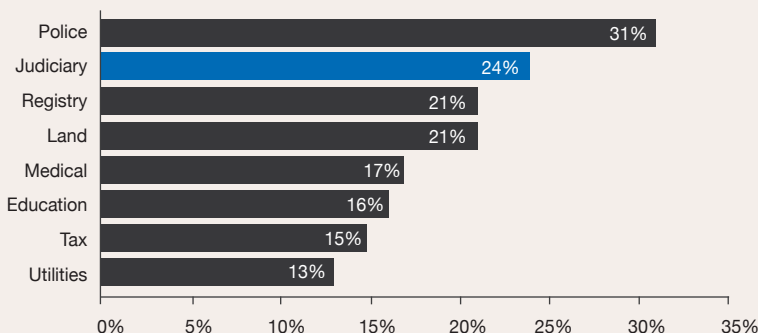
Equal access to justice, along with effective, accountable and transparent institutions, as well as reduction of corruption, are key targets in the 2030 Agenda for Sustainable Development.



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## CORRUPTION IN THE JUDICIARY

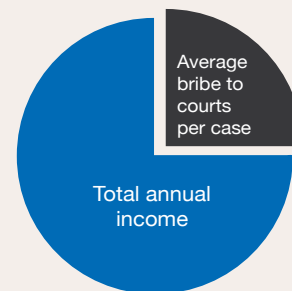
### Citizens who paid a bribe for public services



In the Asia-Pacific region the judiciary is perceived as **the most corrupt institution** in Afghanistan and Cambodia<sup>II</sup>.

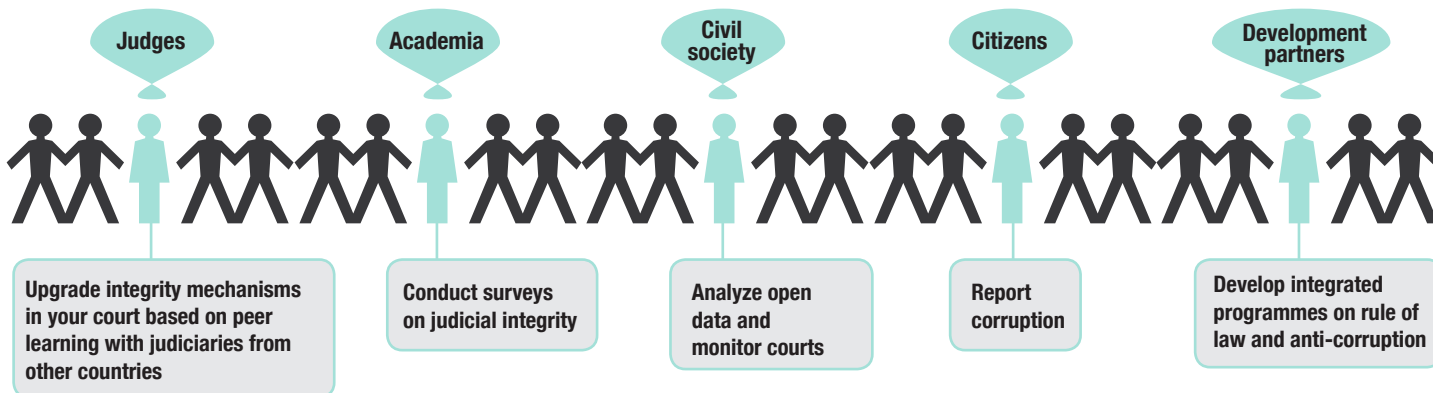


In Bangladesh court users have to pay on average bribes of **US\$108** per case (nearly a quarter of their annual income)<sup>III</sup> to the lower tiers of courts.



Globally, **1 out of 4 citizens** on average has paid a bribe to the judiciary in 2012.<sup>I</sup>

## WHAT CAN YOU DO?



I Citizens who reported to paid a bribe in the past 12 months according to the perception survey *Global Corruption Barometer*, Transparency International, 2013 <http://www.transparency.org/gcb2013/report>  
 II *Global Corruption Barometer*, Transparency International, 2013

<http://www.transparency.org/gcb2013/report>  
 III *Corruption in Bangladesh: A Household Survey*, Transparency International Bangladesh, 2005 <http://www.ti-bangladesh.org/HH%20Survey/Household%20Survey%20-%202005.pdf>



## Executive summary

Corruption is hampering the delivery of justice globally. People perceive the judiciary as the second most corrupt sector, just after the police. In the last decade governments and development partners' efforts to reform judiciaries have been undermined by corruption, and few have taken concrete steps to address it.

Although there are several international standards on judicial integrity and independence, implementation is the challenge. But it doesn't have to be this way, UNDP experience in the field shows that change is possible in judicial systems.

This report finds that opening up judicial systems fosters integrity and increases public trust without impeding independence of the judiciary. The report advocates for judiciaries to open up to peer learning by engaging representatives from judiciaries of other countries in capacity assessments to improve judicial integrity. It also encourages judiciaries to consult end-users, associations of judges and use new technologies to foster transparency and accountability.

There are few wide-ranging success stories but lessons can be learned from piecemeal solutions that have worked in individual countries. The report highlights stories from countries in various contexts - Afghanistan, Bosnia and Herzegovina, Colombia, Indonesia, Kenya, Kosovo, Nepal, Nigeria, Paraguay, Philippines, and Somalia. It draws on international expert discussions held during the 16th session of Transparency International's IACC.

The report discusses internal oversight within the judiciary such as judicial councils, and the related challenge of finding an appropriate model that balances judicial independence and accountability. It also looks at how stakeholders such as associations of judges and court users can become allies in reforming judicial systems. For example, the report cites the use of surveys and consultations with court users that have led to more responsive services and reduced demands for bribes. Another potential transformative tool

is the use of new technologies and court automation. For example, digitising court documents and statistics has helped increase transparency for people who can access judgements on-line, reduce bureaucracy, and achieve efficiency. Even in post-conflict environments where change is difficult, NGOs working with citizens to monitor trials in selected provinces have contributed to improving the administration of justice.

The recently approved 2030 Agenda for Sustainable Development provides renewed impetus to deliver justice for all. Sustainable Development Goal (SDG) 16 includes key targets for providing access to justice, and tackling corruption. The aim of the report is to help transform judicial systems across the world by illustrating inspirational experiences for delivering justice for all.

This report has six parts. Section 1 discusses the importance of promoting a transparent and accountable judiciary to deliver justice for all as part of the 2030 Agenda for Sustainable Development. With the monitoring of SDG 16, it will become increasingly important to collect evidence on judicial systems to measure progress over time.

In Section 2, the report reviews the main international surveys and indexes on corruption perception, as well as diagnostic tools available for assessing judicial integrity. The Nigerian experience distils lessons from a multi-year judicial reform programme, where the broader community was instrumental in developing a baseline for reform and monitoring progress over time.

Section 3 focuses on internal judicial oversight mechanisms for strengthening integrity and accountability, while reflecting on their appropriateness in different contexts, including in post-conflict countries, such as Bosnia and Herzegovina and Kosovo, as well as in Nepal and Somalia.

Section 4 argues that, although technology is not a panacea, automation of court services and proceedings can expedite procedures, avoid human interaction to minimize corruption risks, and give citizens access to court



information and statistics. Indonesia and the Philippines provide case studies on how technical solutions can open up judicial verdicts to public scrutiny. Reference is also made to UNDP's "Strengthening Management Capacities for Governance" approach in Latin America and the Caribbean.

Section 5 presents innovative approaches from Afghanistan and Kenya for involving the community and civil society in trial monitoring and as part of court user committees to increase judicial integrity and accountability.

In Section 6, the report concludes with a call to judiciaries around the world to open up their institutions to peer learning by involving representatives from judiciaries of other countries in assessments of judicial integrity. It highlights some principles to guide these assessments in a way that promotes ownership and effectiveness:

- Making the assessment part of a capacity development exercise, not a mere ad-hoc evaluation;
- Ensuring that the capacity assessments are owned and driven by the judiciary itself while the role of external experts is limited to facilitating the self-assessment;
- Involving judges and legal practitioners from other countries who have faced similar challenges to foster peer-to-peer exchange;
- Having a participatory and inclusive capacity assessment that consults all levels of the organisation being assessed as well as other key actors such as associations of judges or court users;
- Undertaking a capacity assessment that directly feeds into a reform process with the development of an integrity action plan by the organisation itself;
- Grounding the integrity action plan developed as a result of the capacity assessments in normative and policy frameworks.

Finally, the report encourages development partners and researchers to work together in mapping out corruption risks in the overall justice system to develop more integrated programming on anti-corruption and rule of law.



# 1. Why a transparent and accountable judiciary matters for sustainable development

The adoption of the 2030 Agenda for Sustainable Development provides governments with a renewed impetus for developing institutions and processes that are more responsive to the needs of ordinary people, including the poor and marginalized, and that promote sustainable development. The 17 Sustainable Development Goals adopted by UN member states in September 2015 set a new and comprehensive agenda for political, economic, environmental, and social transformation within the next 15 years. Importantly, the existence of an effective governance system is included in the new global agenda both as an enabler for achieving all goals and as a goal in itself.

The Agenda includes key targets on reducing corruption, improving access to justice, and protecting a number of human rights that were not part of the Millennium Development Goals. SDG 16 aims at peaceful and inclusive societies for sustainable development, universal access to justice and effective, accountable, and inclusive institutions.

This gives a new momentum to rethink approaches on how to promote a transparent and accountable judiciary to deliver *justice for all*. A key imperative is to develop integrated solutions involving a range of actors working in justice systems and in anti-corruption, while exploring new pathways to involve the community.

An independent and impartial judiciary is a cornerstone of the rule of law and of a democratic state. It serves to protect human rights and people's liberties, provides a check on other branches of government, and helps secure an environment conducive to economic growth and social progress. Therefore, when corruption occurs in the judiciary, it undermines the very principles of fairness and due process of law, and can negatively affect much needed investment in developing countries. It erodes the public confidence that judicial outcomes are just and without undue pressure or influence from outside. Where this lack of confidence is strong and has become commonplace, it can weaken the legitimacy of an institution and the faith in democratic governance.

## Box 1. Definitions of key terms used in this report

The terms 'judiciary' and 'justice system' should be understood in the context of this report as follows:

- 'Judiciary'—generally refers to the court system and court officials, including judges, and in some instances, to judges only since the report is based on the contributions of experts from different legal traditions.
- 'Justice system'—broadly refers not only to judges and courts but also to actors and institutions that constitute the wider apparatus of justice, such as prosecutors, police, prison officials, and lawyers.

Other relevant concepts are 'transparency' and 'accountability'. Transparency and accountability are strongly interrelated. Unless there is accountability, transparency is of little value. Without transparency, it would be difficult to hold public sector entities to account. The existence of both conditions is a prerequisite to effective, efficient, and equitable management in public institutions. As defined by the United Nations Committee of Experts on Public Administration (2006):

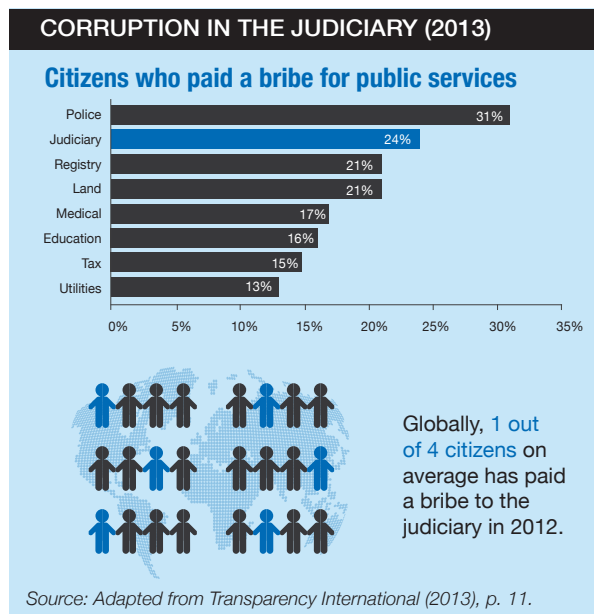
- 'Transparency' is the unfettered access to timely and reliable information on decisions and performance.
- 'Accountability' is the set of mechanisms to report on the use of public resources and consequences for failing to meet stated performance objectives.

## 1. Why a transparent and accountable judiciary matters for sustainable development

### Prevalence of corruption in justice systems worldwide

Globally one out of four people on average reported paying a bribe<sup>1</sup> to the judiciary<sup>2</sup> within the preceding 12 months, according to the *Global Corruption Barometer 2013* (TI, 2013). The survey, which covers 95 countries, showed that on average the judiciary was the sector seen as most vulnerable to corruption, only second after the police. Specifically 31 percent of respondents to the survey had paid a bribe to the police and 24 percent had paid a bribe to the judiciary (see Figure 1).

**Figure 1. Experience of corruption in the judiciary**



The judiciary scores the highest on perceived level of corruption in two countries of Asia-Pacific: Afghanistan and Cambodia (see Figure 2).

**Figure 2. Where the judiciary is perceived the most corrupt institution**



A number of analyses have shown that the effectiveness of the judiciary is intrinsically linked to the police and other actors in the justice system. A 2015 report by U4, *Corruption Risks in the Criminal Justice Chain and Tools for Assessment*, identifies common corruption risks at the main stages of the criminal justice chain (reporting, investigation, prosecution, trial and adjudication, detention and corrections). The report emphasises the importance of seeing the justice system as an intricately linked chain of actors and institutions (Messick & Schütte, 2015). This linkage also is highlighted in TI's *Global Corruption Barometer 2013* (see Box 2). Nonetheless, particular stages of the justice process and different institutions in the justice sector have specific vulnerabilities to corruption and are covered by different oversight and accountability mechanisms. Investigation, prosecution, and corrections commonly fall under the executive branch of government; the functions of the judiciary and of some prosecution agencies are independent from the executive.

Institutions responsible for particular stages of the justice process all enjoy a relatively high degree of discretion in their decision-making and little external oversight. Like the police, corrections officers and administrators are

1 'Bribe' is not defined in the *Global Corruption Barometer 2013*. The phrasing of the question in the survey '...have you or anyone living in your household paid a bribe in any form in the past 12 month?' is ambiguous as 'pay' might be interpreted as referring only to monetary bribes, although the phrase 'in any form' suggests a broader interpretation, including other types of advantage and 'sextortion' (International Association of Women Judges, 2012). It is important to realize that measuring tools, such as the *Global Corruption Barometer 2013*, do not necessarily capture all forms of corruption. In some services and sectors patronage or nepotism might be more prevalent or problematic than straightforward monetary bribery.

2 The actual question in the survey questionnaire refers to the 'judicial system'; the bribes could have been paid not necessarily to a judge but also to a court clerk or some other administrative staff member within the judicial system.



## 1. Why a transparent and accountable judiciary matters for sustainable development

### Box 2. Corruption in law enforcement

Following is an excerpt from TI's *Global Corruption Barometer 2013*:

In 36 countries, the police are seen as the most corrupt institution... In these 36 countries, an average of 53 per cent of people report having paid a bribe to the police, demonstrating that perceptions of corruption in this service are based on people's real experiences in everyday life.

In 20 countries, people believe the judiciary to be the most corrupt institution. In these countries, an average of 30 per cent of people who came into contact with the judiciary report having paid a bribe.

The integrity of the judiciary and the police service is inextricably linked. Police, lawyers and prosecutors are all involved in cases before they even reach the courtroom. When these critical law enforcement agencies cannot be trusted to act with integrity, the fundamental principles of implementing the rule of law in a country are undermined and impunity reigns.

Source: *Transparency International (2013), p. 17.*

under the direct control of the government and therefore vulnerable to political interference. Even with both vertical and horizontal accountability mechanisms for oversight, the police force often shows a strong esprit de corps that makes oversight difficult. By comparison, the need for prosecutorial and judicial independence constrains the possibilities of formal horizontal accountability mechanisms, although it is the lack of independence from outside interference that coincides more often with systemic corruption in these institutions. The need for independence is sometimes abused as an argument to oppose the establishment of external accountability mechanisms. Further, these institutions use professional terminology that is not readily accessible to everyone and tends to constitute a barrier to public scrutiny.

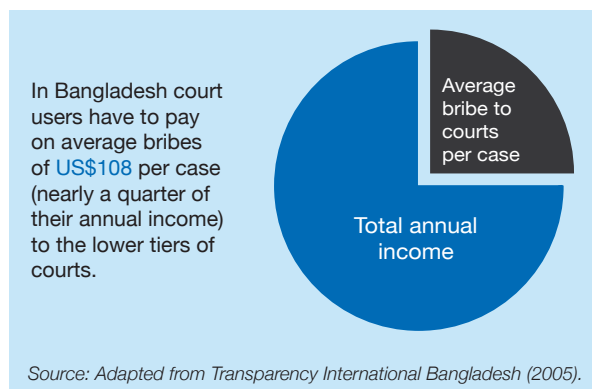
### Negative consequences of corruption on access to justice for the poor and marginalized

Judicial corruption disproportionately impacts the access to justice of the poor and marginalized because they likely cannot afford to pay bribes or gain access to influential networks. For example, in a household survey, TI Bangladesh found that two-thirds of respondents who had used lower level courts paid average bribes of around US\$108 per

case—about a quarter of the local average annual income (see Figure 3).

A 2010 study carried out by UNDP and the Open Society Justice Initiative found that the use of excessive pre-trial detention disproportionately affects poor and marginalized people, whose livelihoods suffer from the resulting socioeconomic impact. The poor and marginalized can get trapped in inefficient and corrupt justice and penal systems when they lack adequate legal representation and aid during the initial stages of the judicial process, and also most often

**Figure 3. Average bribe paid to court per case in Bangladesh**





## 1. Why a transparent and accountable judiciary matters for sustainable development

lack the means to post bail. Their extended absence from family and community life represents a loss in income and social status for the community, and in effect a loss of human potential for society as a whole.<sup>3</sup>

At the same time, the poor and marginalized are often most in need of judicial responses to protect their human rights in criminal justice processes, to access public services (such as health and education), to claim labour rights and social benefits, or to resolve disputes over legal title of land and property. While some poor and marginalized people might have the option to turn to informal justice systems to resolve local disputes and settle issues, the reason for resorting to these mechanisms should not be a lack of trust in the fairness of the formal justice system. Where resolutions are not delivered in accordance with the law or where the law fails to protect and uphold the rights of vulnerable persons, the administration of justice can tragically contribute to maintaining or exacerbating existing conditions of exclusion and marginalization.

### Sustainable Development Goal 16

The ten targets proposed under SDG 16 provide a common framework for governance that focuses on promoting the rule of law, improving access to justice, reducing violence, countering corruption, increasing the transparency and accountability of institutions, addressing exclusion, and enhancing public participation and engagement. Countries are now encouraged to identify country-level targets and indicators to measure progress against the SDGs, including for reducing 'corruption and bribery in all forms' (SDG 16.5).

UNDP has supported projects in five pilot countries (Albania, Indonesia, Rwanda, Tunisia, and the United Kingdom) to assess their capacity to define, collect, produce, and use data related to SDG 16 indicators. In Indonesia, under the leadership of the National Planning Agency (Bappenas), the country identified different sources of information to report on SDG 16 targets. These sources include case management

systems of the national police, the attorney general and the courts; existing national indices such as the Indonesia Democracy Index and the Anti-Corruption Behaviour Index; and data from Indonesia's Corruption Eradication Commission. The data still needs to be consolidated and Indonesia will collaborate with the Praia Group on Governance Statistics to establish integrated data systems for all SDGs. UNDP will prioritize supporting governments and other stakeholders in setting up adequate systems for assessing SDG achievements and for informing policy and programming (UNDP, 2015).

Justice sector institutions will be a crucial source of information for baselines and for measuring progress towards some of the targets, such as reducing corruption and bribery. At the same time, adequate measures are needed to assess the prevalence and types of corruption within the justice institutions themselves. Widely ratified international standards and principles have been available for more than a decade,<sup>4</sup> but the challenge to put them in action and measure their progress remains.

### International principles: How to put them in action and measure them?

The United Nations Convention against Corruption (UNCAC), which entered into force in 2005, identifies the judiciary as a critical institution to prevent and counter corruption. Article 11 requires each state party to take measures to (a) strengthen integrity among members of the judiciary and prosecution services, and (b) prevent opportunities for corruption among members of the judiciary and prosecutions services. To that end, UNODC and GIZ have supported the Judicial Integrity Group (JIG), an international consortium of heads of judiciaries and senior judges that has contributed to the definition of normative standards for judicial conduct by developing a set of principles of judicial integrity, the *Bangalore Principles of Judicial Conduct* (2006). Engaging judges as critical stakeholders in countering corruption

<sup>3</sup> Country studies have been developed for Ghana, Guinea Conakry, and Sierra Leone (UNDP & Open Society Justice Initiative, 23 May 2013). Note however that excessive pre-trial detention is not only a consequence of problems in the judiciary. It is often a result as well of prosecutors or police who request pre-trial detention, of delays in investigations or in the presentation of evidence, or of a system that does not permit conditional release.

<sup>4</sup> This report only briefly introduces recent ones. For a more comprehensive list see 'International instruments and standards: A summary' in *The United Nations Convention Against Corruption: Implementation Guide and Evaluative Framework for Article 11* (UNODC 2015).



## 1. Why a transparent and accountable judiciary matters for sustainable development

in the judiciary has proven effective in a profession that values its independence so highly. Even if the cultural background among judges might vary, the practical advice of a peer from a foreign country carries particular weight because of the similarities of the challenges faced.

The *Bangalore Principles of Judicial Conduct* define six main principles: independence, impartiality, integrity, propriety, equality and competence, and diligence. Efforts have been made by the JIG, GIZ and UNODC to translate these principles into operational measures. The so-called 'Implementation Measures' adopted by the Judicial Integrity Group (2010) break down the principles into implementation responsibilities for the judiciary and the state. By Resolution 23 of 2006, the United Nations Economic and Social Council requested member states to encourage their judiciaries to take into consideration the *Bangalore Principles of Judicial Conduct* and assigned UNODC the responsibility of convening an open-ended intergovernmental expert group to develop (in cooperation with the Judicial Integrity Group and other international and regional judicial forums) a technical guide on approaches to the provision of technical assistance aimed at strengthening judicial integrity and capacity. The resulting *Resource Guide on Strengthening Judicial Integrity and Capacity* (2011) targets the core areas identified by the expert group as the priorities of justice sector reform and offers recommendations, core ideas, and case studies to be taken in consideration for the development and implementation of national justice sector actions plans,

strategies, and reform programmes. To allow for flexibility and to reflect experiences from different legal systems and regions, the guide places emphasis on good practices and lessons learnt from a wide range of countries and legal contexts.<sup>5</sup>

At the regional level there also have been attempts to provide a framework to guide judiciaries in promoting judicial transparency. For example, the *Istanbul Declaration on Transparency in the Judicial Process* was endorsed by 13 chief justices and justices in Asia in December 2013 during the conclusion of the second International Summit of High Courts (UNDP, 22 November 2013). This *Declaration* includes 15 principles and commentaries addressing judicial transparency.

While for many countries the *Bangalore Principles of Judicial Conduct* have been an important reference for the development of codes of conduct, there is increasing recognition of the limits of self-regulation by judges. In order to uphold judicial integrity, it is fundamental to balance legitimate concerns for independence of the judiciary while keeping judges, prosecutors, public defenders, and court officials accountable in case of abuses. The following sections in this report present country experiences that fall along a continuum in the efforts to reform the judiciary—from assessment of judicial capacity and integrity to develop an evidence-based reform, strengthening of internal oversight within the judiciary to modernisation of the court management systems, disclosure of information, and public monitoring of trial procedures.

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<sup>5</sup> The resource guide is structured around topics including: recruitment, professional evaluation and training of judges (chapter 1); function and management of court personnel (chapter 2); case and court management (chapter 3); access to justice and legal services (chapter 4); court transparency (chapter 5); assessment and evaluation of courts and court performance (chapter 6); and judicial codes of conduct and disciplinary mechanisms (chapter 7).





## 2. Assessing judicial integrity

A variety of indices provides a general picture of either the prevalence of corruption or perception of such in the judiciary by comparing levels of corruption across countries or rating the quality of different nations' legal systems. However, more in-depth country level assessments are needed to inform the design of reform processes and the monitoring of their progress. This section presents existing surveys and diagnostic tools to assess judicial integrity. In addition, it illustrates the experience of Nigeria with using surveys and court-users consultations to develop and monitor an evidence-based judicial reform programme.

### International surveys

International indices such as TI's *Global Corruption Barometer 2013* and the *Rule of Law Index* by the World Justice Project (2015) provide a general picture of the perceived and experienced prevalence of corruption.<sup>6</sup> The *Rule of Law Index* provides original data on how the rule of law is experienced by the general public in 102 countries. The *Index* relies on over 100,000 household and 2,400 expert surveys to measure how the rule of law is experienced in practical, everyday situations by ordinary people around the world. This method allows for international and regional comparison against eight categories: constraints on government powers, absence of corruption, open government, fundamental rights, order and security, regulatory enforcement, civil justice, and criminal justice. Among the limitations of the *Rule of Law Index* are its time-sensitiveness (as respondents might be influenced by current affairs, it provides only a snap-shot of the situation) and its geographical bias (data for the household surveys is collected only in urban areas<sup>7</sup>).

The World Justice Project has used the assessments as an entry point to promote innovative solutions at the local level. A project in South Africa that engages a network of international law students in providing research assistance to judges, and a documentary on corruption cases in Mexico City called 'Lawyers with Cameras', in which lawyers follow cases step-by-step, are among these projects. These are still small-scale initiatives, and as the publicly accessible data for each country is available only in aggregated form, the *Index's* role in informing concrete reform initiatives remains limited.

### Country-level assessment diagnostic tools

Assessing and strengthening judicial integrity has received growing attention and support in recent years from the development community, primarily driven by the goal of improving the effectiveness of judicial reforms. There are numerous approaches for the assessment of the capacity and performance of the judiciary, albeit few with a focus on judicial integrity and corruption risks.

GIZ has supported the dissemination of the *Bangalore Principles of Judicial Conduct* since 2005, and more recently has started the assessment of judiciaries against the Principles and their *Implementation Measures* through *Judicial Integrity Scans* in Georgia in 2012, the Ivory Coast in 2013, and Bhutan in 2015. The actual Judicial Integrity Scan consists of two parts. The first part is a desk study based on a questionnaire that draws on the *Implementations Measures* to the *Bangalore Principles of Judicial Conduct* and is filled in by local legal experts and the judiciary itself. The second part

6 For a list of further international surveys and assessments of the justice system, see the introduction in Messick & Schütte (2015).

7 A 2015 survey in Afghanistan included an outreach towards more rural areas.

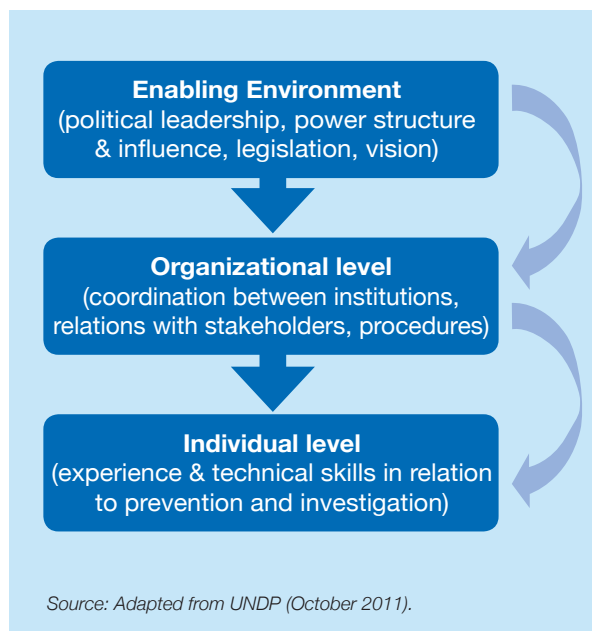
## 2. Assessing judicial integrity

consists of in-depth interviews with relevant stakeholders conducted by international experts on anti-corruption and integrity (at least one of them a judge). The results of the interviews combined with those of the desk study provide an overall picture for designing tailored measures to address potential areas of reform. Based on the results and the recommendations made by the international experts, tailored integrity-building measures can be designed in more detail and implemented in the respective country (Judicial Integrity Group, 2012).

In 2015 UNODC finalised the *Implementation Guide and Evaluative Framework for Article 11 of the UN Convention against Corruption* (UNODC, 2015), which complements the existing *Criminal Justice Assessment Toolkit*. The *Implementation Guide* is intended to support State parties to the UNCAC in their efforts to evaluate and address the strengths and weaknesses of the institutional framework in place to ensure compliance with UNCAC, and for identifying opportunities to strengthen further this framework and address specific challenges. It was developed through a consultative process with high-level judges in several countries and regions, including the Middle East and North Africa, South-East Asia, Indonesia, and the Marshall Islands. This tool complements broader efforts in criminal justice reform, including the use of the *Criminal Justice Assessment Toolkit*, which has been used for judicial reforms around the globe.<sup>8</sup>

The assessment tools based on the *Bangalore Principles of Judicial Conduct* and Article 11 of UNCAC both compare the status quo with a broadly agreed international normative framework. However, the main challenge lies in the implementation of these international principles. UNDP experience has shown that to create the drivers for change in each sector, it is essential to understand the capacity gaps at the individual, organizational levels and within the enabling environment (see Figure 4).

**Figure 4. Analysis of capacity gaps at different levels**



A comprehensive normative framework remains ineffective if it is not translated into practice.

This approach also is valid for the justice sector. Thus it is essential to work closely with judiciaries around the world in a way that the results from these assessments are owned by judiciaries and put into practice through action plans at the institutional level. Participants at the September 2015 UNDP Expert Meeting in Malaysia<sup>9</sup> encouraged an interdisciplinary approach that draws not only on legal expertise but also on human resource management, public administration, and psychology to create an enabling environment for change.

<sup>8</sup> The *Criminal Justice Assessment Toolkit* is designed as a dynamic set of documents that continue to meet assessment needs as they evolve, with an electronic version that is updated on an ongoing basis. The tools are grouped around criminal justice system sectors, which currently include: policing; access to justice; custodial and non-custodial measures; and cross-cutting issues. The assessment tool dealing with the courts includes questions about the risks of corruption and the existence and effectiveness of oversight mechanisms in a criminal trial and appeal process. Implementation of this toolkit requires substantial time and resources. A major strength is that the tool conveys understanding of the differences between and within common law and civil law systems, as well as hybrid systems and traditional or customary law systems. It is therefore appropriate for use in many different countries. It should be noted, however, that many of the questions included do not relate specifically to corruption risks. The toolkit has been applied in part or in its entirety in at least 29 countries, in exercises led by UNODC and other organizations.

<sup>9</sup> More information on the Expert Group Meeting "Promoting Integrity in the Criminal Justice Chain", organized by UNDP in Putrajaya, Malaysia on 4 September 2015, is available at <http://www.asia-pacific.undp.org/content/rbap/en/home/presscenter/events/2015/september/promoting-integrity-in-criminal-justice-chain.html>



## 2. Assessing judicial integrity

UNODC also has developed and applied survey tools for measuring the levels of integrity and capacity of justice sector institutions. To date, working in collaboration with actors in the countries' justice systems, UNODC or other agencies have carried out two assessments in Nigeria, an assessment in two provinces of Indonesia (UNODC, 2006a), one assessment in Montenegro (DACI, 2009), and one in Kosovo (UNDP & UNODC, 2014). The experience with the Nigerian assessments is shared below.

Risk assessment tools applied in other sectors also may be adapted to the judiciary and the justice sector more broadly. Many countries lack actionable evidence on the patterns of corruption in the judiciary and underlying causes to develop tailored countermeasures based on the country context. This means that there is limited information on the type of corruption, the areas within the justice sector that are vulnerable to corruption, and the actors involved. Since 2010, corruption risk assessment in different sectors has been a priority

for UNDP's programming. Studies on anti-corruption in the education, health, forestry, and water sectors were produced that present methods, tools, and good practices to map corruption risks, develop strategies, and sustain partnerships to address challenges, and tackle corruption that could inform similar efforts in other sectors (UNDP, 2011a, 2011b, 2011c). Following a similar risk assessment approach in the justice sector would help gather evidence on where corruption risks lie as well as develop risk mitigation measures in the form of an integrity plan that would be part of a broader judicial reform strategy.

Also, to ensure the ownership and effectiveness of these assessments, there are some lessons that can be drawn from UNDP's capacity development work for other institutions and sectors, such as national human rights institutions (NHRIs). These capacity assessments of NHRIs are based on the operational principles of institutional ownership and peer-review (see Box 3).

### Box 3. Lessons from UNDP's capacity assessment methodology for National Human Rights Institutions

Capacity development (CD) is 'the process through which individuals, organizations and societies obtain, strengthen and maintain the capabilities to set and achieve their own development objectives over time.'

The Capacity assessment (CA) of National Human Rights Institutions is a process of self-assessment assisted by external expert facilitators to provide a step-by-step approach to identifying specific organizational challenges. Internal ownership over the process and the product is therefore one of the main features of this exercise. The CA of NHRIs is not an external exercise, undertaken by outsiders. It is a self-assessment, undertaken by the NHRI itself—the leaders, senior managers, and all the staff—with the assistance and support of a team of external facilitators. The successful experience of the capacity assessment developed by UNDP, OHCHR and APF for NHRIs can be used to design a similar tool to be applied to the integrity mechanisms within the judiciary.

It is not an evaluation—evaluation looks to the past. CA looks towards the future: What skills and processes, or capacities, does the institution need to build if it is to be as effective as possible in the future?

Unlike many other forms of assessment, the CA is participatory and inclusive. It seeks to involve everyone in an NHRI—leaders (commissioners or ombudsman), senior managers, and all staff members, including lawyers, investigators, administrative and finance staff, secretaries, drivers, everyone. All perspectives on the NHRI's capacity are sought and listened to. In this way, unlike many other forms of assessment, the CA is able to reflect the full range of perspectives within the NHRI and to draw on the expertise of all the NHRI's leaders and staff.



## 2. Assessing judicial integrity

Different organizations join hands for the CA: In the case of NHRI assessment, the team of CA facilitators (usually not more than five) consists of representatives of UNDP and the Office of the United Nations High Commissioner for Human Rights, and a member of the Asia Pacific Forum<sup>10</sup> not living in the country where the assessment is taking place. In addition, a senior officer of an NHRI that has already undertaken a CA joins the team, providing valuable experience from both the perspective of an NHRI staff member and as a subject of a CA. In the case of the judicial integrity CA, the presence of a peer (a foreign judge) would be essential with regards to knowledge-information sharing, as well as creating a sense of mutual trust and understanding between the CA team and the judiciary undertaking the assessment.

Throughout the CA process, the team seeks to identify strategies and actions to address the NHRI's capacity gaps. In the questionnaires conducted with staff and stakeholders, respondents are asked, in relation to each of the core capacity issues, for their recommendations for action to increase the capacity on that issue. The CA team records these recommendations for action in relation to the most significant capacity gaps identified in the group discussions and the questionnaire results.

The findings from the CA provide the starting point for formulating a capacity development response for the NHRI. As regards the judiciary, UNODC's self-evaluation checklist for Article 11 can guide the development of the action plan for integrity CD.

A CA report to an individual NHRI is confidential to that NHRI (its leaders, senior managers, and staff), unless it decides to release it publicly. Confidentiality of the report also could encourage open and frank discussions during the judicial integrity assessment.

One important characteristic of the CA is the precise timeline followed. The first step, after the institutional engagement, is a pre-assessment visit, to brief NHRI leaders and staff of the objectives and procedures of the exercise. It usually takes place a couple of months before the CA. The assessment visit lasts one or two weeks, during which time focus group discussions are held with NHRI leaders, stakeholders interviewed, and questionnaires on the core capacity issues identified prepared, submitted to the staff, and analysed. A first draft report with findings and proposed strategies and actions is presented to NHRI leaders and senior managers to already get their initial views at the end of the mission. The report is finalized after the mission team leaves the country, incorporating the comments received by the assessed institution. Annual reports from the NHRI on the implementation of accepted strategies and actions are submitted.

To ensure ownership of the CA report within the NHRI leadership team it is important to pay attention to the time *when* the CA is conducted. As in any planning or review process, it is essential that those commissioning the plan or review are the ones who receive the report, consider the recommendations, and take responsibility for implementing them. CAs are far better conducted early in the terms of NHRI leaders than late in their terms.

*Source: APFNHRI & UNDP-APRC (2014).*

<sup>10</sup> Established in 1996, the Asia Pacific Forum is a coalition of 22 NHRIs from Afghanistan, Australia, Bangladesh, India, Indonesia, Jordan, Kazakhstan, Korea, Malaysia, Maldives, Mongolia, Myanmar, Nepal, New Zealand, Oman, Palestine, Philippines, Qatar, Samoa, Sri Lanka, Thailand, and Timor-Leste. See <http://www.asiapacificforum.net/members/>.



## 2. Assessing judicial integrity

### Nigeria: An evidence-based multi-year judicial reform programme

The experience of Nigeria is an example of how country or state level assessments facilitate and inform reforms, and how court officials highly benefit from the engagement of the community in the assessment and treatment.

#### Highlights<sup>11</sup>

- In Nigeria a comprehensive reform programme has been taking place for over 10 years. Repeated surveys of stakeholders (such as judicial officers, prosecutors, police, court personnel, lawyers, court users, and prisoners awaiting trial) are integral elements of this programme.
- These survey tools are detailed and provide a comprehensive insight into the functioning of the respective judiciaries. With quantifiable indicators, survey results are measurable over time. This is a key factor when the assessment is used to support a broader judicial reform effort over an extended period of time, and when other quantifiable data is scarce. Taking a broad look at multiple aspects of justice sector performance makes it possible to assess the interactions and interdependencies between various factors.

#### Background

Nigeria is the most populous country in Sub-Saharan Africa. It is a multi-ethnic, multi-religious society composed of over 250 ethnic groups and tribes. This diversity makes it one of the most complex societies in Africa, with consequences for political instability, ethnic and tribal clashes, and a high level of corruption, among other problems.

The Federation of Nigeria was granted full independence from Great Britain in 1960. In 1963 Nigeria proclaimed itself the Federal Republic of Nigeria. However, in more than

50 years of independence, 'the country has been under military rule for over 29. Under the military, the rule of law was paid little attention and governance was subject to draconian rules. The Constitution provides for separation of powers and, therefore, independence of the three arms of government (the executive, the legislature, and the judiciary). However, such independence has been more or less theoretical, especially during military administrations. Corruption was bound to grow and flourish in such circumstances' (UNODC, 2006b).

Following the return of democracy in 1999, the Nigerian judiciary faced several challenges, including:

- Perceived lack of independence and authority;
- Weak capacity to deliver justice quickly and to respond to the raising case load;
- The legacies of lack of investment in the judiciary under the various military regimes;
- Rapidly increasing petty corruption, in particular among court staff but increasingly also among judicial officers of the lower bench.

Muhammadu Buhari won in Nigeria's 2015 Presidential election as a candidate of the All Progressives Congress party. His platform was built around his image as a staunch anti-corruption fighter. He was indeed elected largely on a promise to tackle corruption. He appointed a seven-member Presidential Advisory Committee on Anti-Corruption to advise on the prosecution of corruption and the implementation of required reforms in Nigeria's criminal justice system (BBC, 11 August 2015).

#### Involving stakeholders through surveys and complaint committees

From 2000, the Nigerian Judiciary started a collaboration with UNODC to strengthen judicial integrity and capacity. Assessments conducted with the support of UNODC between 2002 and 2007 examined a series of dimensions of the justice system: access to justice, timeliness and quality

11 This case study was compiled in 2015 with contributions from Kashim Zannah, High Court Judge of Borno State, Jason D. Reichelt, Senior Adviser, Crime Prevention and Criminal Justice, and Oliver Stolpe, Chief Conference Support Section, Corruption and Economic Crime Branch, UNODC, who participated in the November 2013 e-discussion organized by UNDP and U4 on 'Judicial Integrity: Assessing Challenges and Results of Capacity Development Interventions'.

## 2. Assessing judicial integrity

of justice delivery, integrity, accountability and transparency of the courts, and coordination across the justice system. These assessments aim to:

- Identify regulatory, institutional, and capacity gaps in the various areas of justice sector performance;
- Forge a shared understanding among stakeholders around priority areas of reform;
- Facilitate the development of specific plans of action for strengthening integrity and capacity of the justice sector;
- Provide a baseline and benchmark for monitoring the progress and impact of reform measures through the conduct of subsequent assessments.

Reform efforts in the Nigerian judiciary have continued on both the federal and state levels, in partnership with several international development partners, including the European Union (EU), the United Kingdom's Department for International Development (DFID), the United States Agency for International Development (USAID), and UNODC. Their aim has been to improve justice sector performance in general and judicial integrity in particular.

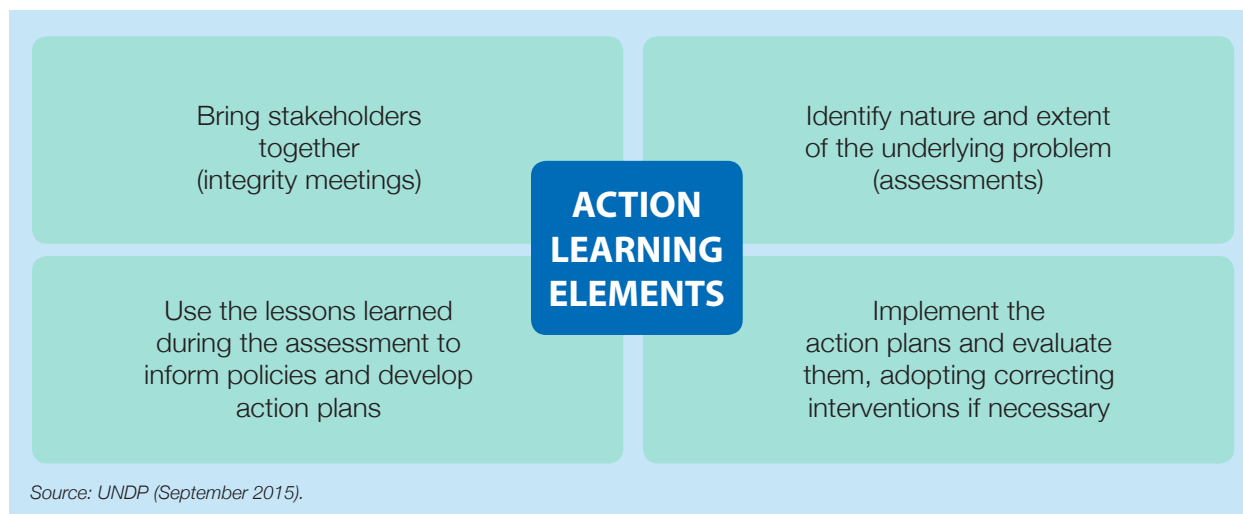
The survey tools utilized since 2000 are rather detailed and provide a comprehensive insight into the functioning of the respective judiciaries. They include the perspectives of

various stakeholders in the justice system, such as judicial officers, prosecutors, police, court personnel, lawyers, court users and prisoners awaiting trial. Through the use of questionnaires, they provide quantifiable indicators. They also have the distinct advantage of being measurable over time. The latter is a key factor when the assessment is utilized to support a broader judicial reform effort over an extended period of time, and when other quantifiable data that would provide insights into the performance of the justice sector is scarce.

Moreover, taking a broad look at multiple aspects of justice sector performance allows the assessment of the interactions and interdependencies between various factors. These types of survey have disadvantages in that they are relatively expensive to conduct, require advanced research and analytical capacity that often are not available in the local environments, and require a comparatively long time to complete.

In Nigeria, the design of the project was based on action-learning principles (see Figure 5) to pass ownership for the development and implementation of activities, together with responsibility for outcomes, to the host country. Action-learning principles also were employed in the development and activities of the implementation and in subcommittees.

**Figure 5. Action learning elements**



## 2. Assessing judicial integrity

The project was designed to stimulate counterparts working on four levels of intervention:

- Policy, research and advocacy: establishment of overall reform objectives; design of a research methodology to produce baseline data relevant to these reform objectives; and facilitation of the development of action plans at state level;
- Implementation and implementation capacities: supporting pilot states in the implementation of their respective action plans and enhancing their respective capacities;
- Monitoring and evaluation: regular meeting of implementation committees; state visits to monitor progress; working meetings of representatives of all pilot states; National Integrity Meeting with all the chief judges of all the 36 states to share lessons and identify promising practices as they were emerging from the pilot implementation;
- Dissemination and replication of good practices: documentation through regular progress reports and dissemination to all justice sector stakeholders; design of a follow-up project to provide support for the replication of good-practices in other states.

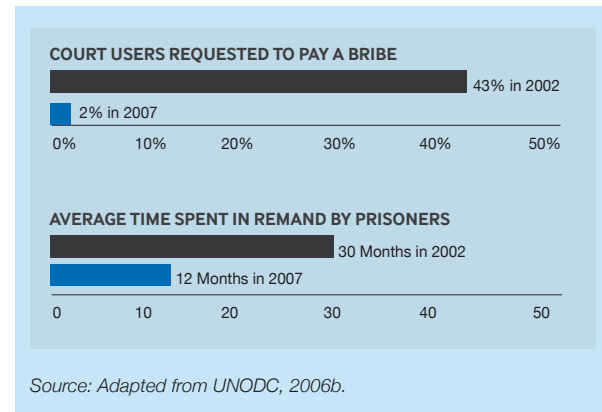
As an element of this programme, UNODC developed a curriculum and manual on judicial ethics training. These provided the basis for training sessions for High Court and other first instance judges throughout the country.

External stakeholders were included both in the diagnosis of the problems and in their treatment. Public complaints committees were set up, consisting of lawyers, police, state security, and NGOs that handle complaints about judicial misconduct. In the state of Borno, such complaints led to the dismissal of several judges. Judge Kashim Zannah from Borno High Court stressed, at the panel discussion on judicial integrity at the 16IACC, that this responsiveness created public trust in the judiciary that protected it more recently from attacks by Boko Haram. Zannah asserted: 'There is nothing to fear from involving the community.'

### Impact

A second assessment of justice sector integrity and capacity conducted with support from the EU and UNODC in 2007-2008 confirmed some rather significant improvements

**Figure 6. Improvements in quality and timeliness of justice delivery from 2002 to 2007**



made in the period 2002-2007 (UNODC, 2006b). The justice system had become more accessible, with the average time prisoners had to spend in remand reduced from 30 months in 2002 to less than 12 months in 2007. The general awareness of prisoners of their right to apply for bail rose from only 43 percent in 2002 to 68 percent in 2007. Prisoners, moreover, had better access to legal assistance, with 56 percent being represented by a lawyer in 2007 as opposed to only 38 percent in 2002. Similar progress could be registered with regard to timeliness and quality of justice delivery. The number of months that it took court users on average to resolve their legal matters went down from 27 months in 2002 to a little over 12 months in 2007 (see Figure 6).

The administrative systems of the courts also improved. The percentage of judicial officers finding the record keeping efficient or very efficient increased from 44 percent in 2002 to 87 percent. With regards to the prevalence of corrupt practices, in 2002 77 percent of lawyers and 43 percent of court users claimed that they had been approached for the payment of a bribe in the context of a court case within the 12 months prior to the interview. In 2007, only 16 percent of the lawyers and 2 percent of court users said that they had been approached for the payment of a bribe.

With regard to the independence, impartiality, and fairness of the courts, in 2002, 19 percent of the judges felt that judicial appointments were politically influenced and not based on merit, while 50 percent of the lawyers claimed to know of judicial decisions that had been inspired by politics.



## 2. Assessing judicial integrity

However, in 2007, findings seemed to suggest that judicial independence had been strengthened. The percentage of lawyers who said they were aware of a judicial decision in the last 12 months that, in their opinion, had been influenced by politics, went down from 50 to 24 percent. The percentage of judges who claimed to be aware of a judicial appointment that had been influenced by political considerations rather than merit declined from 19 to 8 percent.

All of these improvements helped to enhance public confidence in the justice system. The percentage of court users who stated that they had not used the courts during the last two years despite a need to do so went down from 42 percent in 2002 to 36 percent in 2007. At the same time, those court users who indicated that they would use the courts again—based on their experience with it—increased from 58 percent in 2002 to 69 percent in 2007.

### *Lessons learned and recommendations*

After 10 years of project implementation, several key lessons have emerged. A fundamental realization is the importance of taking into account the close linkages between the multiple aspects and actors of the justice system. Enhancing judicial integrity by itself might be impossible due to the strong correlation between access to justice, job-satisfaction, capacity to deliver services, and integrity. A holistic approach addressing integrity and capacity in concert might be required.

At the same time, building up the judiciary as an island of integrity in a sea of corruption is unlikely to produce sustainable results in the long run. Other justice sector stakeholders need to be included in the action planning and implementation process right from the start, and the action

plans also should address their needs in terms of integrity, accountability, and capacity.

Other specific lessons from the Nigeria project include:

- Adopt a non-prescriptive, participatory, holistic and sector-wide approach to project design and implementation, fostering ownership and leadership at all levels;
- Joint and evidence-based planning is key to success—allowing for large groups of stakeholders to be part of the planning, monitoring and evaluation process;
- Build the policy and strategic planning capacity of the courts;
- Manage weak implementation capacity;
- Secure the support of the executive and legislature early on;
- Enhancing accountability is possible without negative impact on independence.

Judges, especially when emerging from a history of interference by the executive or the legislature, often are worried that efforts to strengthen accountability might impair their institutional and professional independence. This might generate initial resistance in taking forward such reforms. This understandable concern needs to be taken into account when designing specific projects in this area. Having said that, it is important to stress that the experience thus far suggests that well designed accountability measures, if anything, have helped to strengthen both the integrity and the independence of the judiciary. Such measures include regular court user surveys, complaints mechanisms, meetings with court users, codes of conduct, judicial ethics training, ethics advisory committees, complaints and disciplinary committees, and court inspections, among others.





### 3. Strengthening judicial oversight mechanisms

Judicial integrity, independence, and impartiality are preconditions for fair and effective access to justice and the protection of human rights. This means that there can be only limited oversight from outside of the judiciary to avoid undue influence and interference from, for example, the government.

This is particularly relevant and challenging in countries emerging from conflict situations, and where judicial independence is put into question by political legacies and subordination to the executive. Guaranteeing a proper separation of powers is the priority under those conditions. In some contexts, it even might be necessary to vet and reappoint the judicial staff, as discussed below for the cases of Bosnia and Herzegovina and of Kosovo.

The need to find a balance between independence and accountability means that the judiciary itself needs to develop adequate structures and procedures to ensure the integrity and accountability of its personnel. Most importantly, most jurisdictions have appeal processes that allow higher courts to review, reverse, or change verdicts. Further, institutional integrity mechanisms should be established, including normative standards of behaviour for judges and court staff (i.e., codes of conduct), and structures to monitor compliance and penalise misconduct, such as judicial councils.

This section looks at examples of internal oversight mechanisms for strengthening integrity and accountability, such as judicial councils, codes of conduct, and the vetting of judges as an instrument of last resort in contexts of transitional justice.

#### The role of judicial councils and codes of conduct

To promote judicial independence, the number of centralised judicial councils has grown in the last decades in different regions of the world (see Box 4). The *UNODC Resource Guide on Judicial Integrity* highlights that reforms in the area of governance of judicial personnel have tried to combine at the operational level the values of both independence and accountability, in particular by:

- Increasing the guarantees of the professional qualification of judges and to promoting accountability for their performance (through reforms in the area of recruitment, initial and continuing education, professional evaluation, career, role assignments, and discipline);
- Promoting, in various forms, the participation of judges in the management of other more junior judges as a way to protect judicial independence.

#### Box 4. Judicial independence and judicial councils

In recent decades, the number of centralised judicial councils has increased greatly in Europe, Latin America, Africa, and the Middle East. Most of them, but not all, have been created with the primary goal to promote and protect judicial independence. This is the case for countries where councils certainly have played a major role in the promotion of judicial independence. The councils, however, are different from one another with regard to the range of their decisional powers on the status of judges, their composition, and the ways in which their members are elected or appointed.

Such differences reveal rather different views on the institutional means needed to either protect judicial independence or promote a better balance between independence and accountability. However, there is no evidence that such



### 3. Strengthening judicial oversight mechanisms

centralised councils are a necessary prerequisite to protect judicial independence. It certainly would be difficult to argue that the judges of countries without those councils (such as Austria and Germany) are less independent than those of Argentina, Belgium, Bulgaria, France, Georgia, Italy, the Netherlands, Romania, Spain, and so on.

On the other hand, worries have been expressed in some countries (such as France, Italy, and Spain) that in national councils where the majority of members consists of judges elected by their colleagues, the corporate interests of the judiciary might prevail over the protection of other important values—such as that of judicial accountability—for the proper working of the judicial system.

*Adapted from: UNODC (2011).*

In Europe there are various models for managing the career of judges. In some states, such as Austria, Belgium, France, and Germany, the responsibility to make decisions on the status of judges from recruitment to retirement is, in various ways and degrees, a shared responsibility of the heads of courts, of judicial councils, or of *ad hoc* agencies that include representatives of the judges (usually higher ranking judges are overrepresented), ministers of justice, and—in some states of the German Federation—parliamentary commissions. In other European states, such as Italy and Spain, the overriding role in managing judicial personnel from recruitment to retirement is played by centralised judicial councils usually composed in various proportions

by representatives of the judges and of 'lay' people, usually practising lawyers or university professors.<sup>12</sup>

Codes of conduct and performance evaluations for judges are other key elements of an integrity infrastructure. However, the experience of UNDP in the field (for example in Nepal, see Box 5) has shown that these instruments are effective only if there are corresponding disciplinary structures to address violations of these standards.

The experience in Somaliland illustrates the effort to strengthen the role of the judicial council and operationalise the code of conduct for judges. This experience highlights

#### Box 5. Promoting standards of conduct in Nepal: Potentials and limitations

The judicial system in Nepal seems to be afflicted by a series of problems such as deficient laws, delays, and procedural anomalies—giving rise to docket congestion in several courts. A poor perception among citizens of the impartiality, integrity, and fairness of courts has further compounded these problems.

It was in the late 1990s that the judicial leadership began to give serious attention to systemic, legal, and human resource-related problems (Bhattarai & Upreti, 2006, p. 7). The judiciary began to introspect and inquire into the management aspects in the courts, when it drew up a comprehensive Strategic Plan (2004–2008). It also took the initiative to set up the National Judicial Academy (NJA), which was established formally in 2004 (Asia Pacific Judicial Reform Forum, 2009).

In Nepal, UNDP supported the development of a code of conduct for judges in 2010–2011, in cooperation with the judiciary, the attorney general, and the bar association. The code followed international standards, in particular the *Bangalore Principles of Judicial Conduct* (see page 16, 'International principles: How to put them in action and measure them?').

UNDP also supported measures to improve access to justice and to increase the citizens' understanding of court procedures. The judiciary published a *Citizen's Charter* and created 'Court Client Information Desks' to assist court users and lawyers know about court procedures and services. These desks also are responsible for disseminating information

<sup>12</sup> For more information on the governance of judicial personnel, see UNODC (2011).



### 3. Strengthening judicial oversight mechanisms

through public service announcements and information kits. The charter is an important channel for informing people about judicial services and existing laws, policies, and procedures (court services, court fees, court legal aid, and so on). Citizens with access to that information can find it easier to claim their rights and hold court officials accountable.

The National Judicial Council has been engaged in providing the necessary training and orientation to judges, judicial officials, and other stakeholders on the code of conduct and the *Citizen's Charter*. The Council, established as an oversight body under Article 113 of Nepal's 2007 Interim Constitution, is responsible for making recommendations for the appointment, transfer, discipline, and dismissal of judges. It also can make recommendations in other matters relating to the administration of justice. In the case of irregularities by judges in the appellate and district courts, the Judicial Council of the Supreme Court is responsible for taking the necessary measures.

The increasing number of cases and complaints for malpractice and maladministration filed against the court system suggests that citizens have a better understanding of the courts, the Code of Conduct, and their right to demand accountability. They are better informed and empowered to claim their rights. However, the Judicial Council still has to act decisively against many lower court judges whose cases of misconduct are pending. Even though the Judicial Council has introduced better procedures for the fair appointment of judges, civil society groups keep voicing concerns about lack of clarity and transparency in the processes.<sup>13</sup> Further work also is needed to establish mechanisms for the Council to provide feedback to those that have filed complaints, to avoid the loss of citizen confidence in the process.

*Source: UNDP Country Office in Nepal.*

the importance of 'closing the loop' in judicial reform. Like Nepal, Somaliland is undergoing substantial judicial reforms that include the strengthening of integrity and oversight at the normative (code of conduct) and operational (strengthening and clarifying the role of the judicial council) levels. As a consequence, disciplinary measures were put in place to hold individuals accountable based on the now clearly defined rules and code of conduct.

a Judicial Code of Conduct as well as for investigating public complaints, helped improve the oversight role of Somaliland's High Judicial Commission.<sup>15</sup>

- A public complaint mechanism, along with immediate action on the basis of inspection reports by the High Judicial Commission, helped improve public confidence in the formal justice system.

## Somalia: Strengthening internal oversight and public complaint mechanisms

### Highlights<sup>14</sup>

- A dedicated team of inspectors, for monitoring the performance of the judges and their compliance with

### Background

Located in the northwest of Somalia, Somaliland unilaterally declared independence from Somalia in 1991. It is internationally recognized as an autonomous region. Somaliland has a pluralist justice system that includes traditional Sharia law and a formal justice system. Somaliland's relative political stability and the government's commitment to establishing formal institutions provided a platform for the development of the justice sector.

13 For example, three out of eight Supreme Court judges appointed in 2014 were suspected of corruption (*Nepali Times*, 29 April 2014).

14 This case study was compiled from contributions by Abdisalam Yusuf Farah, Area Project Manager/Somaliland, Rule of Law-Justice and Corrections, UNDP Somalia.

15 'High Judicial Commission' is the common name of the Commission, which also is referred to sometimes as 'Higher Judicial Commission/Council.' The 1993 Constitution of Somaliland names it 'Judicial Commission.' This case study uses 'High Judicial Commission' to be consistent with UNDP programme documents.



### 3. Strengthening judicial oversight mechanisms

Some indicators show the progress that has been made:

- Somaliland courts adjudicated 10,428 cases in 2014 and 9,227 cases in 2013, in comparison with 7,398 cases in 2012;
- Free legal aid in Somaliland reached 8,927 clients in 2014 and 7,915 in 2013, from 6,577 in 2012.

However, the justice sector faces several challenges and continues to be under-resourced and under-qualified, with a shortage of skilled legal professionals. For example, out of a total of 136 judges, only 29 have received any legal training, and women only recently have been appointed to senior positions such as deputy attorney generals.

Corruption is among the main challenges that undermine public confidence in the formal justice system. Results from the *National Corruption Perception Survey, 2013*, carried out by the Somaliland Good Governance and Anti-Corruption Commission with assistance from UNDP's Governance and Rule of Law programme, indicate high prevalence of corruption in justice systems (GGACC, 2013). According to the survey, bribery is prevalent mostly in police stations, justice courts, and the traffic department. A high proportion (74.6 percent) of service seekers who visited police stations reported that they were asked to pay bribes for any required service. The judiciary and courts ranked second with 65.7 percent of judicial service users saying that they were asked to pay a bribe for accessing services.

Respondents to the survey indicated a lack of confidence in the formal justice system due to corruption and because the system is seen as favouring those who have the ability to pay 'incentives'. With no mechanism for citizens to challenge this behaviour, judges, lawyers, and police officers enjoy impunity and remain outside of the very law and principles they are mandated to uphold.

Low public confidence in, and limited access to, the formal judicial system has meant that most justice and legal issues continue to be solved at a community level, through traditional and informal justice mechanisms.

#### *Strengthening judicial oversight and integrity*

To improve the quality and independence of the formal judicial system and also enhance peoples' confidence in and access to the formal judicial system, UNDP, through its *Strengthening the quality and scope of justice provision and policing in Somalia* project,<sup>16</sup> supported several interventions to strengthen judicial oversight and combat corruption. In October 2012, UNDP signed a letter of agreement with the High Judicial Commission to provide assistance. The Commission consists of 10 members: the chairman of the Supreme Court, who also serves as the chairman of the Judicial Commission; the two Supreme Court judges who rank highest in seniority; the Attorney General; the director general of the Ministry of Justice; the chairman of the Civil Service Agency; two members selected by the House of Representatives from the public every two years; and two members selected by the House of Elders from the public every two years (one from among those who are well versed in the traditions and one from the religious scholars).<sup>17</sup>

UNDP supported the establishment of a team of four inspectors within the High Judicial Commission. This initiative provided the Commission with the capacity to implement its mandate to evaluate the performance of the judges, the justice services, and the quality of the verdicts in all the six regions of Somaliland.

The lack of a judicial code of conduct contributed to the weak accountability of judicial sector actors. To address this gap and as a first step towards improving oversight, UNDP provided technical and financial support to the High Judicial Commission to develop a Judicial Code of Conduct. The code was seen as essential to the efforts to promote integrity and mitigate corruption. During the development of the Code of Conduct, judges, lawyers, prosecutors, and court registrars from all of Somaliland's regions provided inputs through participatory consultations. Training workshops contributed to raise awareness on the importance of the code, and to solicit input from practitioners on possible mechanisms for implementation.

16 The UK's Department for International Development funded this project.

17 See [http://www.somalilandlaw.com/organization\\_of\\_judiciary\\_law.HTM](http://www.somalilandlaw.com/organization_of_judiciary_law.HTM).



### 3. Strengthening judicial oversight mechanisms

Alongside the adoption of the Judicial Code of Conduct, the High Judicial Commission dedicated special efforts to raise public awareness about the ways, modalities, and process for filing a complaint against a judge. Billboards and panels were disseminated and displayed in the main cities and at the Hargeisa court complex (in public places and Courts surroundings) and all over the main cities in other regions. A hotline was set up for anonymous calls. A team of inspectors ensured the compliance of the judges and other judicial sector actors to the Code of Conduct. Towards this end, the inspection team conducted trial observation missions, and collected and analysed court verdicts.

In order to ensure adherence to the Code of Conduct and the Disciplinary Rules for Somaliland Judges and Prosecutors, the judicial monitoring and inspection unit has been undertaking regular monitoring missions to the courts in and outside of Hargeisa. Likewise, inspectors have received and investigated judicial misconduct complaints from the public against a number of judges from Hargeisa’s Appeal, Regional, and District courts. The team has successfully investigated complaints and submitted the report and findings of the investigations to the High Judicial Commission for a decision on disciplinary measures. Commission members, who were selected because of their experience, integrity, and professional skills in the courts and judiciary services, made the decisions based on the inspection reports. The dedicated inspection unit has helped the Commission strengthen its oversight and leadership roles.

### Results and impact

Table 1 illustrates the sanctions adopted by the High Judicial Commission following the inspection team’s investigations. This is the first time in Somaliland history that the Commission has held judges accountable for their misconduct by applying the provisions of a written and public judicial code of conduct and disciplinary rule. There had been dismissals in the past, but those were not based on clear policy. The results are particularly impressive in the Somaliland context, where dismissing a judge is an extremely sensitive and risky issue that can involve clan tensions and retaliations.

The inspection team reviewed and analysed the quality of verdicts passed to identify weaknesses, and possible malpractices. In 2013 and 2014, 130 and 110 court verdicts were reviewed, respectively. The team identified a number of weaknesses, including poor legal writing and knowledge of procedures. Based on the findings, the University of Hargeisa is now conducting further trainings for the judges in these subjects.

As a result of the work of the judicial inspection team, the performance of the High Judicial Commission in relation to oversight and accountability of sitting judges and prosecutors improved. For instance, as shown in Table 1, the High Judicial Commission has enforced the Judicial Code of Conduct and Disciplinary Rules and 21 judges were dismissed due to judicial misconduct, including corruption,

**Table 1. Complaints received and sanctions applied by the High Judicial Commission (Somaliland)**

Year	Complaints Received	Sanctions applied by the High Judicial Commission
2013	73	6 judges dismissed; 3 received warnings; 1 transferred
2014	122	12 judges dismissed
2015 (January to April)	39	3 judges dismissed



### 3. Strengthening judicial oversight mechanisms

undue absenteeism, and failure to attend mandatory judicial trainings. More importantly, strengthening the oversight role of the Commission also has helped safeguard judicial integrity and independence, and curbed external influence on the judicial sector.

Closely linking the complaints mechanism with the work of the High Judicial Commission's inspection team helped ensure the presence of a proper system of checks and balances to mitigate corruption in the judicial sector. This experience is particularly significant because watchdog organizations had not been able to hold justice actors accountable before the implementation of this initiative supported by UNDP. The initiative has been a very important first step in fighting corruption in the judiciary and has helped to raise public awareness to demand accountability. As pointed out by the Deputy Chief Justice during a review meeting with UNDP in May 2015, "before, people did not even know that they could complain against a judge".

#### *Lessons learnt and recommendations*

Interventions to strengthen the oversight and leadership role of Somaliland's High Judicial Commission provide several lessons that lead to the following recommendations:

- Improve policies, procedures and group representation. The systems are still weak and appropriate long-term policies and strategies should be put in place to improve judicial internal oversight. More resources should be invested into ensuring that ethical and fair practices are integrated into the overall justice systems. Relevant measures include:
  - Enhancing and ensuring the High Judicial Commission's ability to promote and protect the independence of the judiciary through more comprehensive systems and policies as well as internal controls;
  - Increasing the number of inspectors and extending their presence at the regional and district level;
  - Developing and strengthening the capacity of other oversight bodies such as the parliament, Human Rights Commission, civil society organizations, and a free press;

- Holding more public information campaigns to increase the general public's understanding of their legal rights and awareness of the consequences of corruption and what to do about it.
- Establish training programmes to increase capacities. Apart from developing more inclusive policies, future interventions also should include intensive training (and re-training) programmes for justice providers and legal personnel. These trainings should include modules on legal writing skills and legal systems, policies and procedures. There should be training and re-training on the Code of Conduct (to ensure transparency, accountability and enforcement), to protect the well being and impartiality of the judiciary.
- Increased capacity for monitoring. Mechanisms for tracking results and public awareness are essential for monitoring the progress of reforms. Regular surveys and mechanisms for anonymous feedback must be incorporated into the design of future interventions.

### When a fresh start is needed: Vetting in Bosnia and Herzegovina and in Kosovo

#### *Highlights*<sup>18</sup>

- In Bosnia and Herzegovina the vetting processes of judges and prosecutors who applied for posts included a performance review, asset disclosure, and background checks. Three High Judicial and Prosecutorial Councils restructured the court system and reappointed all judges and prosecutors between 2002 and 2004.
- In Kosovo, the vetting processes of judges and prosecutors included a professional competency assessment, tests, asset disclosures, and background investigations. Of nearly 450 sitting judges and prosecutors who re-applied for their positions, over half failed to be reappointed.

Most jurisdictions gradually introduce new policies and oversight mechanisms without any major changes in personnel, but what should be done with the problematic

<sup>18</sup> This case study draws heavily on several sources. Proper attribution is provided as needed.



### 3. Strengthening judicial oversight mechanisms

'judicial inheritance' of an autocratic regime or of a conflict situation? A vetting process, aimed at excluding from public office those individuals that fail to demonstrate integrity, can be a crucial element of transitional justice. Dismissing all judges and judicial staff would not be a fair and reasonable response—neither would the particular type of expertise required by the justice sector allow it—so the vetting process becomes the most appropriate option. Ukraine is currently undergoing such a screening for its 7,000 judges. Judges will be reassigned according to the results of performance assessments (best performers assigned to higher courts).

The vetting process in Bosnia and Herzegovina, and the process in Kosovo that was modelled on it, involved a comprehensive process for reappointment of all judges and prosecutors, conducted by the High Judicial and Prosecutorial Council in Bosnia and Herzegovina, and by the Independent Judicial and Prosecutorial Council in Kosovo. In the interest of transparency, these bodies included both international members (judges and/or prosecutors) as well as national members who joined the Council after they had been successfully vetted.

The vetting procedure began at the top (for instance, with the Supreme Court). Once higher judges had been vetted and, if found qualified, re-appointed, their representatives joined the Council to take part in the vetting of lower judges. In both countries, the vetting was framed as a process of 're-appointment' for which officials needed to apply, with a view to establishing fair and effective institutions, not as a mechanism to hold individuals accountable for past abuses. The vetting process should be seen as a first step in a long-term comprehensive judicial reform process with continuous strengthening of oversight and integrity mechanisms.

#### **Background**

With the end of a civil war and with regime change after decades of authoritarian rule comes the question not only of how to right old wrongs, but also of how to deal with a politicised state administration, often including politicised courts. Institutional reform can contribute to facilitate transitional justice through two main channels. On the one hand, fair and efficient public institutions play a critical role in preventing future abuse. After massive human rights

abuses, a fundamental goal for any legitimate transitional justice strategy is to prevent their recurrence.

On the other hand, reform also contributes to transitional justice by enabling public institutions—particularly those in the security and justice sectors—to provide criminal accountability for past abuses. A reformed police service can investigate crimes committed under authoritarian regimes or during conflict periods. A reformed prosecutor's office can effectively issue indictments and a reformed court can impartially judge those responsible for the abuses. Institutional reform might, thus, be a precondition for domestic criminal accountability after conflict or authoritarian periods.

There is a multiplicity of possible institutional reform measures to advance these goals. These can include, for example, establishing oversight, complaint, and disciplinary procedures; reforming or even creating new legal frameworks; developing or revising ethical guidelines and codes of conduct; transforming the public symbols associated with abusive practices; and providing adequate salaries, equipment, and infrastructure in the public sector.

Reform of the public service is a crucial step towards the development of fair and efficient institutions. Public officials are the embodiment of government institutions. These officials are the institutions' agents and public face. Problems in the composition of the institutions' staff have been frequently at the source of the inefficiency and abuse of the past.

Vetting the staff is an important element of institutional reform, particularly during regime transitions. 'Vetting' can be defined as the assessment of personal integrity to determine an individual's suitability for public employment. 'Integrity' here means adherence to international standards of human rights and professional conduct, including norms relating to financial propriety.

Citizens, particularly those that have been victims of abuse, are unlikely to trust and rely on public institutions that employ individuals with serious integrity deficits, and such distrust would fundamentally impair the capacity of the institution to fulfil its mandate. The goal of staff vetting is 'excluding from public service persons with serious integrity deficits in order to (re-) establish civic trust and (re-) legitimize public institutions' (OHCHR, 2006, pp. 3-4).

### 3. Strengthening judicial oversight mechanisms

Bosnia and Herzegovina and Kosovo emerged from the dissolution of Yugoslavia through a series of civil wars. Governments in both countries have undergone wide-reaching institutional reform processes since their independence in 1992 and 2008, respectively.

As in most societies that have to deal with legacies of conflict, the judiciary powers of Bosnia and Herzegovina and of Kosovo face tremendous pressures to deliver justice effectively and to rebuild their credibility. In particular, the Kosovan judiciary faces an especially complex set of challenges, including huge backlogs, entrenched organized crime, complex property disputes, a legacy of strong executive influence, inter-ethnic crimes, allegations of corruption, and a divisive war-crimes caseload (OSCE, 2012). It should be noted that since the OSCE 2012 report, Kosovo's legal infrastructure has been improved with the adoption of new laws, notably the Criminal Code and the Criminal Procedure Code. The physical infrastructure of Kosovo courts also has improved vastly through the USAID sponsored Model Courts Program, which refurbished the majority of the Basic Court buildings and completed the Palace of Justice in Prishtinë/Priština.

#### Bosnia and Herzegovina

Between 2002 and 2004, three High Judicial and Prosecutorial Councils (HJPC), comprised of national and international staff, restructured the court system and vetted all judges and prosecutors in Bosnia and Herzegovina. They declared vacant almost 1,000 posts and opened competitions to fill those positions (OECD, 2015). Even serving judges and prosecutors had to apply. The certification process of other law enforcement personnel removed only those that did not meet the required criteria.

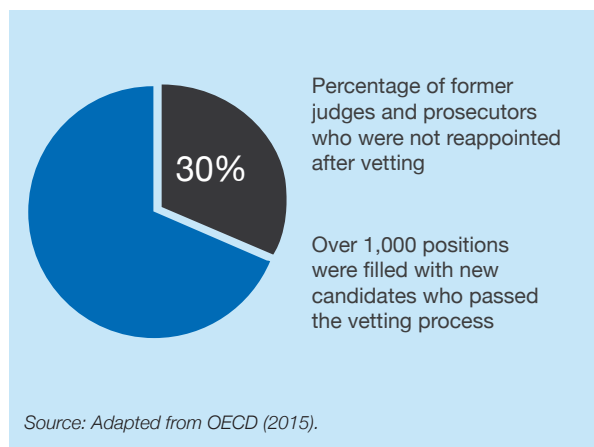
The vetting process of sitting judges and prosecutors who applied for posts included an extensive review of their performance and professional record, a professional competence assessment, disclosure of financial assets, and a background check. The background check included: a property compliance check based on the information provided in their application form and supporting documents they submitted (those who did not comply with the property laws were eliminated);

internal investigations of complaints (submitted by the public) by the HJPC officers; and collection of information on applicants from relevant national institutions and international organizations.

The burden of proof rested on the applicants. They had no right to a hearing or judicial appeal in case they were not selected. This procedural streamlining simplified the vetting process and created improved opportunities for broader reform measures in the security sector (OECD, 2015).

The outcomes of the HJPC vetting process (see Figure 7) included the closing of several courts—about 30 percent of the incumbents not being reappointed—and restoration of the pre-war ethnic balance. Once the process concluded, the HJPC turned into a permanent appointment and disciplinary body (OECD, 2015).

**Figure 7. Results of the vetting process in Bosnia and Herzegovina**



#### Kosovo

The Independent Judicial and Prosecutorial Commission (IJPC) was created to conduct a one-time, comprehensive, Kosovo-wide review of the suitability of all applicants for

19 Constitution of the Republic of Kosovo, Article 150 (1).





### 3. Strengthening judicial oversight mechanisms

permanent appointments... as judges and prosecutors in Kosovo.<sup>19</sup> In order to strengthen the objectivity of the process, the law established that the IJPC would have an international leadership. In practice, during the critical initial phases, the Commission consisted entirely of international members. Later on, even as previously vetted local legal professionals joined the institution, the international membership preserved a voting majority.

In 2009, each of the nearly 450 judges and prosecutors sitting at the time had to re-apply for their positions. The vetting process was open to anyone who fulfilled the qualifications for the office, not only to sitting judges and prosecutors. The vetting processes of judges and prosecutors included: a professional competency assessment; an examination on the Code of Ethics (two exams took place, one for applicants with seven or more years of experience, and another for those with less than seven years of professional experience); and, an entrance exam for all applicants who were not sitting judges and prosecutors.

In addition, the process included background investigation, disclosure of financial assets, and review of work performance and professional record. The background investigation included a criminal background check (based on information collected from Interpol, the Kosovo Anti-corruption Agency, the Kosovo Property Agency, and the Kosovo Police Service), and community checks. Almost 900 candidates applied for those positions.

The Organization for Security and Cooperation in Europe (OSCE), with some additional support by UNDP, had been running the Kosovo Judicial Institute since 2000 (nationalized under Kosovo law in 2006). While initially it was developed for continuing legal education, it also became a judicial and prosecutor training school. It meant that there was a cadre of trained professionals that could walk into the posts that were vacated by sitting judges who did not pass the vetting exams. In the end, 343 persons were appointed. More than half of the sitting judges and prosecutors failed to be reappointed (OSCE, 2012).

The IJPC dissolved at the end of October 2010. The President of Kosovo assumed authority over all judicial appointments and dismissals based on recommendations of the Kosovo Judicial Council (KJC). On the strong recommendation of influential groups, the KJC subsequently lowered the initial criteria for applicants who failed to pass the ethics exam. This resulted in a number of judges and prosecutors who re-entered through a 'back door', to a certain extent devaluing the IJPC process. Aside from recruiting and proposing candidates to judicial office, the KJC also oversees judges' transfers and disciplinary proceedings. The KJC is responsible for conducting judicial inspections, judicial administration, developing court rules in accordance with the law, hiring and supervising court administrators, developing and overseeing the budget of the judiciary, determining the number of judges in each jurisdiction and making recommendations for the establishment of new courts.<sup>20</sup> The Law that regulates the KJC puts it in charge of promulgating a code of professional ethics for judges, 'the violation of which provides grounds for sanctions, including dismissal from office'. Similarly, it requires the KJC also to promulgate an ethics code for 'court support employees'.

In recent years, reports from international organizations and non-governmental bodies have called attention to significant corruption risks in the Kosovan judiciary. UNDP's *Public Pulse Report IX*, published in April 2015, indicated that only about 17 percent of respondents were satisfied with the courts and prosecution services. 43 percent believed that there was large-scale corruption in courts.<sup>21</sup> These findings are further supported by the emergence in the last two years of a number of cases of corruption in the judiciary and prosecution services. The KSJ's Disciplinary Committee heard some of these cases and decided to apply disciplinary action (UNDP & UNODC, 2014).

The vetting process has been only a first step in a process of judicial reform that still has to face important challenges. The 2014 UNODC/UNDP assessment identified a series of areas in the disciplinary process that need improvement,

20 Constitution of the Republic of Kosovo, Article 108 (5).

21 *Public Pulse Report IX* does not explain the nature of corruption perception among respondents. The last prior edition of the series that does is *Public Pulse VI* (UNDP Kosovo, August 2013). According to *Public Pulse Report VI*: 'Even though the majority of Kosovans think that corruption is a problem, only a few of them claimed to have had personal experiences with it (8 percent). Majority of respondents (62 percent) stated that they are informed about corruption through media, while 21 percent stated that they heard about corruption from relatives or friends.'



### 3. Strengthening judicial oversight mechanisms

including a 'significant lack of transparency' that contributes to perceptions of bias and unfairness among the public (UNDP & UNODC, 2014).

#### *Lessons learned and recommendations*

The OECD online resource library identified a series of lessons learned and recommendations extracted from the vetting process in Bosnia and Herzegovina, including the following:

- Vetting processes imply a risk of arbitrary interference in otherwise independently operating sectors. Thus, they should be only a last resort when the institution is fundamentally dysfunctional. Further, they should be directed by an independent body that follows fair procedures, and be developed as early as possible to avoid long periods of legal uncertainty.
- Vetting processes should be linked to other reforms in the sector. The HJPC processes pursued broader security sector reforms. In particular, it reduced the overall personnel size and increased minority representation.
- International organizations play an important role. Vetting processes under domestic leadership prevent resentment against outside imposition and contribute local know-how. Vetting processes, however, often are contested, and considerable international involvement might be required. With an internationalised process, every effort should be made to involve domestic actors and guarantee a seamless changeover to regular domestic procedures. In this regard, the shortcomings of the United Nations Mission in Bosnia and Herzegovina were significant. The HJPC process,

conversely, was integrated into the domestic legal system and ensured a smooth transfer to a domestic follow-on mechanism (OECD, 2015).

- Vetting mechanisms should be seen as part of larger institutional process. The HJPC reappointment process reveals an institutional dimension of vetting. The main rationale was comprehensive personnel reform to build fair and effective institutions rather than establishing individual accountability for past abuses (Mayer-Rieckh, 2007).

Stakeholders suggested to the UNODC assessment team particular reforms that could promote greater transparency in the disciplinary process in Kosovo, including:

- Enhancing the role of civil society;
- Creating a programme to raise public awareness about the mechanisms available to hold the judiciary and prosecution services accountable;
- Introducing training and support to increase the capacity of court administrators to respond to requests for access to information;
- Developing new platforms for the exchange of information and concerns between the media and the judiciary.<sup>22</sup>

The KJC has recognized that more could be done to make its work transparent. It is considering the production of a short guide outlining the role and responsibilities of the KJC as a first step in this direction. In order to promote awareness of the work the KJC, all decisions should be made public and actively disseminated among court officials (UNDP & UNODC, 2014).

<sup>22</sup> This platform offers opportunities for all Kosovo citizens to report on corruption, fraud, conflict of interest as well as on other cases such as abuse of official position, negligence, endangerment of human rights of Kosovo citizens or endangerment of general interest (see <http://kallxo.com/>).



## 4. Using automation and technology to foster transparency and access to justice

Information and communications technology (ICT) has great potential to automate court services and proceedings as a way to make court administration more efficient, transparent, and accountable. ICT can expedite procedures, minimize direct human interaction in certain phases of the process to reduce opportunities for corruption, and systematically provide access to court information and statistics to the citizens.

Indonesia and the Philippines provide examples on how simple technical solutions can create unprecedented transparency and open up judicial verdicts to public scrutiny. They also show how complex reforms that involve institutions at national and local levels need to be carefully

phased. In Indonesia, the digital publication of verdicts by the Supreme Court reportedly has been a game changer in that it allows for external scrutiny and for comparison of verdicts. Today about 1.5 million verdicts are available online to be examined by anyone interested.

Technology and the digitalisation of testimonies and evidence also can improve the exchange of information between justice sector institutions and, thus, facilitate coordination and cooperation among them. For example, in Latin America and the Caribbean, UNDP has fostered the use of technology to improve the judicial system with the Management System for Governance (see Box 6).

### Box 6. UNDP Management System for Governance

To improve the efficiency, performance, and accountability of the government and its institutions, UNDP's Regional Bureau for Latin America and the Caribbean developed *Sistema de Gestión para la Gobernabilidad* (SIGOB) or Management System for Governance.

In Paraguay, UNDP supported the development of *Sistema de Gestión Jurisdiccional*<sup>23</sup> (JUDISOFT), or Jurisdictional Management System, now the justice sector's main management tool. It is used across jurisdictions (civil, criminal, labour, and family branches of the law) and in almost every court in the country. Every case is registered in the system and assigned to a specific court. JUDISOFT manages all documents relating to legal cases. It also registers and tracks cases by procedural step (for example, initial ruling, notification, response, and so on) to expedite their processing, and alerts court officials about upcoming deadlines.

The automation of case processing has helped reduce corruption risks in the judiciary by limiting human interaction and providing traceability for the cases. In addition, JUDISOFT allows 24/7 remote access to cases and supporting documents to all parties involved in a case. Based on the role and function of the person accessing the information

23 See <http://www.csj.gov.py:8080/portal>.



## 4. Using automation and technology to foster transparency and access to justice

(i.e., judge, prosecutor, attorney, public information counter), the system allows access to cases. The system also generates statistical information on case management that can be used for continuous improvement, access to information, evaluation, and research.

In Colombia, an integrated database called *Sistema de Gestión de Correspondencia y Archivo de Documentos Oficiales*<sup>24</sup> (SIGOBius) or Management System for Correspondence and Archiving of Official Documents, brought all justice sector institutions into the same communication network—including all administrative courts' units and offices, the judicial secretariat of the disciplinary tribunal, and the Supreme Court of Justice, among others. It has helped improve effectiveness, strengthen the long-term institutional memory of the justice sector, increase transparency, traceability (avoiding the removal, destruction, concealment, or manipulation of documents), and reduced corruption risks. SIGOBius is the approved methodology for the administration and handling of official correspondence in the SJC and other offices of the justice sector in Colombia.<sup>25</sup>

Source: UNDP Regional Bureau for Latin America and the Caribbean.

Discussing experiences of ICT-led reform, participants to the Expert Meeting in Malaysia warned against seeing technology as a panacea for all the challenges faced by the administration of justice. Technology is as effective only as the people using it allow it to be. It should be regarded as the tangible component of a larger reform process. The case studies below provide only a hint of the importance of the 'human factor' in reforms when they mention 'pockets of resistance to the new culture of simplification' and the ways the initiatives are communicated to relevant actors within the justice system. Pointing out the benefits of technology as a tool to gain public trust and to alleviate the burden of day-to-day operations (by reducing administrative tasks) has proven to ease the selling of reform efforts.

### Philippines: e-Courts as a means to enhance transparency and preserve integrity

#### Highlights<sup>26</sup>

- Cooperation among different actors is at the basis of effective judicial reform. In the Philippines, the Supreme

Court and other key agencies set up the Justice Sector Coordinating Council on the premise that good justice administration results from the performance of interdependent functions.

- e-Courts is a Supreme Court programme to increase court efficiency by providing a modern tool to manage cases and monitor court performance. The system increases transparency and public access to information.

#### Background

Docket congestion and case delays have plagued Philippine courts for decades, breeding distrust and lack of confidence in the institution and its processes. Courts generally are branded as slow, inept, and corrupt. The factors that have contributed to case delays go deeper than simple neglect or inefficiency.

The general law, which created the trial courts and apportioned their territorial and substantive jurisdictions, dates back to 1980 (*Batas Pambansa Bilang 129*). Since then, there has not been a comprehensive review and amendment, despite massive changes in terms of population increase, migration, and socioeconomic development. The result is significant asymmetry between the large caseloads of courts in 'new' urban centres and industrial hubs, and

24 See <https://www.ramajudicial.gov.co/web/centro-de-documentacion-judicial/sigobius>.

25 This information was compiled with assistance from Maria Eugenia Boza and Tomas Fantl of the UNDP-SIGOB team.

26 This case study was compiled from contributions by Justice Maria Filomena D. Singh, Associate Justice, Court of Appeals; Hon. Teresita Leonardo de Castro, Supreme Court of the Philippines; Attorney Jose Midas P. Marquez, Court Administrator; Pamela S. Fahey, Team Leader and Justice Expert, EU-Philippines Justice Support Programme; and, Robert C. La Mont, Country Director Philippines, American Bar Association Rule of Law Initiative.

#### 4. Using automation and technology to foster transparency and access to justice

the virtually empty dockets in ‘dead’ or ‘dying’ localities. Presently, with 103 million Filipinos and only 2,200 trial court judges nationwide, there is a ratio of one judge for every 50,000 citizens. Associate Justice Maria Filomena D. Singh of the Court of Appeals describes the challenges of a single courtroom trial court in a small town that has since grown into one of the biggest commercial and residential centres in the Philippines:

From a docket of less than 200 [cases], the single court accumulates new filings until its docket reaches a total of 16,000 cases. Yet, no relief is in sight by way of a new law to create additional courts. Even if the judge sets 100 cases every day, he will only be able to potentially hear 500 cases a week or 2,000 a month, and it will take him an estimated 8 months just to be able to calendar all the 16,000 cases.

That is not the end of the judge’s woes. Every week, the judge receives an additional 50 new cases to add to his docket of 16,000... All the judges, save those appointed to newly created courts, which [are] a very small number, inherit what we call a ‘backlog’. This loosely refers to the caseload left by the predecessor judge. The normal procedures, time standards and performance measures therefore cannot apply to these courts because a new factor is introduced into the equation, i.e., the inherited caseload. (UNDP, September 2015)

The Supreme Court, the Department of Justice, and the Department of Interior and Local Government constitute the Justice Sector Coordinating Council (JSCC), a forum for dialogue on issues of common interest and a mechanism for effective sharing of information. These institutions are independent and have their own mandates but share a large degree of interdependence in their functions and common interests crucial to the administration of justice. Coordination contributes to delivering ‘justice in real-time’ instead of ‘justice delayed’.

#### e-Courts

e-Courts is an initiative by the Supreme Court of the Philippines that aims to contribute to the modernization of the court system. The use of new technologies helps reduce human intervention, thus minimizing integrity risks along the justice chain—from the electronic raffle system assigning cases, to the adoption of the Automated Hearing System, which electronically captures every activity of the trial, including orders issued by the judge, minutes, and marking of evidences.

e-Courts will have an important impact on court performance. Some of the most important objectives are to:

- Speed up decision-making through automated monitoring of cases. At every hearing, a judge and the judge’s staff need to know the incidents that have

**Figure 8. Dual functions of Philippine trial judges**





## 4. Using automation and technology to foster transparency and access to justice

transpired in the cases that are in the court calendar. Going through the case files just to find out what has happened to them consumes hours, if not days. By freeing more time for research and decision writing, e-Courts is expected to enhance productivity and case resolution.

- Reduce case backlogs. e-Courts provides judges with a dashboard that tracks the status of the cases on the judge's docket and provides information like the aging of cases, deadlines, and case incidents that require court action. This information gives judges a more precise picture of the status of their dockets. They can prioritize cases that have been delayed and pursue needed actions.
- Increase public access to information. The public can find out the status of cases through computers in public kiosks located in the lobby of courthouses. People who are not computer literate can go to the Office of the Clerk of Court and get help with accessing the information they need electronically.
- Bolster transparency and serve as an anti-corruption tool. The electronic raffle of cases is done immediately upon filing. Litigants and lawyers can observe it from computer monitors at the Office of the Clerk of Court. Removing human intervention in the raffle of cases removes the possibility of manipulating their distribution.
- Save more time for making decisions. Every semester the courts conduct a two-week manual inventory of cases in order to generate a report of their caseload. Hearings are suspended during these inventory periods. As soon as all case information is stored in the e-Courts system, courts will not need to perform manual inventories, as reports will be automatically generated and electronically submitted. This gives judges one additional month every year for decision-making.
- Adopt templates and forms for greater access and efficiency. Following the examples of the Small Claims Courts, e-Courts will use ready-to-use templates for easy access and use by litigants and lawyers, as well as by the judges and court personnel. This will reduce drastically the time consumed by the courts to act on interlocutory and final case incidents. It also will be an access-to-justice tool for litigants unassisted by counsel.
- Implement the Automated Hearing System, which transforms the entire courtroom into an automated trial forum. During trial, every activity is captured electronically in real time, including orders issued by the judge, minutes of the hearing conducted, judges' notes on testimony taken, markings of evidence, issuance of writs, and so on. In a pilot test in February 2013, first

level and second level courts were equipped with the infrastructure and the skills to conduct automated hearings. The pilot test showed that the system eliminated delay in the preparation of open court orders, which the parties could get prior to leaving the courtroom. Most importantly, it freed up valuable time for the judge and the court staff as they no longer had to prepare these court orders after each hearing. Instead, they could focus on the more important task of adjudication.

### *Five main anti-corruption features of e-Courts*

1. The system can reflect all the deadlines and overdue actions of the courts. The current manual system easily can disguise, alter or overlook these references, and leaves it to the Branch Clerk of Court, by the judge's mere notation, to declare the monthly number of cases submitted for decision or motions submitted for resolution. Litigants have filed administrative cases owing to delays in their cases, charging court personnel with misdeclaration, falsification, and non-declaration of due dates. With litigants' vigilance, delays will be reduced to a bare minimum and violators will be identified easily.
2. The software is designed to leave a 'footprint' of every user who accesses the system. This is especially important in tracking changes, like unauthorized deletion of entries or changes in information. This is a great anti-corruption tool since the ill motivated can no longer hide their acts as every change in information is traceable.
3. Once a court order, resolution, or decision is entered into the system and uploaded, it can be changed or deleted only by authorized users, whose every change or alteration is logged by the system. Not only does this give parties easier and faster access to court actions on their cases, it makes formal court issuances virtually tamper-proof once uploaded.
4. Litigants know exactly the status of their cases because every movement in the case is electronically captured. The court cannot hide details such as when a party is delayed in submitting a pleading or when the court itself is the cause of delay. Thus, courts can be compelled to be more diligent, even-handed, and fair in the treatment of parties.
5. The system also works as a court performance monitoring tool. The Court Administrator (who has administrative supervision over all trial courts) and the Chief Justice have direct access to the information of any trial court whose performance they wish to review. This



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is an added incentive for the courts to perform their tasks honestly, competently, and responsibly. In each station, the Executive Judge has the same access to the data of all the courts in that particular station. Thus, the Executive Judge can monitor judges that perform poorly.

### *First results of implementation*

In 2013, e-Courts was piloted in the 58 courts of Quezon City, a major city in Metropolitan Manila with the highest caseload in the Philippines (about 7.5 percent of the total caseload in the country). Since then, it has been rolled out in 15 other courts, including in provinces north of Manila and Central Philippines. In the course of 2015 e-Courts reached 94 more courts, including one in Tacloban City, Leyte. Super Typhoon Yolanda (international name Haiyan) ravaged Tacloban City in November 2013, destroying court facilities and almost all court records. In implementing e-Courts, the judiciary is prioritizing not only the courts with the highest caseloads, but also courts that handle many commercial cases. One of the aims of modernizing the courts system is to boost investment in key economic corridors by ensuring speedy dispute resolution.

In 2016, e-Courts will be rolled out further in the 120 courts of Manila (the capital city), Pasig City, and Mandaluyong City. By the end of 2016, e-Courts will be in 287 trial courts and will handle about 30 percent of the total caseload of the Philippine court system.

### *Lessons learned and further implementation of the initiatives*

- Courts based on paper documents are at high risk in a natural disaster-prone country like the Philippines. Tacloban City turned into a great lesson, when it was ravaged by Typhoon Yolanda. The implementation of e-Courts prevents future loss of data in areas more vulnerable to natural disasters.
- Starting 2015, the judiciary began implementing an Enterprise Information Systems Plan (EISP), a 5-year information and communications technology master plan funded with appropriations from the national

government. As part of EISP, the Judiciary is building two major data centres, around a dozen regional data centres, and connectivity hubs in major locations, including areas where e-Courts is being rolled out. This will be the backbone of the overall judiciary ICT infrastructure.

- A wider approach that involves all main actors in justice systems is needed. Main actors include the police, judges, prosecutors, detention and correction agencies, and even the Department of Labour and Employment, which is tasked with reintegrating released prisoners into society. This wider approach is at the basis of the Justice Zone Project launched at the end of 2014 to enhance cooperation among different justice system actors.

All these recent efforts aim to offer citizens a justice system that is fair and timely. In many cases in the Philippines, the defendant—although presumed innocent—remains in jail until the case is solved, and this might take 10 to 15 years. The legal provisions might be excellent (such as the Speedy Trial Act enacted in 1998) but implementation is wanting.

Despite these new reform initiatives, citizens likely will not see the effects very soon because it will take a while to overcome current problems like cases backlog and corruption. There still are pockets of resistance to the new culture of simplification. Furthermore, the presidential elections of 2016 might affect the sustainability of the reforms. The incoming government might modify the composition and perhaps even the mandate of the Justice Sector Coordinating Council, the principal body spearheading judicial reforms in the Philippines.

## **Indonesia: Transparency and technology to reform the judicial sector**

### *Highlights<sup>27</sup>*

- To date, the most successful initiatives of the Judicial Reform Team in Indonesia have been the promotion of transparency and the disclosure of court information to the public.

<sup>27</sup> This case study was compiled from contributions by Haemiwan Z. Fathony, Former Deputy Coordinator of the Judicial Reform Team Office, and Agus Suyitno Loekman, Senior Technical Analyst, UNDP Indonesia.



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- The involvement of the legal community is essential for successfully implementing judicial reform. Advocates can become drivers of change if they increase their demand for information and accountability to the courts, and if they actually make use of the information during the exercise of their profession (Pompe, 29 March 2011).
- The automation of the court cases management system was not introduced as an IT improvement or as a modernization project, but as a tool to gain public trust and alleviate the burden of day-to-day operations.

### Background

The past decade witnessed major reforms in Indonesia's judicial sector. Before the *Reformasi* (the period of reforms following the fall of Suharto's regime in 1998), there was a very weak concept of independence of the judiciary. Instead of a unified court system, the country had four types of courts: military, religious (Islamic civic courts), administrative, and general jurisdictions that were under the control of the Ministry of Defence/Armed Forces, the Ministry of Religious Affairs, and the Ministry of Justice, respectively. Judges were considered civil servants of the ministries. In 2004 the responsibilities of the lower branches of the judiciary formerly administered by these ministries were transferred to the Supreme Court.

At the policy level, the Supreme Court established two reform blueprints, first in 2003 and then in 2010, designating Indonesia's Judicial Reform 2010-2035 as an update of the previous blueprint to be implemented through five-year plans. The Supreme Court established a Judicial Reform Team to implement these reform blueprints. The Team is composed of several senior members of the judiciary, and is currently led by the deputy chief justice. The Supreme Court also invites several representatives from civil society and the academe to sit as members. The willingness of the Court to open the process to public participation triggered subsequent initiatives and collaborations between the Court and the public at large.

### Impact of on-line accessibility of information on court information

The Judicial Reform Team recognized that the lack of transparency was a major driver of corruption in

the court system. The most important and successful initiatives to address corrupt practices were conducted under the umbrella of modernization of the court cases management system and disclosing court information to the public (i.e., court decisions, hearing schedules, and case information and status during the trial processes). These initiatives were developed in compliance with the Chief Justice Decree No. 144/2007 on Transparency of Court Information. The decree mandated all court information to be made available to the public (except for issues of domestic violence, sexual abuse, family law, taxation, and trade secrets). It was issued ahead of the Law on Public Information in 2008.

One reason to start with the publication of court decisions was to address a particularly challenging context in implementing a computerised case management system within the courts. The Indonesian judiciary consists of more than 800 courts around the country. It is a three-layer system (first instance, appeal, and court of cassation) with four jurisdictions (general courts, sharia courts, military courts, and administrative state courts). There are challenges related to the lack of ICT literacy and of reliable ICT infrastructure as well. The Judicial Reform Team decided to promote the effort as a measure to gain public trust and to alleviate the burden of day-to-day operations, instead of branding it as an ICT or modernization project.

The introduction of these transparency initiatives has brought initial results:

- In the past, complete copies of judgments were rarely accessible. Copies of judgments were usually limited to excerpts containing the punishment or penalty, poorly justified due to a weak legal rationale, and incomplete because of the unwillingness of the court staff to type the complete judgment. Now judges are obliged to make comprehensive and clear judgments available to the public through the Internet. With the new rules, both the judges and the Registrar (court clerks responsible for case management) have to adopt new ways of working.
- The information disclosed online includes the type of case, the name of the judge hearing it, and the lawyers involved. This gives the academic community and other observers the opportunity to evaluate the quality of the judgments themselves, hence potentially leading to the exposure and censure of dishonest judges who





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tamper with judgments. Currently more than 1 million judgments are available online via the judgment directory (see MARI, n.d.).

- A group of researchers from the University of Indonesia has compared 500 verdicts on rape cases, studying the relationship between evidence and resulting sentences. Their plan is to perform a similar analysis for corruption cases, comparing the sentences requested by the prosecutors in their indictments with the actual sentences. For the analysis of large numbers of verdicts, it would be helpful to make the format of the verdicts searchable.
- Case documents are now available electronically as well. Currently, the Supreme Court has an integrated dashboard to monitor the status of cases and their ongoing progress all over Indonesia. So far, the system works as an internal tool, allowing the Court to monitor, exercise oversight, and conduct the necessary managerial interventions to avoid corrupt practices at all Registrar offices.

In 2013, a *Public Service User Satisfaction Survey* was conducted to establish a baseline on court public service in Indonesia by the Indonesian Centre for Law and Policies Studies. The objective was not to 'judge or evaluate the courts' public service, but to see the weakness and strengths...and also to identify challenges and opportunities to improve [it] in the future.' This survey led to the following recommendations:

- Increase human resources' capacity to perform the service appropriately (using new technologies and adopting a user-satisfaction approach);
- Adopt new simplification measures to offer a quick and accurate public service; and,
- Introduce new technologies for efficient case management (PSHK, 2013).

Another survey, the *Indonesia Judicial Transparency Survey 2013*, conducted by the Supreme Court, concluded that 'the degree of transparency and the degree of information availability in judiciaries are at sufficient levels.' However, it states that this 'does not necessarily reflect the equal treatment of requests for information submitted by various parties.' In practice, the survey discovered that requests

for information from members of the public are treated differently from those submitted by NGO staff, with NGO staff reporting higher satisfaction than private citizens.

The difference in the service indicates that administrative reform in justice institutions has not fully succeeded yet, considering that the final goal is the behavioural change of civil servants to ensure good service to the public. A recommendation from the survey suggests that the public can play a relevant role in encouraging court information disclosure, by submitting massive amounts of information requests. A massive amount of requests would ultimately boost accurate and responsible management of information by the Court, and promote the accurate use of information in the formulation of policies (UNODC, MPPI, and MARI, 2013).

### *Lessons learned and recommendations*

Though progress has been made in the last decade, it is important to continue supporting reform efforts towards a more transparent and fair judiciary in Indonesia. Several limitations still exist:

- The publication of court decisions online helps to keep the judiciary accountable to the public by disclosing information on the assignment of cases to judges, the relationship between lawyers and judges, as well as weak prosecutions. However, it relies on the manual review of court judgments in an unsearchable digital format; it would be more convenient to be able to perform full-text searches.
- Automated detection of corruption risks (e.g., through random search) based on modern computer algorithms/software could open up a new horizon in combating judicial corruption.
- Developing partnerships can be beneficial, involving in the fight against judicial corruption not only the legal communities and the academe, but also experts from different backgrounds, such as mathematics, computer science, psychology, and management. Similar approaches in addressing fraud and corrupt behaviour are already applied in the private sector.



## 5. Empowering civil society and the broader community to increase judicial accountability

High discretion and low oversight constitute corruption risks specific to the judiciary and law enforcement agencies. Judicial independence—and the confidentiality often required during investigations and prosecutions—limit oversight by the state (both vertical and horizontal) and external oversight by the media, civil society organizations, and the public at large. In addition to these institutional hurdles, the technical language of the courts constitutes a barrier that not everyone can take on. Therefore, many judicial reform programmes, and especially those focusing on access to justice, include outreach and awareness raising components, such as citizen’s charters and complaint and redress mechanisms (see the sections on the Philippines, Nepal, and Somalia). It is still rare, however, that communities themselves take the initiative for oversight.

This section contains two case studies on the experiences of Integrity Watch Afghanistan with community-based monitoring of trials, and on the Court Users Committees set up in Kenya as part of the broader Judiciary Transformation Framework. It is remarkable that in a challenging and fragile contexts such as in Afghanistan and in Kenya, ‘bottom-up’ approaches have been developed to monitor and hold the judiciary accountable from the outside.

The systematic monitoring of trials is not new (see Box 7). The OSCE Office for Democratic Institutions and Human Rights (ODIHR), for example, has accumulated significant experience in trial monitoring in more than a dozen countries, including Kosovo, and has brought together the knowledge and good practices collected in a manual (ODIHR, 2012).

### Box 7. Trial monitoring: A multifaceted tool

This excerpt from the 2012 edition of *Trial Monitoring: A Reference Manual for Practitioners* by the OSCE/ODIHR introduces key concepts of trial monitoring:

Trial-monitoring programmes can be multifaceted tools for states, civil society groups and international organizations seeking to enhance the fairness, effectiveness and transparency of judicial systems. To maximize the effectiveness of these tools, organizations must be aware of the different types of trial monitoring and should design programmes that are responsive to the needs of a justice system in a particular domestic context. The paragraphs below set out some of the key concepts in trial monitoring.

#### ***Exercise of the right to a public trial***

At its most basic level, the act of monitoring a trial is an expression of the right to a public trial and increases the transparency of the judicial process. In individual cases, trial monitoring may serve to improve the effective and fair administration of justice or bring attention to serious deficiencies. Over time, trial-monitoring programmes raise awareness of the right to a public trial within the judiciary and among other legal actors, opening the door to wider awareness and acceptance of other international human rights and fair trial standards.



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### ***A diagnostic tool to support justice reform***

A trial-monitoring programme can be seen as a diagnostic tool to collect objective information on the administration of justice in individual cases and, through these, to draw and disseminate conclusions regarding the broader functioning of the justice system. Trial-monitoring programmes provide objective findings and conclusions for the consideration of all stakeholders, including the judicial, executive, and legislative branches of government, as well as civil society and the international community. Programme's recommendations and advocacy efforts can guide and influence stakeholders to take action and develop positive reforms. Trial-monitoring programmes can prompt justice actors to improve their practices; they may urge the executive to prioritize the allocation of resources needed to overcome shortcomings; they can encourage parliaments to adopt or amend legislation to bring justice practices into conformity with human rights standards; and they may raise civil society awareness of areas where it can play a significant role.

### ***A capacity-building vehicle***

The advocacy and capacity-building elements of trial-monitoring programmes provide a powerful vehicle to educate and train local jurists on international standards and domestic law. By pointing out shortcomings in the administration of justice from the perspective of fair trial standards, trial monitoring contributes to enhancing the knowledge of judges, prosecutors, legal counsel and other stakeholders on international due process rights and their application in domestic proceedings. It can acquaint these actors with good practices from the same or other justice systems that may be used to meet challenges. At the same time, by hiring local lawyers as monitors and legal analysts, programmes can provide interested legal professionals with an opportunity to become involved in the legal reform process. Programme partnerships and support for domestic monitoring groups increase the capacity of domestic organizations to engage in monitoring. In this way, programmes may facilitate the creation of a local monitoring capacity that will survive beyond the completion of an international organization's programme. Additionally, monitoring personnel may be subsequently hired by state authorities and be able to use their expertise to benefit the justice system.

*Source: ODIHR (2012).*

## **Afghanistan: Community-based monitoring of trials**

### ***Highlights***<sup>28</sup>

- Community based monitoring of trials, a community-based initiative implemented by Integrity Watch Afghanistan (IWA), promotes the direct engagement of citizens with judicial authorities. It is based on the assumption that daily observation of the formal judiciary by local monitors with the ability to report and comment on the decision of the judicial officials will result in a change in the attitudes and behaviour of the judiciary.
- Trial monitoring has proven to be a powerful tool in supporting judicial reform and promoting domestic guarantees on the rights of fair trial. It has the potential to provide constant and low-cost independent oversight on the courts, especially in remote areas where government access is limited.
- The presence of local monitors led the tribunals to

<sup>28</sup> This case study was compiled from contributions by Sayed Ikram Afzali, Executive Director, Mohammad Hashem Programme Manager of Community Based Monitoring of Trials, and Kowsar Gowhari, Head of Programs, Integrity Watch Afghanistan; Dawn Del Rio, Head of Rule of Law Unit and Kwanpadh Suddhi-Dhamakit, Programme Analyst, Democratic Governance, UNDP Afghanistan.



## 5. Empowering civil society and the broader community to increase judicial accountability

implement improved fair trial practices, thereby building confidence in the judicial process.

- District and provincial courts have accepted and implemented recommendations from the local monitors, leading to improvements in the administration of justice and to greater respect for human rights and the rule of law.

### Background

Since 2001, the international community, together with the Afghan government in the post-Taliban era, has deployed significant funds and technical assistance to rebuild the country's overall security sector, including the justice system. Promoting the rule of law and strengthening justice sector institutions are key priorities in the Afghanistan National Development Strategy. A diverse range of interventions took place to reform the justice system in order to reshape and institutionalize the rule of law and democratic values (e.g., passing and reforming a formal legal framework, providing technical assistance, and building infrastructure).

Yet, despite all these efforts, rule of law and access to justice have remained extremely poor and limited.

According to the *Global Corruption Barometer 2013*, as many as 60 percent of the respondents in Afghanistan perceived their judiciary as 'corrupt/extremely corrupt', and 65 percent of those who came into contact with the judiciary within the previous year reported having paid a bribe. By these measures, the judiciary is the most corrupt institution in the country (TI, 2013). Corruption is one of the weaknesses of the judicial system (see Box 8). It undermines the public's trust in the formal justice system, which historically has been subordinate to the executive branch and whose infrastructure and resources have suffered from decades of civil war (UNDP, 2007). Several surveys have reported a preference of the Afghan people to seek justice and resolve their disputes through informal mechanisms, such as the customary *jirga* or *shura* (Barfield, Nojumi, and Their, 2006).

More uplifting is the belief of 40 percent of the respondents that ordinary people can make a difference in the fight against corruption (TI, 2013). IWA has been tapping into

### Box 8. Corruption perceptions of the Afghan justice sector in IWA's annual surveys<sup>29</sup>

- The justice sector ranked in 2010 as the most corrupt sector, threatening the legitimacy of the state and creating a gap between citizens and state (Integrity Watch Afghanistan, 2010). The situation did not improve in the following years: The *National Corruption Surveys* of 2010, 2012, and 2014 registered an increase in the bribes that citizens were forced to pay to obtain public services. Bribery has nearly doubled in the last four years. A total of about US\$1,942 million were paid in bribes in 2014 compared to \$1,254 million in 2012. The number of adults who paid a bribe increased from 1.6 million to nearly 2 million, a 25 percent increase in participation in bribery in two years. While the average amount of bribes rose from US\$190 in 2012 to US\$240 in 2014, the average number of bribes paid per year has remained unchanged.
- According to the 2013 annual perception survey, 34 percent of the respondents believe the courts to be the most corrupt public institution, with 17 percent believing that the Ministry of Justice is the most corrupt. Nineteen percent of all respondents sought services from the judiciary and public prosecutors over the last 12 months.
- A large amount of corruption takes place in the police department, the attorney's office and the Department of Huquq—institutions that seriously affect the courts' decisions. The resulting confusion leads to the public perception that court officials commit the majority of abuse and corruption in the justice sector. Consequently, this creates the perception that the judiciary is the most corrupt institution, even if this is not necessarily the case. A fair trial thus requires transparency in the performance of all the actors involved in the justice sector.<sup>30</sup>

29 The National Corruption Surveys by Integrity Watch Afghanistan are available at <http://iwaweb.org/ncs/>.

30 Interview in Bamyam with Mr. Panahi, July 2012, quoted in Jahangeer (2012).



## 5. Empowering civil society and the broader community to increase judicial accountability

that confidence to engage citizens in monitoring the proceedings of local courts. Since 2005, IWA has used a community-based approach to monitor public services. It initially focused on infrastructure projects, and then expanded its methodology to the extractive industries and since 2012 to the courts.

The failure to hold senior officials in Afghanistan accountable impedes the success of all rule of law objectives. If power-holders can arbitrarily exert their will, people cannot predictably order their affairs. In a culture of impunity, power-holders may be encouraged to continue aggressions, knowing they will not be held accountable for them. And, when there is no political will to enforce the law, 'it does not matter how well trained the judges are or how skilfully the laws are written' (Wang, 2014, p. 225).<sup>31</sup>

The existing accountability mechanisms do not ensure integrity and transparency in the performance of judicial personnel and in safeguarding 'the right of access to justice' for Afghan citizens at the subnational level.

A very limited number of bottom-up initiatives aimed at ensuring the participation of ordinary citizens in the justice system have been carried out. These include community policing, community dispute resolution projects, and so on. Systematic and direct observation takes place on a very limited basis. Media reporting on court proceedings has been virtually non-existent so far. A large number of civil society organizations carry out capacity building initiatives in the justice sector; this has diverted their attention from playing a key role in monitoring and holding law enforcement institutions accountable to citizen demands (Jahangeer, 2012).

### **Involving non-traditional actors to hold the judiciary accountable**

According to the Afghan Constitution, court hearings are open to the public (Article 128, 2004 Constitution of Afghanistan). However, in practice, few people systematically and directly observe the proceedings. Unburdened by either outside observation or scrutiny, judges and prosecutors

consistently fail to observe the procedural rights set out in the Afghan laws, such as the Afghan Criminal Procedure Code and the Civil Procedure Code.

One of the rare bottom-up initiatives to tackle this problem in Afghanistan is Integrity Watch's pilot Court Trial Monitoring (CTM), launched in 2012 in the provinces of Kapisa and Bamyán. It was designed on the basis of the lessons learned from the Community Based Monitoring (CBM) Programme, where citizens were mobilized to monitor reconstruction and infrastructure projects. Currently, the project is being implemented in two other provinces (Nangarhar and Balkh), and it has been renamed Community Based Monitoring of Trials (CBM-T). CBM-T was conceived originally as a way both to increase citizens' participation in Afghan courts and monitor courts for compliance with Afghan procedural laws. It is a community-based initiative that promotes the direct engagement of citizens with judicial authorities. It is based on the assumption that daily observation of the formal judiciary by local monitors with the ability to report and comment on the decision of judicial officials will result in a change in the attitudes and behaviour of the judiciary.

The role of IWA consists of:

- Mobilizing the community by selecting local monitors to oversee the trial in their communities;
- Conducting trainings to build monitors' capacity to understand legal issues and to apply monitoring techniques;
- Interpreting and disseminating the data gathered by local monitors to address concerns related to judicial institutions.

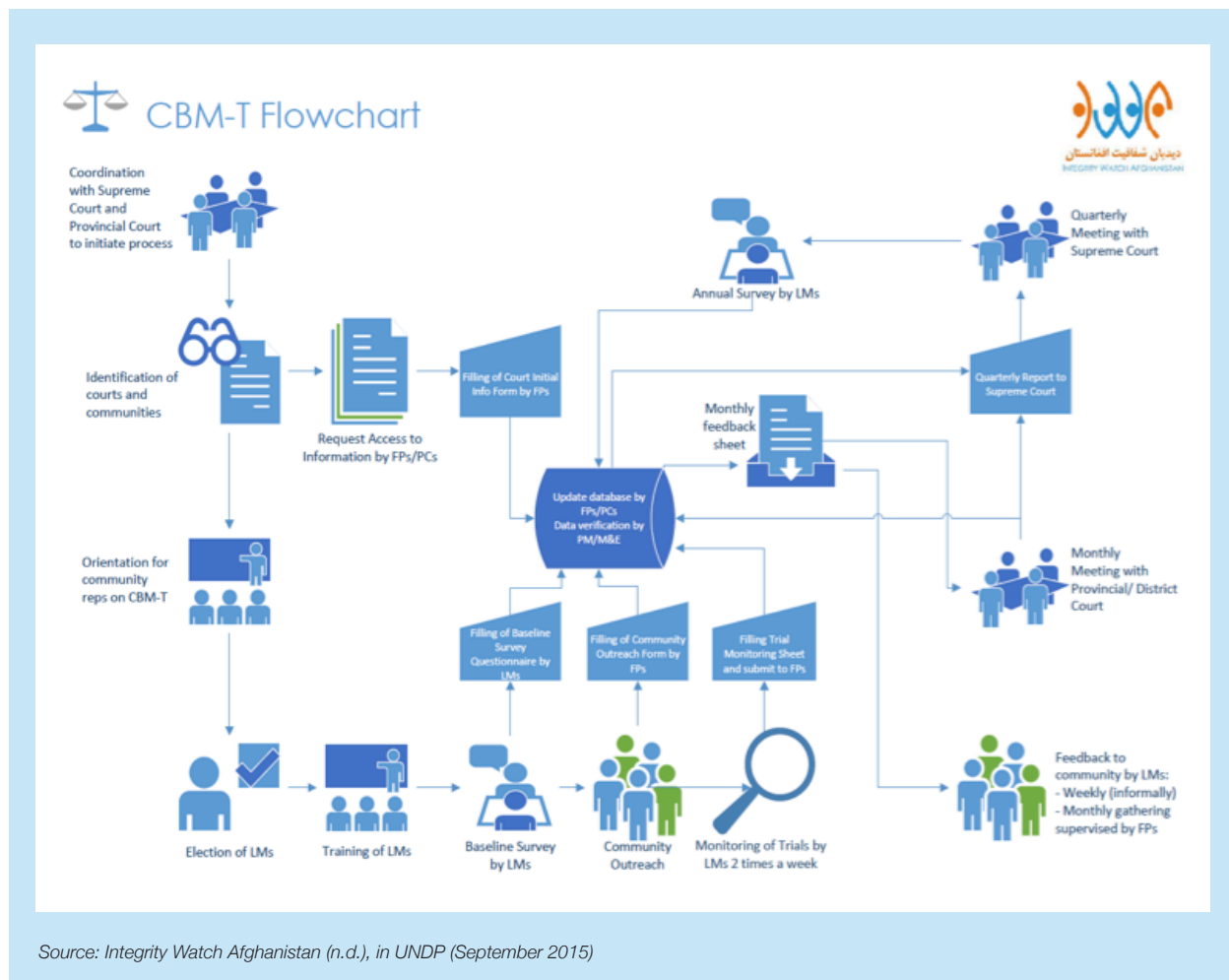
The main actors involved in the programme (see Figure 9) are:

- Communities in four provinces: IWA gathered and selected representatives to participate in court monitoring. The community then receives feedback reports on how courts have been performing.
- Local monitors: They are the key players in the process. Their respective communities select them based on pre-defined criteria that IWA developed. Local monitors

31 Wang is quoting American Institute of Afghanistan Studies, *Rule of Law in Afghanistan*, report on a conference held at Boston University, 23–24 September 2010.

## 5. Empowering civil society and the broader community to increase judicial accountability

Figure 9. The process of community-based trial monitoring



Source: Integrity Watch Afghanistan (n.d.), in UNDP (September 2015)

do the monitoring voluntarily. IWA conducts regular legal training for them to build their capacity and ensure the quality of monitoring. Local monitors have a mixed background: Some are selected based on their technical knowledge, while others are 'elected' based on community representation. The rationale for the mixed composition of the monitoring team is to make the process representative and participatory, while simultaneously benefiting from the legitimacy of technically trained members. This pairing also has

advantages in terms of capacity building. It seems that the number of local monitors who are elected based on their influence in the community is greater than those with technical knowledge. Local monitors obtain legal training and attend the trials at court. They monitor court proceedings and prepare feedback reports for their respective communities and IWA. They get involved in advocacy activities and consultations with court officials. Local monitors are under the oversight of IWA staff and the members of their community.



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- **Courts Officials:** They conduct the trials and receive feedback from local monitors and communities about the open trials conducted. Reforms of court proceedings and procedures are conducted based on the regular feedback reports received from community members through IWA.
- **Attorney General's Office (Prosecutors):** They inform local monitors of the case investigation process and other aspects of case proceedings.
- **Supreme Court Authorities:** They support the programme and regularly receive feedback reports. They advise local courts on the necessary reforms in court proceedings and court performances.
- **IWA:** Staff members facilitate court watch, legal trainings, community mobilization and gatherings, and advocacy campaigns, and they provide policy support to reform the judiciary.

### Results and lessons learned

IWA's CBM-T interventions in the four provinces have shown two main results (see Figure 10):

- An increased number of transparent trials, as well as acceptance of public trials through consistent presence of the public at courtrooms (65 percent of trials are

conducted openly in front of local monitors selected by the local communities);

- Increased community awareness contributing to the reduction of corruption and opaqueness of trials (Integrity Watch Afghanistan, 2014).

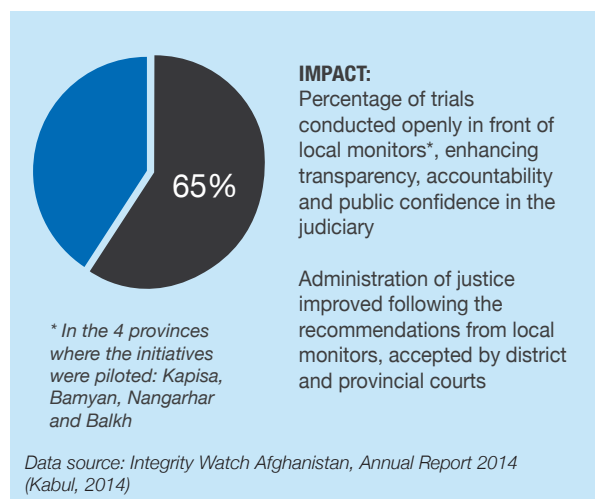
Overall, the project is a relevant and appropriate intervention to address the corruption challenges associated with justice institutions at the sub national level. CBM-T is the first civil society intervention supporting the formal justice system in Afghanistan. It has contributed to court transparency and court proceedings reform, and improved the service delivery capacity of formal justice institutions, especially at the district level, where court performance is weak.

### Recommendations

Considering the high level of corruption in the judiciary, community court monitoring needs to be expanded and continued in Afghanistan to make the judiciary transparent and accountable. The project should be expanded in other provinces considering the following recommendations:

- It is effective to pair local monitors combining influence in the community and technical knowledge;
- A comprehensive training package is required to better equip the communities that intend to do 'court-watch';
- The training component also should address judges, prosecutors, and other stakeholders to guide them in understanding the project's aims, objectives and implementation strategy, thus gaining valuable support;
- Coordination with universities, the Independent Human Rights Commission, the Afghanistan Bar Association, and other civil society organizations will be of vital importance to achieve the objectives of the project;
- A balance should be kept between institutionalization of the project and promotion of volunteerism in the community. This balance can be achieved through involving the communities in some of the activities of the project and gradually increasing their role to transfer project management skills to the community members;
- Research organizations, think tanks, and NGOs should support court watch initiatives by helping to translate the data gathered by local communities into policy-oriented papers;
- Due to security issues and lack of results in insecure areas, expansion of the project in insecure areas is not advisable.

**Figure 10. Results of local monitoring of trials in four Afghan provinces**





## 5. Empowering civil society and the broader community to increase judicial accountability

In Afghanistan, the percentage of people using the formal justice system is very low. Although CBM-T is a good initiative, the majority of people simply do not use the formal justice system to settle their disputes. The final objective of CBM-T is to make the formal system less corrupt, thus enhancing citizens' trust and encouraging them to use the system. However, this might not be always the result, since citizens' decisions about whether to use the formal justice system also depend on a host of other factors—e.g., court presence in the area, distance, language, and costs.

### Kenya: Judiciary Transformation Framework

#### Highlights<sup>32</sup>

- Since 2011 Kenya's judiciary has undergone substantial reforms that prioritise the reduction of case backlogs and corruption; the current reform initiative is the Judiciary Transformation Framework (JTF).
- Reform efforts aim to address administrative problems that hinder citizens' access to justice and open up a historically closed institution to public engagement.
- Judges, magistrates, and court staff help court registrars standardize and speed up administrative processes. Wide consultations, involving all levels of staff are conducted to ensure ownership of the reform.
- New technologies are used in a case-tracking system that facilitates nationwide monitoring of delays and workloads.
- An Office of the Judiciary Ombudsperson and Court Users Committees open up lines of communication for citizens to register complaints, suggest changes, and receive responses.

#### Background

Since 1895 when Britain made Kenya a colony, the public generally has rated Kenya's judiciary poorly, characterising it as inefficient, politically biased, and corrupt (Gainer, 2015).

According to Transparency International's *Global Corruption Barometer 2010*, 43 percent of Kenyans who sought services from the judiciary reported paying bribes (TI, 2010).

The new Constitution of 2010 laid the foundation for a wide transformation of the whole governance system in Kenya, including the judiciary. The Constitution's measures for restructuring the judiciary include a vetting process. Here, an independent board of Kenyan lawyers, civil society leaders, and foreign judges review the record of each judicial officer serving before the adoption of the Constitution and determine whether the officer is suitable to remain on the bench (Gainer, 2015).

In mid-2011, the Judicial Service Commission, the president, and parliament chose a new chief justice through an open process. There was a public call for applications and candidates were interviewed on live television. Based on the Commission's recommendation and with approval by the legislature, the president appointed as chief justice, Willy Mutunga, a veteran reformer who made his career in civil society.

#### *The development and adoption of the Judiciary Transformation Framework*

In a speech in October 2011, Mutunga outlined the challenges of Kenya's judiciary. He described an institution "so frail in its structures; so thin on resources; so low on its confidence; so deficient in integrity; so weak in its public support that to have expected it to deliver justice was to be wildly optimistic" (Mutunga, 19 October 2011).

"The [Kenyan] population does not understand how courts work, [or] why they work the way they do," according to George Kegoro, former executive director of the International Commission of the Kenyan Section of Jurists (Gainer, 2015). Citizens are not aware of their rights and not empowered to demand quality services. Moreover, there is no system to track the status of cases and hold judicial officers accountable for delays. A lack of resources compound the judiciary's problems.

At the beginning of his term, Mutunga set up a reform

32 This case study was compiled from contributions by Simon Ridley, David Maina, and Wambua Kituku (UNDP), who provided useful information, including extensive reference to Gainer (2015).

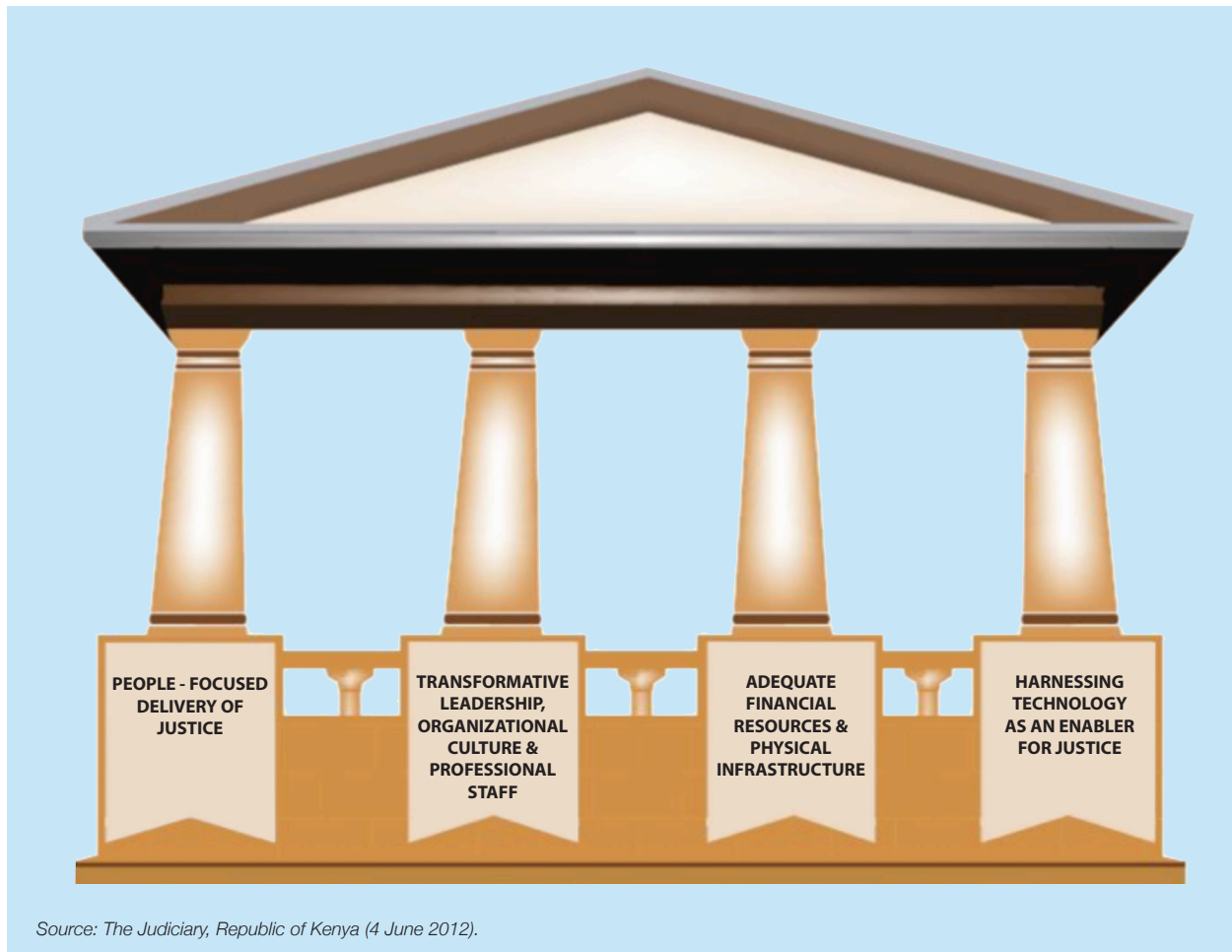


## 5. Empowering civil society and the broader community to increase judicial accountability

team to assess the challenges of the judiciary and develop a blueprint for reform. The reform team developed the Judiciary Transformation Framework (JTF), a 2012-2016 strategy based on several existing internal reports proposing reforms and many recommendations from civil society. The main challenge that the reform team anticipated was the judiciary's 'culture of unaccountability, distance, hierarchy, and opacity—sometimes driven by a self-serving invocation of the principle of independence' (Gainer, 2015).

Led by the chief justice, the reform team consulted judges, magistrates, and staff members to make them part of the process and generate their support. A complete draft of the reform strategy was sent to two academics and a legal aid NGO for comment before being finalized. The JTF was meant to generate common understanding, and to identify and structure priorities in a way that facilitated their implementation. The final strategy document was issued in May 2012. The JTF, which is accessible online, has four pillars (see Figure 11):

**Figure 11. Four pillars of Kenya's Judiciary Transformation Framework**





## 5. Empowering civil society and the broader community to increase judicial accountability

- Pillar One: People-focused delivery of justice. The judiciary is focused on delivering on three key result areas: (i) access to delivery of justice; (ii) people-centredness and public engagement; (iii) stakeholder engagement. Some of the initiatives under this pillar include building more courts, increasing the number of mobile courts, and engaging the public and stakeholders in the administration of justice.
- Pillar Two: Transformative leadership, organizational culture, and professional and motivated staff. The judiciary is changing its philosophy and culture, improving on leadership and management, decentralizing its organizational structure, and establishing institutions that support growth of jurisprudence and judicial practice. A Judiciary Training Institute has been established to promote learning and capacity development among judicial officers.
- Pillar Three: Adequate financial resources and physical infrastructure. The focus is on delivering on two key result areas: (i) physical infrastructure and (ii) resources. The judiciary will develop an Infrastructure Development Master Plan and Strategy to accelerate the construction and refurbishment of courts and operationalize the Judiciary Fund. The judiciary will put in place value-for-money standards, trails, and indicators for forensic audit. It will train procurement committees at the devolved units and institutionalize the development of annual procurement plans.
- Pillar Four: Harnessing technology as an enabler for justice. The judiciary is expected to use technology to facilitate speedier trials and enhance the efficiency and effectiveness of administrative processes.

The JTF adopts a holistic approach by building on cross-sector collaboration, strategic and technical partnerships, and benchmarks based on national, regional, and global standards and good practices.

UNDP, under the framework of the Judicial Transformation Support Programme, in cooperation with the Netherlands Government, assists the Kenyan judiciary to embark on its new role whose emphasis is on values of integrity, efficiency, transparency, accountability, and effectiveness in public service (UNDP in Kenya, n.d.).

The JTF has attracted the interest of others in the international development community, including UNODC, the World Bank, and GIZ. International support ensures

adequate funding for reform. Many of the measures included in the strategy—such as increasing the number of courts, introducing mobile courts, establishing customers' desks, hiring new staff, and ensuring good salaries and benefits—require the infusion of fresh financial resources.

### ***The meaning of 'people-centred approach': Empowering the community to hold the judiciary accountable***

Several measures have been taken to reach the two main goals of the transformation strategy, namely (i) the shift of the judiciary's culture toward public service and away from isolation, and (ii) opening the door to citizens' understanding of how the system works. The measures range from the development of a new case management tool, to the introduction of workshops and training for judges, magistrates and court staff to present the reform and support spreading the new culture. Judicial officials need to understand that their authority derives from the people, and to those people they should deliver justice effectively. Measures include:

- Hiring of new judges and magistrates. Twenty-five new courts have been opened, bringing justice closer to citizens living in remote areas; this new architecture also helps reduce delays.
- Customer Care Desks. These desks offer litigants the opportunity to ask procedural questions. Each court station is required to display publicly a service charter that lists the requirements, fees, and timelines for each court process.
- Office of the Judiciary Ombudsperson. Created in 2011 by the chief justice, this office collects and resolves citizen complaints about administrative issues. Citizens can bring their complaints to the office in person, by telephone, letter or e-mail. In many cases citizens appeal to the ombudsperson when they are unsatisfied with court verdicts, or when they need legal assistance. In those cases the office puts them in touch with legal aid organizations. The office is required to respond to citizens' request within a reasonable time.
- Court Users' Committees. Set up in 2006, the committees consist of local magistrates or judges, representatives of other agencies involved in the judicial system such as police and corrections, civil society organizations,



## 5. Empowering civil society and the broader community to increase judicial accountability

and community leaders. Reporting quarterly (albeit in an informal and sometimes disorganized way) to the National Council on the Administration of Justice,<sup>33</sup> they help members identify problems or best practices with national relevance. The committees use reporting and work plans templates to increase their efficiency. The committees enable civil society organizations, community leaders, and the public at large to raise issues directly with the judiciary. They are a vehicle to communicate new judicial reforms and procedures to citizens.

- Open Days. On these occasions, judges and magistrates hold informal meetings with the public, imparting information about the judiciary and responding to citizens' questions about its functions. The practice started in the previous decade and has been expanded under the JTF.
- Judicial Marches. A practice started in 2012, this involves judicial officials walking through neighbourhoods to discuss the court system with people on the street aim to promote knowledge and public trust.
- Directorate of Public Affairs and Communications. This office is responsible for providing information to the public through a media strategy, informational materials, and support for public events.<sup>34</sup>
- Yearly update. The chief justice is required to submit this update on the state of the judiciary, in accordance with the Judicial Service Act.

### Results and impact of the JTF

- The JTF prioritizes the issues of delays and corruption. Institutional systems are strengthened through review, development and adoption of policies, standard operating procedures, manuals and guidance notes in human resource management, finance, procurement, communication and public engagement, and management of court registries.

- A case tracking system registers all the information about the active cases and the officers responsible for it, facilitating the collection and comparison of information, as well as the control of the timeline. This also facilitates the work of judges, who spend less time going through files.
- A new and more efficient architecture has increased the number of courts and staff, and set up new offices, such as the Performance Management Directorate and the Directorate of Public Administration and Communication.
- In its first four years, the Office of the Judiciary Ombudsperson handled more than 21,000 complaints and suggestions.
- Both the Office of the Ombudsperson and the Performance Management Directorate help to reduce case backlog through monitoring and performance reviews, as well as streamlining of procedures.
- The reforms have 'changed the ways the judiciary served the Kenyan public' (Gainer, 2015). The combination of direct engagement, media, and publicly available reports help make the judiciary far more transparent than in the past.

### Recommendations

- Resolve the issue of limited funding for the judiciary (partly attributable to tensions between the judiciary and parliament, and the slow pace of establishing the Judiciary Fund);
- Expand vetting to clerical staff inherited from the 'old' judiciary;
- Reduce delays in appointing new judges by the president (linked to judicial interference by the executive);
- Leverage donor support to sustain a culture of openness and transparency among judicial officers, as well as engagement of stakeholders and court-users.

33 The 2011 Judicial Service Act makes the Court Users' Committees official part of the justice system, with the goal of promoting a coordinated, efficient, and consultative approach to justice. The Act also created the National Council on the Administration of Justice, which brings together the heads of the same agencies and organizations represented in the committees to make policy decisions on issues that affect courts around the country, such as procedural adjustments for cases involving children and bail guidelines.

34 Public perception can shift quickly. In 2013, a Gallup poll found 61 percent of Kenyans had confidence in the judiciary compared with 27 percent in 2009. However, subsequent polls found this confidence dropping significantly for both the Supreme Court and the other courts. One explanation is that high-profile controversies over the Supreme Court's 2013 election ruling and corruption by top administrative staff eroded trust in the judiciary despite reform efforts (Gainer, 2015).



## 6. Lessons for the way forward

Several countries have recognized the importance of a strong justice system for reducing conflicts, maintaining the rule of law, and protecting rights. Accordingly they have undertaken reforms and introduced initiatives to address corruption and promote integrity in the judiciary. A number of lessons can be drawn from these experiences to make these reforms more effective.

First a note of caution: The experiences shared in this report highlight that there is a multitude of contexts of judicial reform, and that while international principles and guidelines—such as the *Bangalore Principles of Judicial Conduct* and its derivative guidelines, including the *Implementation Measures* by JIG, the *Judicial Integrity Scans* by GIZ, and the *Guide and Evaluative Framework of Article 11* by UNODC—are important benchmarks, the most effective ways to strengthen judicial integrity, access to justice, and the rule of law have to be identified from and tailored for the specific country context.

### Mapping out risks to integrity and assessing capacity for change

In many countries actionable evidence on the patterns of corruption in the judiciary and underlying causes is lacking. Limited information on the type of corruption, most vulnerable areas within the justice sector, and the actors involved hampers the development of tailored countermeasures based on the country context.

Although development partners such as UNODC, GIZ, and others have developed several assessment tools to guide and support judicial reform (see Section 2), the review of experiences suggests that in many countries reform efforts are not yet informed by regular assessments over time. Nonetheless, even a one-time assessment can offer

a snapshot of the situation, as well as help identify entry points for reform.

Important lessons learned from the above experiences for the way forward are:

- Make the assessment part of a capacity development exercise: UNDP experience undertaking capacity assessments of other government organizations—for example with national human rights institutions and anti-corruption agencies—has shown that it is essential to make the assessment the first step towards building the capacities of the institution being assessed: What skills and processes, or capacities, does the organization need to build if it is to be as effective as possible in the future? For the judiciary this could translate into the following question: Are the oversight processes in the judiciary sufficient to mitigate organizational risks to integrity? Also what are the factors in the enabling environment that can facilitate change? The results from the assessment should identify the entry points for reforms building on the existing capacity for change in the judiciary.
- Make a map of risks to integrity in the judiciary as a starting point for the capacity assessment. Ideally, this map would be based on existing surveys providing information on the drivers of corruption (e.g., low salaries of judges, rent seeking by lawyers, etc.), its patterns as well as the main actors that are vulnerable to corruption.
- Ensure that the assessments are owned and driven by the judiciary itself. The organization being assessed undertakes a self-assessment of its organizational challenges, while the role of external experts is limited to facilitating the assessment. This means that the responsibility for prioritising the organizational challenges and the development of an integrity action plan in the judiciary lies with the organization being assessed. As reported by participants in the expert



## 6. Lessons for the way forward

meeting in Malaysia, assessments often are more effective and convincing when they are driven by the organization itself, to ensure ownership, while external experts facilitate the assessment to enhance the credibility of the results.

- Have a participatory and inclusive assessment. The capacity assessment gathers the views and feedback of different levels within an organization—chief justice, judges, lawyers and clerks, as well as administrative and finance staff. The assessment process also engages actors outside of the judiciary such as association of judges, relevant civil society organizations, prosecutors, police, lawyers and court users to get feedback on their experience with accessing justice. This also will help build public trust in the judiciary's capacity to deliver justice. Ideally, these stakeholders would continue to be involved in the reform process and its monitoring. The case of Nigeria, where UNODC supported surveys in 2002 and 2007, highlights how allowing large groups of stakeholders to be part of the assessment and subsequent planning helps forge a shared understanding among stakeholders about priority areas of reform. The repeated assessment helps measure and demonstrate progress of reforms. The disadvantages of these types of comprehensive surveys are that they are relatively expensive to conduct, require advanced research and analytical capacities (often unavailable in the relevant environments), and require a comparatively long time to complete.
- Involve judges and legal practitioners from other countries who have faced similar challenges to foster peer-to-peer exchange. Considering the difficulty of overcoming corruption in the judiciary, the expert team facilitating the self-assessment should include judges and legal practitioners, preferably from the same region, that have faced similar challenges in their countries and can advise on how they have overcome them.
- The capacity assessment should be undertaken as a starting point to support the judiciary in formulating an action plan to develop its integrity and organizational capacities. The action plan developed based on the results of the capacity assessment should be closely tied to the broader judicial reform strategy of the country. Also, it provides an opportunity for countries to align judicial integrity mechanisms with Article 11 of UNCAC before the start of the next review cycle.

### Adopting a phased approach to reform for achieving sustainable results

The country experiences presented in this report highlight the importance of long-term sustained efforts to implement reforms that address corruption risks and promote integrity. Specifically, the Nigeria and Philippines case studies show the importance of a phased approach with periodic assessments of progress.

In jurisdictions that have been successful in introducing a fully-fledged case management system, this was done gradually, often automating one business process at a time. They also have utilized a collaborative approach to designing the system, incorporating inputs from lawyers, judges, court staff and IT professionals.

### Matching judicial ethics and oversight with disciplinary action

In Nepal, the *Bangalore Principles of Judicial Conduct* served as a guideline for training judicial operators on integrity issues and for drafting codes of conduct. These are important first steps that need to be supported by a strong judicial appointment system and by actually taking disciplinary measures against judges, prosecutors, or lawyers who engage in corruption or professional misconduct.

The Somaliland experience shows how a strong judicial council can 'close the loop' in the efforts to promote judicial integrity and accountability. Judicial councils and other similar bodies internal to the judiciary typically are responsible for developing and implementing a judicial code of conduct. In the case of Somaliland, the judicial council's inspection team also conducted trial observations and analysed court verdicts. Where evidence of misconduct was found, the judicial council imposed sanctions—including the dismissal of judges.

The experience from Kosovo shows that vetting processes can be only a first step in overhauling the judicial system after an authoritarian regime or conflict, and that the replacement and transfer of personnel must be accompanied by continuous efforts to create an institutional framework that



## 6. Lessons for the way forward

fosters integrity and penalises misconduct in a consistent and transparent manner.

### Understanding political economy and engaging in dialogue

Especially in the case of international development partners who are new in the country, or who are engaging in a new area of support, it is important to understand the political economy of corruption in the judiciary and in the justice system more broadly.

Unless there is political will at the top of the judicial structures to enforce anti-corruption measures or other court reforms in general, they will not succeed. The case studies in this report tell positive stories, precisely because there has been some political will and ownership of the reform process within the respective judiciaries. But there are countless stories of case management systems that have gone unused or have been only partially adopted in many recipient countries. Court staff do not have incentives to use automated services, as they can take away opportunities to make extra money through corruption. If the courts' leadership has no intention of disciplining staff that refuse to use the case management tools, then these systems become a huge waste of money and a source of cynicism.<sup>35</sup>

To test and secure political will, continuous engagement and political dialogue at the decision-making level are needed. It is important to ensure that capacity-building measures are perceived and supported as such, and not undermined as threats to existing power structures.

### Promoting modernization, automation, and access to information

The experiences from Indonesia, Nepal, the Philippines, Kenya and the Strengthening Management Capacities for Governance (SIGOB) project in Colombia and Paraguay

stress the importance of pursuing the modernization and automation of judicial services and of providing information on trial procedures and judicial verdicts. These measures not only allow greater efficiency in managing cases but also promote greater transparency and accountability. The establishment of management systems make it easier to identify and address problems in the judicial administration, and contribute to a more proactive judiciary.

Modernisation and automation of courts could be key enablers for judicial accountability—by providing systematic information on the way courts operate and related judgements. In the case of Indonesia, modernization and disclosure of information on judicial verdicts has increased both the quality of the judgments and the accountability of the judges. In the case of Nepal and Kenya, citizen's charters with information on different services and on the cost of services have helped increase transparency and allowed the public to report corruption and other types of malpractice.

However, these case studies do not include hard evidence on how information on verdicts and court fees has helped to improve judicial accountability, or on how the public or organizations working to promote judicial integrity use this information.

### Strengthening community-based monitoring systems

Other stakeholders, such as associations of judges, court users, and the broader community have a role to play in promoting accountability within the justice sector. Good practices include regular consultation processes with these stakeholders, for example to assess the progress of judicial reforms as illustrated in the case of Nigeria, or the periodic meetings and reporting of the Court Users' Committees in Kenya.

The Afghanistan experience highlights the importance of promoting judicial integrity and of strengthening a community-based monitoring system to rebuild public trust in formal judicial systems in fragile contexts. Supported by

<sup>35</sup> Public expenditure reviews have been suggested as an entry point to identify issues related to the financial independence of the justice sector by one of the contributors of this report. A justice system that is completely cash starved (in some cases even deliberately) is more vulnerable to external manipulation.



## 6. Lessons for the way forward

IntegrityWatch Afghanistan, the local monitoring of trials has led to improved fair trial practices and increased confidence in the judicial process. Though implemented in only four provinces, the project strengthened the network, and the coordination and interaction between different actors (such as court officials, the Prosecutor's Office, local monitors, etc.) to ensure greater transparency and accountability in the delivery of services.

A key enabler for community monitoring is transparent, readily available, and comprehensible information for non-judicial experts. Civil society needs to gain access to information on verdicts and trials. Judge Mellinghoff from the Judicial Integrity Group emphasized at the 16IACC that 'every judgement must be published.' Openness in the judiciary can foster not only integrity but also professionalism on the part of judges, as illustrated by the experience of Kenya. Initiatives to achieve greater integrity and accountability should be encouraged, for example by taking advantage of the opportunities offered by ICT to automate court proceedings and use tailored software to make information available to citizens on a systematic basis.

### Conducting more research on other institutions in the justice system

A major challenge is the development of a solid evidence base on the impact of judicial reform initiatives to combat judicial corruption and strengthen judicial integrity. Most data available consists of surveys of public and business perceptions of judicial corruption. There is a significant need to develop further work on strengthening the capacity and integrity of judiciaries. Simultaneous investments should be made to assess and monitor the impact of measures such as the implementation of codes of conduct, complaint mechanisms, and disciplinary actions.

The urgency of assessments is even more pressing when considering other institutions in the justice system, most conspicuously the police and prison services. To reiterate the recommendation of the 2015 U4 report *Corruption Risks in the Criminal Justice Chain and Assessment Tools*: 'The formal organizations that constitute the system are the natural starting points for analysis. But when it comes to reform efforts and a comprehensive anti-corruption

strategy, only a sector-wide lens will allow identification of the linkages and dependencies within the criminal justice chain.'

Although the police and correction services are typically under the executive branch of government, and hence under direct top-down oversight, they are often as difficult to access and monitor by outsiders as the independent judiciary. Trials in many countries are open to the public, whereas most police work is covered by some form of confidentiality. Prisons are inherently locked away from the public eye. In these cases, approaches for enhanced community access and monitoring seem particularly warranted.

To repeat a key recommendation from the Nigeria case study discussed in this report:

Building up the judiciary as an island of integrity in a sea of corruption is unlikely to produce sustainable results in the long run. Other justice sector stakeholders need to be included in the action planning and implementation process right from the start, and the action plans should also address their needs in terms of integrity, accountability and capacity.

### Taking the way forward

The experiences presented in this report and the consultative process with experts from numerous countries, exceeding those whose reforms have been shared here, demonstrates the wealth, willingness and benefit of openly sharing lessons learnt. Rarely are there outright success stories, but lessons from failures or just 'muddling through' can be just as insightful. Hopefully this report has provided some ideas and resources to look up further, and encourages those who seek a more transparent and accountable judiciary on their journey.

UNDP, along with its partners, stands prepared to support judiciaries that are ready to engage in critical self-assessments and exchange with their peers on how to develop a practical reform agenda that promotes integrity and overall trust in the judiciary.



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## **United Nations Development Programme**

Bangkok Regional Hub  
3rd Floor United Nations Service Building  
Rajdamnern Nok Avenue,  
Bangkok 10200  
Thailand

Tel: +66 (0)2 304 9100

Fax: +66 (0)2 280 2700

<http://asia-pacific.undp.org>