

Policy Position

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Promoting Decent Judicial Terms and Conditions

The terms and conditions under which judges and court officials work are important in determining their likelihood to engage in corrupt practice. Judiciaries faced with low salaries, poor training and benefits, uncertain security of tenure, or sub-standard administration are unlikely to attract and retain high-quality candidates. Even where able judges and court staff are in place, poor terms and conditions can provide both incentives and opportunities for resorting to corruption. The security of tenure is an essential means of securing judicial independence but, more broadly, conditions of service should provide a professional environment that is a transparent, motivating and safe place for judicial officers to work. Developing decent working environments is therefore a key means of preventing judicial corruption.

1. Judicial salaries – why are they important?

Judicial salaries that are too low to attract qualified legal personnel or retain them, and that do not enable judges and court staff to support their families in a secure environment, mean that judges are more susceptible to corruption. They may accept bribes when offered and, when left unchecked, may be more likely to extort bribes from vulnerable court users to supplement their income. ‘Adequate’ salaries mean a wage that ensures judges and prosecutors have, at least, no economic ‘need’ for resorting to corruption, and which is in line with the salaries of other senior public officials. This logic should extend to the provision of fair pensions, ensuring financial security for judges even after their retirement from the bench.

Although it is clear that lower level judges will receive less than higher level judges, and salary scales should be graduated to reflect experience, differences in pay should not be so extreme as to make more junior judges potentially vulnerable to corruption. In some countries, such as Nepal and Vietnam, Supreme Court justices receive 10 to 20 times the salary of lower judges, as well as such perks as cars and housing. Extreme differences in salaries can potentially isolate lower level judges, leaving them outside the core of the institution they serve and making them less likely to adhere to its professional standards.

2. The role of prestige

Although judges’ salaries are often not as attractive as those of other legal professionals in the private sector, the security of the judicial position and the respect afforded to the profession should be such that it compensates for loss of earnings. For example, while the salary of a federal judge of a district court in the United States is not commensurate with what a judge might have earned in private practice, it is higher than most government employees and its prestige makes it a sought-after position. Security of tenure of judges is an important way of increasing the prestige of the office and is essential for securing judicial independence.

3. Ensuring adequate resources

Though it is difficult to draw a precise causal link, severe under-funding always has an impact on corruption in the judiciary as members seek to supplement their needs from other sources. It is the duty of the state to provide adequate resources to enable the judiciary to perform its functions properly. This includes adequate salaries, but also resources for legal materials, adequate support staff and maintenance of court buildings. The personal security of judicial officers is essential too. The state must be responsible for protecting them against intimidation and violence, as well as securing court rooms and buildings. The allocation of resources within a judicial structure can also be a potential cause of corruption. Issues of the judiciary’s institutional and financial management capacity, budgetary independence and transparency need to be addressed so that available budgets are used effectively and fairly.

Generally, it is thought that long periods of tenure are needed in order to limit possible influences on judicial decisions — for example a term of 10 to 12 years. One school of thought on judicial tenure is that it should not be open to renewal since towards the end of their term judges tend to tailor judgements and conduct in anticipation of renewals.

The allocation of resources within a judicial structure can also be a potential cause of corruption.

4. Improving court administration

Poor court administration can allow corruption to undermine the judicial process. Though there is no one model of court administration that is particularly resistant to corruption, developing a hierarchal administrative structure headed by a court administrator can help improve the quality of judicial service. However, such structures can also allow the executive to exert too much control over the day-to-day running of the courts. It is important, whatever the model used, that court administrations retain a sufficient degree of independence and transparency.

A case-management system that allows for transparent tracking of case files enhances the effectiveness of court proceedings and ensures that claims and causes are heard in a reasonably efficient manner. It also helps improve the overall accountability of the justice system. Computerised case-management systems with tamper-proof software allow attorneys and litigants to track cases, trace files and monitor time requirements, removing a potential source of corruption: court staff responsible for file management will no longer be able to withhold or 'lose' files, only to 'find' them on receipt of a small bribe.

5. Appropriate education and training

Poor education and training of judges threatens judicial integrity by undermining standards of professionalism and confidence in the judiciary as an institution. However, proper education and training allows judges to acquire and build knowledge that is relevant for their positions and helps develop a broader culture of ethical behaviour and high standards of professionalism. Training also provides a non-financial benefit to complement salaries, giving the prospect of advancement and a disincentive to corruption.

Judicial reform efforts often include education and training as part of fighting judicial corruption. Integrity and ethics are important elements in such programmes, which should involve detailed teaching on codes of conduct, laws requiring disclosure of assets, cases of major judicial corruption, and lessons learned. Capacity building initiatives may form part of a broader programme of legal-judicial reform that aims not only to build knowledge, but to change the attitudes of senior officials, judges and lawyers who may be resistant to change.

6. Key recommendations

- 🌐 **Security of tenure** for judges should be guaranteed for around 10 years and should not be made subject to renewals, since towards the end of the term judges tend to tailor their judgments and conduct in anticipation of renewals.
- 🌐 **Judges' salaries** need to be commensurate with their position, experience, performance and professional development for the entirety of their tenure — and fair pensions should be provided upon retirement.
- 🌐 The state should provide sufficient resources to ensure that judges are **safe from violence and threats** and court rooms are secure.
- 🌐 Laws should **protect judicial salaries and working conditions** so that they cannot be manipulated by the executive and legislature in order to

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Promoting decent judicial terms and conditions

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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punish independent judges and/or reward those who consistently rule in favour of the government.

- 🌐 Objective criteria to determine the **placement of judges** in particular court locations should ensure that independent or non-corruptible judges are not punished by being sent to remote jurisdictions. Judges should not be assigned to a court in an area where they have close ties and allegiances with politicians.
- 🌐 **Case assignments** should be based on clear and objective criteria, be administered by judges, regularly assessed, and protected against the allocation of cases to pro-government or pro-business judges.
- 🌐 Judges must have easy **access to legislation, cases and court procedures**, and must receive initial **training** prior to or upon appointment — as well as continuing training throughout their careers. This includes training in legal analysis, the giving of reasons for decisions, judgement writing and case management, as well as specific ethical and anti-corruption training. 🌐

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