

Policy Position

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Enhancing Judicial Transparency

Transparency relating to the judiciary serves to increase public knowledge about the judicial system, provides recourse for redress when problems occur and decreases the opportunities for corrupt practices. It is vital that appointments, complaints and disciplinary processes are transparent and objective, and that the public has a means of challenging decisions where they are unreasonable or improper. Transparency also bolsters judicial independence. A diligent judge, for example, can demonstrate that they are acting in accordance with the law. In addition, information on judicial conduct and discipline enables the public and civil society to act as a check against arbitrary executive interference.

Computerised case-tracking systems and improved IT expertise are important means to limit individual discretion in the way cases or files move through the judicial system, and have the benefit of making information on particular cases readily accessible.

Public access extends to the need for court proceedings to be public (with limited exceptions). This means that the public needs to be informed that cases are or should be heard publicly and the courts are actually accessible to them.

The introduction of a code of conduct can serve as a kind of customer charter that informs court users of the kind of conduct and professionalism they should expect from the judiciary. The judiciary can also offer information on judges, including their salaries, vacancies and appointments (processes and criteria).

1. Transparent administration

A lack of transparency in administrative processes within the judiciary can provide opportunities for undue influence and bribery and dent public confidence in the institution as a whole. Transparency can, however, be introduced relatively simply. Increasingly, for example, judiciaries and judicial divisions are producing annual reports detailing their expenditures, the number of cases processed by the courts, backlogs, and the number of judges sitting and appointed. Some judiciaries are also opening up their working environments, enabling colleagues to see each other at work and limiting opportunities for improper behaviour.

To remove concerns of any possible conflicts of interest, it is becoming increasingly common for judges to be required to disclose their income on appointment and periodically thereafter, including upon retirement. Though there are mixed views on the wisdom of this approach, it may prove beneficial if judges are not singled out for asset disclosure but do so as part of a broader programme for all public officials.

2. Public access to information

Public access to reliable information about the activities of the judiciary is a key safeguard against corruption. One essential requirement is to have published, reasoned decisions available to lawyers, judges, the media and the public. Access to information about the laws ensures that the basis for the decisions of all judges is clear and generally improves accountability. Disseminating information about the way in which the legal system functions, people's rights in court, and the way the appeals process works helps to encourage individuals both to use the justice system and to challenge irregularities.

Prosecution services, too, should engage in developing and promoting transparency by informing the public about their roles and responsibilities, working with the legal profession to develop clear guidelines on the rights of defendants, witnesses and other individuals involved in the process. Developing a code of professional conduct by which the performance of the prosecution can be measured is also a useful approach.

3. Transparency and the media

The media is a key player in developing and maintaining transparency in the public sector, including within judicial systems. But with access to information comes the responsibility of reporting accurately and fairly. Journalists should be trained to report on legal issues and proceedings so that they can offer the public

intelligent and sensible accounts of what is happening in courts. When journalists report in an ill-informed or sensationalist way, public knowledge of the court system will be obscured.

4. Promoting sustainable judicial reform

Research and monitoring of judicial performance provides an important means of assessing the progress of judicial reform. This might include, for example, academic research into the frequency and causes of adjournments and the incidence and success of appeals. Identifying incidences of bribery and canvassing the public on their perceptions of judicial corruption are also important.

5. Key recommendations

- 🌐 The judiciary must **publish annual reports** of its activities and spending, and provide the public with reliable information about its governance and organisation.
- 🌐 The public should have reliable **access to information** pertaining to laws, proposed changes in legislation, court procedures, judgements, judicial vacancies, recruitment criteria, judicial selection procedures and reasons for judicial appointments.
- 🌐 The prosecution must **conduct judicial proceedings in public** (with limited exceptions such as for children); **publish reasons for decisions**; and produce **publicly accessible prosecution guidelines** to direct and assist decision makers regarding the conduct of prosecutions.
- 🌐 Judges should make **periodic asset disclosures** especially where other public officials are required to do so.
- 🌐 Judges must **declare conflicts of interests** as soon as they become apparent and disqualify themselves when they are (or might appear to be) biased or prejudiced towards a party to a case, when they have previously served as lawyers or material witnesses in the case, or if they have an economic interest in the outcome.
- 🌐 Formal institutional mechanisms for the judiciary should be established to ensure that **parties using the courts are legally advised** on the nature,

It is vital that those promoting justice-sector reform are aware of the impact their work may have on judges. The principle of judicial independence should not be undermined by pressures to meet targets or cut costs. Donors should embrace the needs of integrity and transparency, incorporating processes and working with key actors to develop transparent reforms.

Enhancing judicial transparency

This TI Policy Position is part of a series on preventing corruption in judicial systems. It was produced in 2007 and revised in 2008.

The four topics covered in this series are: Decent Working Conditions, Fair Appointments, Accountability and Discipline, and Transparency. All four Policy Positions are based on TI's Global Corruption Report 2007 on Corruption and Judicial Systems.

To learn more about the GCR for 2007, please visit: www.transparency.org/publications/gcr.

Additional details of TI's work on the judiciary are at: www.transparency.org/global_priorities/other_thematic_issues/judiciary

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scale and scope of their rights and procedures before, during and after proceedings.

- 🌐 Journalists must be able to **comment fairly on legal proceedings** and report suspected or actual corruption or bias. Laws that criminalise defamation or give judges discretion to award crippling compensation in libel cases inhibit the media from investigating and reporting suspected criminality and should be reformed.
- 🌐 Journalists and editors should be **better trained in reporting what happens in courts and in presenting legal issues** to the general public in an understandable form. Academics should be encouraged to comment on court judgements in legal journals, if not in the media.
- 🌐 Civil society organisations should contribute to understanding the issues related to judicial corruption by **monitoring the incidence as well as potential indicators of corruption**, such as delays and the quality of decisions.
- 🌐 Judicial reform programmes should address the problem of judicial corruption. Donors should share knowledge of diagnostics, evaluation of court processes and efficiency; and engage openly with partner countries. 🌐

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