1. Article 11 of the United Nations Convention Against Corruption (UNCAC) provides that:

   (1) Bearing in mind the independence of the judiciary and its crucial role in combating corruption, each State Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, take measures to strengthen integrity and to prevent corruption among members of the judiciary. Such measures may include rules with respect to the conduct of members of the judiciary.

   (2) Measures to the same effect as those taken pursuant to paragraph 1 of this article may be introduced and applied within the prosecution service in those States Parties where it does not form part of the judiciary but enjoys independence similar to that of the judicial service.

Paragraph (1) of article 11 has established a mandatory obligation, while compliance with paragraph (2) is optional.

2. Article 11 emphasizes the crucial role of the judiciary in combating corruption. Accordingly, it requires each State Party (a) to take measures to strengthen integrity among members of the judiciary, and (b) to take measures to prevent corruption among members of the judiciary. A code of conduct for judges has been suggested as one such measure. This article also requires that whatever measures are taken should be consistent with the principle of judicial independence.
Part 1

THE JUDICIARY

1

Judicial independence

3. Judicial independence refers to both the individual and the institutional independence required for decision-making. Judicial independence is, therefore, both a state of mind of the judge, and a set of institutional and operational arrangements which the State is required to establish to enable the judge to enjoy that state of mind. The protection of the administration of justice from political influence or interference cannot be achieved by the judiciary alone. While it is the responsibility of the judge to be free of inappropriate connections with the executive and the legislature, it is the responsibility of the State to establish the institutional arrangements that would secure the independence of the judiciary from the other two branches of government.¹

4. In 1985, the United Nations General Assembly endorsed the Basic Principles on the Independence of the Judiciary that had been adopted earlier that year by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders.² In the following month, the General Assembly “welcomed” the Principles and invited Governments “to respect them and to take them into account within the framework of their national legislation and practice”.³ These Basic Principles were “formulated to assist Member States in their task of securing and promoting the independence of the judiciary”.

¹ In its General Comment No.32 (2007), the Human Rights Committee states that the requirement of independence in article 14(1) of the International Covenant on Civil and Political Rights refers, in particular, to the procedure and qualifications for the appointment of judges, and guarantees relating to their security of tenure until a mandatory retirement age or the expiry of their term of office, where such exist, the conditions governing promotion, transfer, suspension and cessation of their functions, and the actual independence of the judiciary from political interference by the executive branch and legislature. Accordingly, States are required to take specific measures guaranteeing the independence of the judiciary, protecting judges from any form of political influence in their decision-making through the constitution or adoption of laws establishing clear procedures and objective criteria for the appointment, remuneration, tenure, promotion, suspension and dismissal of members of the judiciary and disciplinary sanctions taken against them.

² UNGA Resolution 40/32 of 29 November 1985.

5. In 2010, the Judicial Group on Strengthening Judicial Integrity (“Judicial Integrity Group”), which was convened by the United Nations Centre for Crime Prevention (now UNODC) in 2000 to develop a concept of judicial accountability, revisited the UN Basic Principles when formulating Measures for the Effective Implementation of the Bangalore Principles of Judicial Conduct. The Bangalore Principles of Judicial Conduct had been endorsed by the United Nations Economic and Social Council (ECOSOC) as representing “a further development” and as “complementary to the Basic Principles on the Independence of the Judiciary”. Noting the requirement in Basic Principle 1 of the Basic Principles on the Independence of the Judiciary that “The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the laws of the country”, the Judicial Integrity Group recommended that the principle of judicial independence requires the State to provide guarantees through constitutional or other means:

(a) that the judiciary shall be independent of the executive and the legislature, and that no power shall be exercised as to interfere with the judicial process;

(b) that everyone has the right to be tried with due expedition and without undue delay by the ordinary courts or tribunals established by law subject to appeal to, or review by, the courts;

(c) that no special ad hoc tribunals shall be established to displace the normal jurisdiction otherwise vested in the courts;

(d) that, in the decision-making process, judges are able to act without any restriction, improper influence, inducement, pressure, threat or interference, direct or indirect, from any quarter or for any reason, and exercise unfettered freedom to decide cases impartially, in accordance with their conscience and the application of the law to the facts as they find them;

(e) that the judiciary shall have jurisdiction, directly or by way of review, over all issues of a judicial nature, and that no organ other than the court may decide conclusively its own jurisdiction and competence, as defined by law;

(f) that the executive shall refrain from any act or omission that preempts the judicial resolution of a dispute or frustrates the proper execution of a court decision;

(g) that a person exercising executive or legislative power shall not exercise, or attempt to exercise, any form of pressure on judges, whether overt or covert;

(h) that legislative or executive powers that may affect judges in their office, their remuneration, conditions of service or their resources, shall not be used with the object or consequence of threatening or bringing pressure upon a particular judge or judges;

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(i) that the State shall ensure the security and physical protection of members of the judiciary and their families, especially in the event of threats being made against them; and

(j) that allegations of misconduct against a judge shall not be discussed in the legislature except on a substantive motion for the removal or censure of a judge of which prior notice has been given.

6. Further elaborating the responsibilities of the State to ensure the independence of the judiciary, the Judicial Integrity Group recommended that the following principles be also guaranteed by constitutional or other means:

**Qualifications for Judicial Office**

(i) Persons selected for judicial office should be individuals of ability, integrity and efficiency with appropriate training or qualifications in law.

(ii) The assessment of a candidate for judicial office should involve consideration not only of his or her legal expertise and general professional abilities, but also of his or her social awareness and sensitivity, and other personal qualities (including a sense of ethics, patience, courtesy, honesty, commonsense, tact, humility and punctuality) and communication skills. The political, religious or other beliefs or allegiances of a candidate, except where they are proved to intrude upon the judge’s performance of judicial duties, should not be relevant.

(iii) In the selection of judges, there should be no discrimination on irrelevant grounds. A requirement that a candidate for judicial office must be a national of the country concerned shall not be considered discriminatory on irrelevant grounds. Due consideration should be given to ensuring a fair reflection by the judiciary of society in all its aspects.

**The Appointment of Judges**

(i) Provision for the appointment of judges should be made by law.

(ii) Members of the judiciary and members of the community should each play appropriately defined roles in the selection of candidates suitable for judicial office.

(iii) In order to ensure transparency and accountability in the process, the appointment and selection criteria should be made accessible to the general public, including the qualities required from candidates for high judicial office.
All judicial vacancies should be advertised in such a way as to invite applications by, or nominations of, suitable candidates for appointment.

(iv) An independent council or commission should be constituted for the appointment of judges. Its members should be selected on the basis of their competence, experience, understanding of judicial life, capacity for appropriate discussion and appreciation of the importance of a culture of independence. Its non-judge members may be selected from among outstanding jurists or citizens of acknowledged reputation and experience chosen by an appropriate appointment mechanism.

(v) The promotion of judges, when not based on seniority, should be made by the independent body responsible for the appointment of judges, and should be based on an objective appraisal of his or her performance, having regard to the expertise, abilities, personal qualities and skills required for initial appointment.

**Tenure of Judges**

(i) It is the duty of the State to provide a full complement of judges to discharge the work of the judiciary.

(ii) A judge should have a constitutionally guaranteed tenure until a mandatory retirement age or the expiry of a fixed term of office. A fixed term of office should not ordinarily be renewable unless procedures exist to ensure that the decision regarding re-appointment is made according to objective criteria and on merit.

(iii) The engagement of temporary or part-time judges should not be a substitute for a full complement of permanent judges. Where permitted by local law, such temporary or part-time judges should be appointed on conditions, and accompanied by guarantees, of tenure or objectivity regarding the continuation of their engagement which eliminate, so far as possible, any risks in relation to their independence.

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5 National practice appears to favour a specified retirement age for judges of superior courts. The constitutionally prescribed retirement age for judges of the highest court ranges from 62 in Belize, Botswana and Guyana to 65 in Greece, India, Malaysia, Namibia (with the possibility of extension to 70), Singapore, Sri Lanka and Turkey, 68 in Cyprus, 70 in Australia, Brazil Ghana, Peru and South Africa, to 75 in Canada and Chile. In some of these jurisdictions (for example, Belize and Botswana), however, provision exists to permit a judge who has reached retirement age to continue in office “as long as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before him before he attained that age”.

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Because the appointment of judges on probation could, if abused, undermine the independence of the judiciary, the decision whether or not to confirm such appointment should only be taken by the independent body responsible for the appointment of judges.

Except pursuant to a system of regular rotation provided by law or formulated after due consideration by the judiciary, and applied only by the judiciary or by an independent body, a judge should not be transferred from one jurisdiction, function or location to another without his or her consent.\(^6\)

**Remuneration of Judges**

(i) The salaries, conditions of service and pensions of judges should be adequate, commensurate with the status, dignity and responsibilities of their office, and should be periodically reviewed for those purposes.

(ii) The salaries, conditions of service and pensions of judges should be guaranteed by law, and should not be altered to their disadvantage after appointment.

**Discipline of Judges**

(i) Disciplinary proceedings against a judge may be commenced only for serious misconduct.\(^7\) The law applicable to judges may define, as far as possible in specific terms, conduct that may give rise to disciplinary sanctions, as well as the procedures to be followed.

(ii) A person who alleges that he or she has suffered a wrong by reason of a judge’s serious misconduct should have the right to complain to the person or body responsible for initiating disciplinary action.

(iii) A specific body or person should be established by law with responsibility for receiving complaints, for obtaining the response of the judge and for considering in the light of such response whether or not there is a sufficient case against the judge to call for the initiation of disciplinary action. In the event of such a

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\(^6\) The transfer of judges has been addressed in several international instruments since transfer can be used to punish an independent and courageous judge, and to deter others from following his or her example.

\(^7\) Conduct that gives rise to disciplinary sanctions must be distinguished from a failure to observe professional standards. Professional standards represent best practice, which judges should aim to develop and towards which all judges should aspire. They should not be equated with conduct justifying disciplinary proceedings. However, the breach of professional standards may be of considerable relevance, where such breach is alleged to constitute conduct sufficient to justify and require disciplinary sanction.
conclusion, the body or person should refer the matter to the disciplinary authority.\(^8\)

(iv) The power to discipline a judge should be vested in an authority or tribunal which is independent of the legislature and executive, and which is composed of serving or retired judges but which may include in its membership persons other than judges, provided that such other persons are not members of the legislature or the executive.

(v) All disciplinary proceedings should be determined by reference to established standards of judicial conduct, and in accordance with a procedure guaranteeing full rights of defence.

(vi) There should be an appeal from the disciplinary authority to a court.

(vii) The final decision in any proceedings instituted against a judge involving a sanction against such judge, whether held in camera or in public, should be published.

(viii) Each jurisdiction should identify the sanctions permissible under its own disciplinary system, and ensure that such sanctions are, both in accordance with principle and in application, proportionate.

**Removal of Judges from Office**

(i) A judge may be removed from office only for proved incapacity, conviction of a serious crime, gross incompetence, or conduct that is manifestly contrary to the independence, impartiality and integrity of the judiciary.

(ii) Where the legislature is vested with the power of removal of a judge, such power should be exercised only after a recommendation to that effect of the independent authority vested with power to discipline judges.

(iii) The abolition of a court of which a judge is a member should not be accepted as a reason or an occasion for the removal of the judge. Where a court is abolished or restructured, all existing members of that court should be re-appointed to its replacement or appointed to another judicial office of equivalent status and tenure. Where there is no such judicial office of equivalent status or tenure, the judge concerned should be provided with full compensation for loss of office.

\(^8\) Unless there is such a filter, judges could find themselves facing disciplinary proceedings brought at the instance of disappointed litigants.
Budget of the Judiciary

(i) The budget of the judiciary should be established in collaboration with the judiciary, care being taken that neither the executive nor legislature authorities is able to exert any pressure or influence on the judiciary when setting its budget.

(ii) The State should provide the judiciary with sufficient funds and resources to enable each court to perform its functions efficiently and without an excessive workload.

(iii) The State should provide the judiciary with the financial and other resources necessary for the organization and conduct of the training of judges.

(iv) The budget of the judiciary should be administered by the judiciary itself or by a body independent of the executive and the legislature and which acts in consultation with the judiciary. Funds voted for the judiciary should be protected from alienation and misuse.

7. The requirements set out above encapsulate universally accepted principles, drawn from national, regional and international laws and jurisprudence on the concept of the independence of the judiciary.

2 The crucial role of the judiciary in combating corruption

8. International and regional human rights instruments recognize as fundamental that, in the determination of any criminal charge, everyone is entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. An essential element of the right to a fair trial is an impartial tribunal. Another inherent element of a fair trial is the procedural equality of parties - or what is generally called “the equality of arms”. If the judicial system is corrupt, neither of these elements exist. If one of the parties has bribed the judge, or has bribed a court official and either obtained access to documents to which the other party has no access, or caused documents to disappear, there is no equality of arms. A bribed judge will, of course, be neither independent of the parties, nor impartial. A corrupt judiciary also means that the legal and institutional mechanisms designed to curb corruption, however well-targeted, efficient or honest, remains crippled.

9. Article 10 of the Universal Declaration of Human Rights (UDHR) states that:
Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

The UDHR was adopted by the United Nations General Assembly without a dissenting vote, and represents “a common understanding” of those rights which the member states of the United Nations had pledged in the Charter of the United Nations to respect and to observe.

10. Article 14, paragraph 1, of the International Covenant on Civil and Political Rights (ICCPR) states, inter alia, that:

All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

The ICCPR was adopted unanimously by the United Nations General Assembly. As on 16 April 2013, 167 States had either ratified or acceded to it, thereby accepting its provisions as binding obligations under international law. Similar provisions have been included in the European Convention on Human Rights and Fundamental Freedoms, the American Convention on Human Rights, and in the African Charter on Human and Peoples’ Rights.

3

Measures to strengthen integrity among members of the judiciary

11. The term “integrity” in article 11, in its application to members of the judiciary, may be defined as a holistic concept that encapsulates the following elements:

- **Independence:**
  The responsibility imposed on a judge to adjudicate a dispute honestly and impartially, on the basis of the law and the evidence, without external pressure, influence, inducement, threat or interference from any quarter or any person, be it government, pressure group, individual or even another judge.

- **Impartiality:**
  The ability to act without bias or prejudice, both as a matter of fact, as well as a matter of perception measured by the standard of a reasonable observer.
- **Personal integrity:**
  The absolute necessity to act honourably and in a manner befitting the judicial office, free from fraud, deceit and falsehood, and to be good and virtuous in behaviour and in character.

- **Propriety:**
  The duty to accept, freely and willingly, restrictions on his or her personal and professional activities that might be viewed as burdensome by the ordinary citizen.

- **Equality:**
  The duty to ensure equality of treatment to all before the courts, including the duty to be aware of, understand, recognize and respect diversity in society and differences arising from various sources including race, colour, sex, religion, disability, age and marital status.

- **Competence:**
  The duty to take reasonable steps to maintain and enhance knowledge, skills and personal qualities necessary for the proper performance of judicial duties, and to be informed of developments in international law, including international conventions and other instruments establishing human rights norms.

- **Diligence:**
  The duty to perform all tasks relevant to the judicial office or the court’s operations, including the delivery of reserved judgments, efficiently, fairly and with reasonable promptness, and to conduct all court proceedings with patience, dignity and courtesy.

These are identified in the Bangalore Principles of Judicial Conduct as the core values of the judiciary.

### A code of judicial conduct

In 2006, the United Nations Economic and Social Council (ECOSOC) “invited Member States, consistent with their domestic legal systems, to encourage their judiciaries to take into consideration the Bangalore Principles of Judicial Conduct [which was annexed to that resolution] when reviewing or developing rules with respect to the professional and ethical conduct of members of the judiciary”. ECOSOC also requested UNODC “to convene an open-ended intergovernmental expert group, in cooperation with the Judicial Integrity Group and other international and regional judicial forums, to develop a commentary on the Bangalore Principles, taking into account the views expressed and the revisions suggested by Member States”. The *Commentary on the Bangalore Principles of Judicial Conduct* was published by UNODC in September 2007, and is intended to contribute

to a better understanding of these Principles. In 2007, ECOSOC similarly requested UNODC to develop a guide on strengthening judicial integrity and capacity. The Resource Guide on Strengthening Judicial Integrity and Capacity was published by UNODC in December 2011.

13. Consistent with the principle of judicial independence requires, a code of judicial conduct should be drafted by the judges, and enforced by the judiciary, without the intervention of the executive or legislative branches of government. Such a code has several objectives: (i) to establish standards of ethical conduct for judges; (ii) to provide guidance to judges in the performance of their judicial duties; (iii) to afford the judiciary a framework for regulating judicial conduct; (iv) to assist members of the executive and the legislature, and lawyers and the public in general, to better understand the judicial role; and (v) to offer the community a standard by which to measure and evaluate the performance of the judicial sector. In order to achieve these objectives, it is necessary that the judiciary should not only adopt a code of judicial conduct, but should also ensure that such code is disseminated among judges and in the community, and that judicial ethics, based on such code, is an integral element in the initial and continuing training of judges.

Application and enforcement of a code of judicial conduct

14. A code of judicial conduct will do little to improve judicial performance and enhance public confidence if it is not enforceable. Therefore, the State Party should encourage the judiciary:

(a) to consider establishing a judicial ethics advisory committee of sitting and/or retired judges to advise its members on the propriety of their contemplated or proposed future conduct.

(b) to consider establishing a credible, independent judicial ethics review committee to receive, inquire into, resolve and determine complaints of unethical conduct of members of the judiciary, where no provision exists for the reference of such complaints to a court. The committee may consist of a majority of judges, but should

10 ECOSOC Resolution 2007/22.

11 In many jurisdictions in which such committees have been established a judge may request an advisory opinion about the propriety of his or her own conduct. The committee may also issue opinions on its own initiative on matters of interest to the judiciary. Opinions address contemplated or proposed future conduct and not past or current conduct unless such conduct relates to future conduct or is continuing. Formal opinions set forth the facts upon which the opinion is based and provide advice only with regard to those facts. They cite the rules, cases and other authorities that bear upon the advice rendered and quote the applicable principles of judicial conduct. The original formal opinion is sent to the person requesting the opinion, while an edited version that omits the names of persons, courts, places and any other information that might tend to identify the person making the request is sent to the judiciary, bar associations and law school libraries. All opinions are advisory only, and are not binding, but compliance with an advisory opinion may be considered to be evidence of good faith.
preferably include sufficient lay representation to attract the confidence of the community. The committee should ensure, in accordance with law, that protection is accorded to complainants and witnesses, and that due process is secured to the judge against whom a complaint is made, with confidentiality in the preliminary stages of an inquiry if that is requested by the judge. To enable the committee to confer such privilege upon witnesses, etc., it may be necessary for the law to afford absolute or qualified privilege to the proceedings of the committee. The committee may refer sufficiently serious complaints to the body responsible for exercising disciplinary control over the judge.\textsuperscript{12}

15. The adoption of a code of conduct, and the establishment of measures for its effective implementation, are responsibilities of the judiciary. However, where the judiciary, after having been encouraged to do so, has nevertheless failed to perform these tasks, it remains the duty of the State Party to take appropriate steps to comply with the mandatory provisions of article 11.

4

Measures to prevent corruption among members of the judiciary

16. In the past two decades, evidence of corruption in the administration of justice has steadily and increasingly surfaced in many parts of the world. In one country, 88.5\% of those surveyed thought it was impossible to obtain a quick and fair judgment from the judicial system without money or influence, while 63\% of those involved in litigation in the lower courts claimed to have paid bribes to either court officials or the opponents' lawyers. In another country, 32\% of those surveyed reported payments to persons engaged in the administration of justice. In yet another, 54\% of those polled believed that judicial decisions were subject to external “pressures”. It may be that public perceptions are unreliable; that they may not necessarily be correct; that they reflect an exaggerated picture, blown up out of proportion to the real thing. But such perceptions should not be ignored. If the public

\textsuperscript{12} In many jurisdictions in which such committees have been established, complaints into pending cases are not entertained, unless it is a complaint of undue delay. A complaint is required to be in writing and signed, and include the name of the judge, a detailed description of the alleged unethical conduct, the names of any witnesses, and the complainant’s address and telephone number. The judge is not notified of a complaint unless the committee determines that an ethics violation may have occurred. The identity of the person making the complaint is not disclosed to the judge unless the complainant consents. It may be necessary, however, for a complainant to testify as a witness in the event of a hearing. All matters before the committee are confidential. If it is determined that there may have been an ethics violation, the committee usually handles the matter informally by some form of counselling with the judge. If the committee issues a formal charge against the judge, it may conduct a hearing and, if it finds the charge to be well-founded, may reprimand the judge privately, or place the judge on a period of supervision subject to terms and conditions. Charges that the committee deems sufficiently serious to require the retirement, public censure or removal of the judge are referred to the body responsible for exercising disciplinary control over the judge.
wrongly believes that the judicial sector is corrupt, the reasons for that mistaken belief, and what contributes to such negative perceptions, need to be identified and remedied, since the real source of judicial power is the public acceptance of the moral authority and integrity of the judiciary.

17. Unfortunately, there is evidence from other sources, more disturbing than public perceptions, namely, reports of independent commissions of inquiry. For example, one such report documented proved instances of court staff demanding bribes to open files or destroy case files; magistrates accepting bribes to grant undeserving 'court injunctions'; accused persons either voluntarily or under compulsion offering bribes to magistrates to obtain light sentences; magistrates and prosecutors accepting bribes to reduce sentences or dismiss cases; bribes being solicited and given to magistrates and prosecutors so that accused persons may be granted bail; personal secretaries and typists accepting bribes to produce copies of judgments; magistrates accepting bribes from advocates in exchange for favourable judgments; primary and district court judges refusing to give copies of judgments to people who had lost their cases so as to prevent them from appealing to higher courts, thereby protecting those who had fraudulently obtained their judgments; and magistrates colluding with auctioneers in selling property belonging to litigants who had lost their civil cases and sharing the receipts. The Commission described an instance of corruption thus: “One court has established a standard procedure in dealing with traffic cases. The public prosecutor confers with the accused before the court proceedings begin and advises them on the fastest way to dispose of the cases. Each accused is advised to give a certain amount which will be divided between the prosecutor and the magistrate. If the "advice" is declined one is likely to be convicted, heavily fined and his driving licence suspended or revoked altogether. The result is that the "advice" is normally followed and cases are disposed of quickly and the prosecutor and magistrate appear to be doing a good job”.

18. Corruption in the judiciary does not appear to be limited to conventional bribery. An insidious and equally damaging form of corruption arises from the interaction between the judiciary and the executive, as well as from the relationship between the judiciary and the legal profession. For example, the political patronage through which a judge acquires his or her office, a promotion, an extension of service, preferential treatment, or the promise of employment after retirement, can give rise to corruption if and when the executive makes demands on such judge. Similarly, when a family member regularly appears before a judge, or when a judge selectively ignores sentencing guidelines in cases where particular counsel appear, the conduct of the judge would give rise to the suspicion of corruption, as would a high rate of decisions in favour of the executive. In certain countries, the active involvement of judges in community organizations has evoked a similar response when their civil society associates appear as litigants before them. Indeed, frequent socializing with particular members of the legal profession, the executive or the legislature, or with litigants or potential litigants, is almost certain to raise, in the minds of others, the suspicion that the judge is susceptible to undue influence in the discharge of his duties. In respect of this form of
corruption too, hard evidence has surfaced of judges being pressurized by executive authorities to render justice contrary to law, and of being victimized in the event of failure to do so; of opportunism among judges whereby they seek to obtain material and moral advantages and benefits from the executive for themselves or family members; and of political protection for corrupt judges.

19. The constitutional guarantees of judicial independence and the application and enforcement of a code of judicial conduct, which are referred to above, are measures that are designed to minimize both the opportunity and the inclination to resort to corruption. The following are other measures recommended as elements of a holistic approach to combating corruption in the judiciary.

**Judicial training**

20. It is through the quality of judicial decisions that public confidence in the judicial process can be enhanced.\(^{13}\) The quality of judicial decisions will depend, among other factors, on the legal training of the legal professionals involved in judicial proceedings. While the State has a duty to provide the judiciary with the necessary means, the responsibility for organising and supervising judicial training rests with the judiciary, either by itself or through an independent body under its supervision. All appointees to judicial office should have or acquire, before they take up their duties, appropriate knowledge of relevant aspects of substantive national and international law and procedure. Duly appointed judges should also receive an introduction to other fields relevant to judicial activity such as management of cases and administration of courts, information technology, social sciences, legal history and philosophy, and alternative dispute resolution. The training of judicial officers should be pluralist in outlook in order to guarantee and strengthen the open-mindedness of the judge and the impartiality of the judiciary. Where the language of legal literature (i.e. law reports, appellate judgments, etc) is different from the language of legal education, instruction in the former should be provided to both lawyers and judges. The training programmes should take place in, and encourage, an environment in which members of different branches and levels of the judiciary may meet and exchange their experiences and secure common insights from dialogue with each other.

**Court personnel**

21. Court personnel are the initial contact point and the providers of information to those who seek to invoke the jurisdiction of the court, whether they be litigants, witnesses or lawyers. They are also responsible for the administrative and technical non-judicial tasks that

\(^{13}\) This subject is discussed at length in UNODC, *Resource Guide on Strengthening Judicial Integrity and Capacity* (2011), pp. 11-17, and in Opinion No.11 (2008) of the Consultative Council of European Judges (CCJE) on the Quality of Judicial Decisions.
contribute to the outcome of a judicial proceeding. Among other tasks, court personnel manage court facilities, assist with case management, protect evidence, facilitate the appearance of parties and witnesses, and perform a variety of other functions that help avoid postponements and a professional and timely adjudication process. They help judges with legal research, and ensure that decisions are properly announced and published, and maintain case files. Since court personnel have the potential to undermine the integrity of the judicial process, through neglect of duty, abuse of power or corruption, the judiciary should ensure that their conduct is regulated and monitored. The Principles of Conduct for Judicial Personnel that were adopted by the Judicial Integrity Group in 2005 prescribes detailed standards of conduct in respect of fidelity to duty, confidentiality, conflict of interests and performance of duties.

Access to Justice

22. Access to justice is of fundamental importance to the rule of law. The judiciary should, within the limits of its powers, adopt procedures to facilitate and promote such access. The right to legal representation, especially for defendants in criminal proceedings, is a fundamental component of the right to a fair trial. When there is no sufficient legal aid publicly available, the high costs of private legal representation make it necessary for the judiciary to consider, where appropriate and desirable, such initiatives as the encouragement of pro bono representation of selected litigants by the legal profession of selected litigants, the appointment of amici curiae (friend of the court), alternative dispute resolution, university legal clinics and community justice procedures, to protect interests that would otherwise be unrepresented in court proceedings; and the provision of permission to appropriate non-qualified persons (including paralegals) to represent parties before a court.

23. Access to justice is effectively denied if potential litigants do not know how to use the system. The judiciary must, therefore, provide standard, user-friendly forms and instructions, and furnish clear and accurate information on matters such as filing fees, court procedures and hearing schedules. Since access commences before the potential litigant arrives in court, this information should also be disseminated via the internet or automated telephone systems. The Multi-Door Courthouse (MDC) concept recognizes that there are several different doors to justice, of which litigation is only one door. The MDC acts as an information centre, responsible for informing potential court users of the services provided by the courts, including information about alternative dispute resolution; a desk providing additional information in the form of pamphlets, brochures and forms; explaining court procedures and


15 Report of the Fourth Meeting of the Judicial Integrity Group (Vienna, 2005) at www.unodc.org, or www.judicialintegritygroup.org

16 For a fuller discussion of this subject, see Resource Guide, pp.70-83.
costs associated with different forms of dispute resolution; and helping with legal aid applications.

24. Potential litigants, witnesses, other court users and interested members of the public are entitled to easily readable signs, publicly displayed courthouse orientation guides, and the assistance of court personnel to respond to questions. Customer service and resource centres should be provided in an accessible place. Court users should have access to safe, clean, convenient and user-friendly court premises, with comfortable waiting areas, adequate public space, and amenities for special-need users, such as children, victims, and the disabled. Court users are also entitled, not only to timely and efficient services, but also to the highest standards of ethical conduct, professionalism and accountability from court personnel.

Court administration

25. The principal responsibility for court administration, including the appointment, supervision and disciplinary control of court personnel should vest in the judiciary or in a body subject to its direction and control. Since a judge’s primary duty is the due performance of the judicial function which involves the hearing and determination of cases, the management of the court may be delegated to a registrar or court administrator on the basis that there exists a shared responsibility between the head of court and the court administrator for the overall management of the court. The court may be supported by an Inspectorate.\textsuperscript{17}

Case management

26. It is now recognized that the judiciary should actively monitor and control the progress of a case, especially in the original courts, from institution to judgment, including the completion of all the post-judgment steps. Traditionally, the parties to a dispute control the movement of a case, with the judge supervising the interactions between the parties and assessing the evidence and arguments that parties provide in support of their claims. The active management by the court of the progress of a case is designed to encourage the just, orderly and expeditious resolution of disputes.

27. There are several techniques of case management.\textsuperscript{18} For example, the individual docket system is based on the principle that the judge to whom a case is randomly allocated is responsible for managing the case until final disposition. This involves the case being handled by the same judge from beginning to end; the early fixing of a near-immutable trial date; the judge himself fixing the timetable and giving relevant directions in the pre-trial period; and the same judge trying the case if it goes to trial. The active involvement of the

\textsuperscript{17} An Inspectorate is usually a body created by statute to inspect and report to the Head of the Judiciary on the system that supports the carrying on of the business of the courts and the services provided for those courts.

\textsuperscript{18} For a discussion of case management techniques, see Resource Guide, pp.43-51.
judge enables him or her to deal effectively with the critical areas of litigation, such as defective pleadings, excessive discovery of documents and other tactics frequently employed by lawyers to delay the proceedings to frustrate legitimate claims. It will also facilitate the continuous hearing of a case instead of short and incomplete hearings spread over several weeks or months, and thus help resolve a dispute with due process and in due time. The burden of continuous monitoring can be eased if the court has in place an effective case information management system, either manual or electronic, and where the judge can rely on the assistance of key staff. Such a system will provide details on the status of the case, including deadlines imposed by the court and whether the litigants are complying with them. Having competent staff to assist the judge in the case management and monitoring process will relieve the judge of those administrative functions and enable the judge to focus on the judicial function.

**Assignment of cases**

28. The nomination of judges to sit on a bench is an inextricable part of the exercise of judicial power, and should not be influenced by the wishes of any party to a case or any person concerned with the results of the case. The division of work among the judges of a court, including the distribution of cases, should ordinarily be performed under a predetermined, transparent arrangement provided by law or agreed by all the judges of the relevant court. Such arrangements may be changed in clearly defined circumstances such as the need to have regard to a judge’s special knowledge or experience. The allocation of cases may, by way of example, be made by a system of alphabetical or chronological order or other random selection process. A case should not be withdrawn from a particular judge without valid reasons, such as serious illness or conflict of interest. Any such reasons and the procedures for such withdrawal should be provided for by law or rules of court.¹⁹

**Communication technology**

29. The judiciary should endeavour to complement (or replace where resources permit) the paper based court record systems with electronic information and communication technologies (ICT). ICT will enable case records to be kept up to date, accurately, promptly and in an easily accessible form, and will contribute to strengthening the transparency, integrity and efficiency of justice. The computerisation of case records will also avoid the reality or appearance that court files are “lost” and that “fees” are required for their retrieval or substitution.²⁰

¹⁹ For a discussion of this subject and practical examples, see Resource Guide, pp.40-43.

²⁰ For advice on formulating an ICT development strategy, see Resource Guide, pp.51-58.
Transparency in the exercise of judicial office

30. The right to a public trial and to the public pronouncement of the judgment\(^{21}\) underscores the importance of transparency in the delivery of justice. The principle of transparency also requires the judiciary to demystify the judicial process. The judiciary should make information regarding the time and venue of hearings available to the public and provide for adequate facilities for the attendance of interested members of the public, within reasonable limits, taking into account, inter alia, the potential interest in the case and the duration of the hearing.\(^{22}\) Where legitimate grounds exist to exclude the public or the media from a particular judicial proceeding, the judge should issue and display a written order explaining the reason for doing so.

31. The judiciary should also ensure that, subject to judicial supervision, the public, the media and court users have reliable access to all information pertaining to judicial proceedings, both pending and concluded, whether on a court website or through appropriate and accessible records. Such information should include reasoned judgments, pleadings, motions and evidence, but affidavits or like evidentiary documents that have not yet been accepted by the court as evidence may be excluded. Unscrupulous court personnel often take advantage of systems that do not allow access to such material by soliciting bribes to alter documents or lose files. Access to court documents should not be limited to case-related material, but should also include court-related administrative information such as statistics on the caseload and case clearance rates, as well as budget-related data such as collection of court fees, and the use of budgetary allocations.

32. Enabling access to information is associated with numerous benefits that contribute to the integrity and efficiency of the justice system. The publication of judgments allows the public, the press, civil society organizations, lawyers, judges and legal scholars to scrutinize the actions of judges. Submitting judgments to public scrutiny through publication also regularises the application of the law, and makes judicial decisions more predictable and consistent, thus improving the quality of justice. In judicial systems where higher court decisions are binding precedents, the publication and distribution of appellate court decisions is crucial in ensuring that lower court judges are following the law. Even in countries where

\(^{21}\) International Covenant on Civil and Political Rights, article 14(1).

\(^{22}\) The requirement of a public hearing does not necessarily apply to all appellate proceedings which may take place on the basis of written presentations, or to pre-trial decisions. Article 14(1) of the International Covenant on Civil and Political Rights acknowledges that a court has the power to exclude all or part of the public for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would be prejudicial to the interests of justice. Apart from such exceptional circumstances, a hearing must be open to the general public, including members of the media, and must not, for instance, be limited to a particular category of persons. Even in cases in which the public is excluded from the trial, the judgment, including the essential findings, evidence and legal reasoning must be made public, except where the interest of juvenile persons otherwise requires, or the proceedings concern matrimonial disputes or the guardianship of children.
higher court decisions are merely persuasive, it is still important to ensure that judges are interpreting the applicable statutes in a consistent manner.

**Promoting the quality and delivery of justice**

33. Continuing public confidence in the quality of justice is a critical feature of a judicial system. The judiciary, therefore, has the responsibility to promote the quality of justice, and to periodically review public satisfaction with the delivery of justice. Apart from being sensitive to contributions from academia, the judiciary should, through regular case audits, surveys of court users and other stakeholders, and discussions with court user committees, endeavour to review public satisfaction with the delivery of justice and identify systemic weaknesses in the judicial process, especially any that may have created “gatekeepers” seeking gratifications, with a view to remedying them.

**Achieving and maintaining public trust**

34. For the judiciary to be effective in delivering justice, the public must have confidence in its ability to do so. Efforts to promote public trust and confidence in the judiciary should, therefore, form a part of a comprehensive, system-wide strategy aimed at correcting negative public perceptions and eliminating inefficiencies that lead to such perceptions. Public perceptions of the judicial system are often predetermined by the personal experiences of court users. Therefore, the better informed the judiciary is about public needs and desires, the more capable it is to respond to them. The tools that may be used for this purpose include an effective and impartial complaint system, and regular public opinion and court user surveys. However, opinion surveys and other methods for assessing public trust in the judiciary will be meaningless if lessons are not learnt and concrete action not taken. The publication of an annual report of its activities, including any difficulties encountered and measures taken to improve the functioning of the justice system, is one measure to foster public confidence in the judiciary.

**Judicial outreach programmes**

35. In some jurisdictions, judicial outreach programmes have enabled the judiciary to address misconceptions about the judicial system and educate the public on the role of the judiciary in society. In a departure from the traditional belief that judges should remain isolated from the community to ensure their independence and impartiality, judicial outreach now involves proactive measures by judges and direct interaction with the communities they serve. Experience suggests that increased public knowledge about the law and court processes promote not only judicial transparency but also public confidence. Recent outreach approaches have included town hall meetings, the production of radio and television programmes, and the dissemination of awareness-raising materials such as court user guides in the form of short pamphlets providing basic information on arrest, detention and bail,
criminal and civil procedures, and useful contacts for crime victims, witnesses and other users.

Relations with the media

36. Media access to judicial proceedings is not a matter of simply opening doors to the courtroom and providing seats to journalists. Courts are not well served by inaccurate and sensationalist coverage of court proceedings. In fact, poor or biased media coverage can undermine public trust in the judiciary and raise concerns with regard to judicial independence, impartiality and integrity. The training of journalists organized by, or in cooperation with, the courts can help reduce ineffective reporting by providing them with basic knowledge about court procedures and legal issues, improving journalistic skills and ethics, and building trust between judges and journalists.23 Engaging the media may also require that courts actively reach out to journalists. A successful approach in many countries has involved establishing press or public affairs offices within individual courts, in order to facilitate media coverage of judicial proceedings. These offices are commonly charged with liaising with media representatives, responding to and managing requests from journalists, issuing press releases and otherwise providing accurate information about judicial decisions and legal issues, providing schedules of upcoming cases, monitoring the media for accurate reporting, and designing media campaigns that promote public understanding of the judiciary.

Advisory opinions

37. A judge or a court should not render advisory opinions to the executive or the legislature except under an express constitutional or statutory provision permitting that course.

Declaration of assets

38. Rigorous obligations should be adopted to require all judicial officers publicly to declare the assets of the judicial officer concerned and of parents, spouse, children and other close family members. Such publicly available declarations should be regularly updated. They should be inspected after appointment and monitored from time to time by an independent and respected official.

Immunity of judges

39. A judge should be criminally liable under the general law for an offence of general application committed by him or her and cannot therefore claim immunity from ordinary

criminal process. Where reasonable cause exists to warrant investigation by police and other public bodies of suspected criminal offences on the part of a judge, such investigations should take their ordinary course, according to law.

40. A judge should enjoy personal immunity from civil suits for conduct in the exercise of a judicial function. The remedy for judicial errors (whether in respect of jurisdiction, substance or procedure) should lie in an appropriate system of appeals or judicial review. The remedy for injury incurred by reason of negligence or misuse of authority by a judge should lie only against the State without recourse by the State against the judge.

41. Since judicial independence does not render a judge free from public accountability, and legitimate public criticism of judicial performance is a means of ensuring accountability subject to law, a judge should generally avoid the use of the criminal law and contempt proceedings to restrict such criticism of the courts.

Alternative dispute resolution

42. The use of alternative dispute resolution (ADR) mechanisms, whether traditional or otherwise, may significantly reduce the work load of regular courts while providing a simpler, inexpensive, expeditious and informal forum for the settlement of disputes relating to the family, home, employment and, indeed, even in respect of the review of certain administrative decisions. ADR therefore can be an effective complement, but not a substitute, to formal court procedures. However, formal ADR mechanisms suffer from problems such as unpredictability, lack of impartiality, lack of clear procedural guidelines and standards of conduct for mediators, and difficulties with enforcement. Nevertheless, these mechanisms are time and cost efficient and could be used as an effective backlog reduction strategy. They are less intimidating to the public, and offer disadvantaged groups greater access to justice, especially where the formal system is inefficient and discredited.\(^\text{24}\)

Data collection

43. There is a need for the collection and national and international exchange of information concerning the scope and variety of forms of corruption within the judiciary. A mechanism should, therefore, be established to assemble and record such data and, in appropriate format, to make it widely available for research, analysis and response.

Part II

THE PROSECUTION SERVICE

1. Article 11 suggests that in those States Parties where the prosecution service does not form part of the judiciary, but enjoys independence similar to that of the judicial service, measures to the same effect as those taken in respect of the judiciary may be introduced and applied to the prosecution service.

2. In 1990, the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders adopted Guidelines on the Role of Prosecutors. In 2008, the Commission on Crime Prevention and Criminal Justice, in a resolution entitled “Strengthening the Rule of Law through improved integrity and capacity of prosecution services”, requested Member States, consistent with their domestic legal systems, to encourage their prosecution services to take into consideration the Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors when reviewing or developing rules with respect to the professional and ethical conduct of members of prosecution services. The Commission also requested UNODC, to circulate the Standards, which had been formulated and adopted by the International Association of Prosecutors in 1999, to Member States for their consideration and comments. In their comments, Member States agreed that the Standards constitute an international benchmark for the conduct of individual prosecutors and of prosecution services.

3. The crucial role that the prosecution service plays in the administration of criminal justice may vary from one jurisdiction to another. The constitutional status of the chief prosecutor (or attorney-general/director of public prosecutions) may also not be the same in every country. Nevertheless, the rule of law requires that prosecutions be conducted fairly and reasonably, with integrity and care. The decision whether or not to commence a prosecution should not be motivated by improper considerations, but by the interests of justice. Political advantage or disadvantage, or factors such as the gender, colour, race, religion, political opinion, sexual orientation or ethnic origin of the suspected person, are wholly irrelevant. Nor should a prosecutor be subject to direction from any external source. In that sense, the qualities required of a prosecutor are no different from those of a judge. The conduct expected is that of a professional, acting in accordance with the law and public interest and the rules and ethics of the profession. The prosecutor must, at all times, exercise the highest standards of integrity and care; act fairly, consistently and expeditiously; be well informed of relevant national and international legal developments; be consistent, independent and impartial; protect an accused person’s right to a fair trial; and respect and uphold the universal concept of human dignity and human rights.
Recruitment and training

4. Persons selected as prosecutors should be individuals of integrity and ability, with appropriate training and qualifications. The selection criteria should embody safeguards against appointments based on partiality or prejudice. The State should ensure that prosecutors receive appropriate training that makes them aware of the ideals and ethical duties of their office, of the constitutional and statutory protections for the rights of the suspect and the victim, and of human rights and fundamental freedoms recognized by national and international law.

Independence

5. The office of prosecutor should be strictly separated from the judicial function. In countries where the prosecution service forms part of the judiciary, it is important that the prosecutor is, and appears to be, independent of judges. In the eyes of accused persons and society as a whole, there should not be even a hint of connivance between them, or confusion between their respective functions.

6. One of the most difficult areas of the law applicable to prosecutors is the discretion to prosecute. The use of prosecutorial discretion, when permitted and relevant, should be exercised independently and free from political interference. In some countries, the law permits a non-prosecutorial authority, such as a minister of justice, to give general or specific instructions to prosecutors. Such instructions may include a direction to institute criminal proceedings or to stop legally instituted proceedings. It is essential that any such instruction should be transparent; consistent with lawful authority; and subject to established guidelines, in order to safeguard the actuality and the perception of prosecutorial independence.

Impartiality

7. A prosecutor should perform his or her duties without fear, favour or prejudice. In particular, the prosecutor must carry out the functions of his/her office impartially, remain unaffected by individual or sectional interests and public or media pressures, and have regard only to the public interest. A prosecutor must act objectively, and have regard to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect. A prosecutor must ensure that all necessary and reasonable inquiries are made and the result disclosed, whether that points towards the guilt or the innocence of a suspect. A prosecutor’s duty is to search for the truth and assist the court to arrive at the truth, and to do justice between the community, the victim and the accused according to the law and the dictates of conscience. A prosecutor should never act in his/her professional capacity in a case in which family or business associates have a personal, private or financial interest or association.
Criminal proceedings

8. A prosecutor should uphold the right to a fair trial as defined and guaranteed in Article 14 of the International Covenant on Civil and Political Rights. This right is guaranteed in similar terms in the European Convention for the Protection of Human Rights and Fundamental Freedoms, the American Convention on Human Rights, and the African Charter on Human and Peoples’ Rights. Accordingly, a prosecutor should, in particular, respect the presumption of innocence and safeguard the principle of equality of arms.

9. When instituting criminal proceedings, the prosecutor should proceed only when a case is well-founded, upon evidence reasonably believed to be reliable and admissible, and should not continue with such proceedings in the absence of such evidence. In court, the prosecutor should ensure that the case is firmly but fairly presented, and not beyond what is indicated by the evidence. The prosecutor should disclose to the accused and counsel, relevant prejudicial and beneficial information as soon as reasonably possible. The prosecutor should also examine proposed evidence to ascertain if it had been lawfully or constitutionally obtained. If a prosecutor comes into possession of evidence against a suspect that the prosecutor knows or believes on reasonable grounds to have been obtained through recourse to unlawful methods which constitute a grave violation of a suspect’s or another person’s human rights, especially involving methods which constitute torture or cruel, inhuman or degrading treatment or punishment, the prosecutor should refuse to use such evidence against anyone other than those who applied such methods. The prosecutor should inform the court accordingly and should take all necessary steps to ensure that those responsible for applying such methods are brought to justice.

10. In jurisdictions where the prosecutor participates in the investigation of crime, or in exercising authority over the police or other investigators, he/she should do so objectively, impartially and professionally. The prosecutor should also ensure that the police or other investigators respect legal precepts and fundamental human rights. A prosecutor should consider the views, legitimate interests, and possible concerns of victims and witnesses whose personal interests are, or might be, affected, by a prosecution, and seek to ensure that victims and witnesses are informed of their rights. Similarly, a prosecutor should ensure that any aggrieved party is informed of the right of recourse to some higher authority or court, where that is possible.

11. In order to ensure the fairness and effectiveness of prosecutions, a prosecutor should cooperate with the police, the courts, defence counsel, public defenders and other government agencies, whether national or international, and render assistance to the prosecution services and colleagues of other jurisdictions, in accordance with the law and in a spirit of mutual cooperation.

Personal conduct
12. A prosecutor should not compromise the actual, or the reasonably perceived, integrity, fairness and impartiality of the profession, by activities in his/her private life. A prosecutor should respect and obey the law at all times, and conduct him/herself in such a way as to promote and retain public confidence in the profession. A prosecutor should not allow personal or financial interests or family, social or other relationships, improperly to influence professional conduct, and should not use any information to which a prosecutor has had access during the course of the employment, to further his/her own private interests or those of others. It is important that a prosecutor should not accept any gifts, prizes, benefits, inducements or hospitality from third parties, or carry out any tasks which may be seen to compromise his/her integrity, fairness and impartiality.

Entitlements

13. In order to enable them to carry out their professional responsibilities, prosecutors should be protected by law against arbitrary action by the Government. In particular, they should be entitled:

(a) to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability;

(b) to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability;

(c) to reasonable conditions of service and adequate remuneration, commensurate with the crucial role performed by them, and not to have their salaries or other benefits arbitrarily diminished;

(d) to reasonable and regulated tenure, pension and age of retirement subject to conditions of employment;

(e) to recruitment and promotion based on objective factors, and in particular professional qualifications, ability, integrity, performance and experience, and decided upon in accordance with fair and impartial procedures;

(f) to expeditious and fair hearings, based on law or legal regulations, when disciplinary steps are necessitated by complaints alleging action outside the range of proper professional standards;

(g) to objective evaluation and decisions in disciplinary hearings;
(h) to form and join professional associations or other organizations, in accordance with law, to represent their interests, to promote their professional training and to protect their status; and

(i) to relief from compliance with an unlawful order or an order which is contrary to professional standards or ethics.

Conclusion

14. Perhaps the best description of the role of the prosecutor in the judicial system was provided by former Chief Justice Gubbay in the Supreme Court of Zimbabwe:25

A broad and creative interpretation of the right to a fair trial embraces not only the impartiality of the court but also the absolute impartiality of the prosecutor whose function forms an indispensable part of the judicial process and whose conduct reflects on the impartiality or otherwise of the court. A prosecutor has to dedicate himself to the achievement of justice and pursue that aim impartially. He has to conduct the case against the accused with due regard to the traditional precepts of candour and absolute fairness. Since he represents the State, the community at large and the interests of justice in general, the task of the prosecutor is more comprehensive and demanding than that of the defending practitioner. Like Caesar’s wife, the prosecutor must be above any trace of suspicion. As a “minister of the truth” he has a special duty to see that the truth emerges in court. He must produce all relevant evidence to the court and ensure, as best he can, the veracity of such evidence. He must state the facts dispassionately. If he knows of a point in favour of the accused, he must bring it out. If he knows of a credible witness who can speak of facts which goes to show the innocence of the accused, he must himself call that witness if the accused is unrepresented, and if represented, render the witness to the defence. If his own witness substantially departs from his proof, he must, unless there is special and cogent reason to the contrary, draw the attention of the court to the discrepancy, or reveal the seriously contradictory passage in the statements to the defending practitioner.

EVALUATIVE FRAMEWORK

Part 1

THE JUDICIARY

Independence of the Judiciary

Constitutional safeguards

- Does the Constitution expressly guarantee the independence of the judiciary?

- Does the Constitution guarantee non-interference with the judicial process in any manner, direct or indirect, by the executive or the legislature or any member thereof?

- Is discussion in the legislature of the conduct of a judge, except on a substantive motion for the removal or censure of such judge, prohibited by the constitution or other law?

- Does the Constitution grant the judiciary jurisdiction to decide all judicial matters?

- Does the Constitution grant the judiciary the power to determine whether it has jurisdiction over a particular matter?

- Does the Constitution guarantee the right of everyone to be tried without delay by ordinary courts established by law, with a right of appeal to a higher court established by law?

- Does the Constitution grant the judiciary the authority to strike down or invalidate a law on the basis that it is unconstitutional or is in conflict with a binding human rights treaty?

- Does the Constitution grant the judiciary the authority to review executive actions?

- When the highest court renders a decision, is it binding upon the entire country?
• Have judges been granted contempt powers to enforce judicial orders and to maintain the decorum of the court? What mechanisms are in place to prevent the abuse of contempt powers?

• Has the legislature enacted legislation to invalidate the final judgment of a court?

• Has the executive, by any act or omission, pre-empted the judicial resolution of a dispute or frustrated the execution of a court decision?

• Does the government require a judge or a court to render advisory opinions to the executive or the legislature?

• Is that requirement made under an express constitutional or statutory provision?

• Is any area of legislative or executive action deemed by the Constitution to be beyond review by the judiciary?

• Has the government established ad hoc courts or tribunals to exercise a jurisdiction vested in a court?

• What measures are taken to provide security and physical protection for members of the judiciary and their families?

• Do any mechanisms exist for judges, the legal profession, civil society or the public to report non-compliance with any of these safeguards?

The appointment and promotion of judges

• Is there a council or commission established for the purpose of appointing, or nominating persons for appointment, to judicial office?

• How, and by whom, are the members of such council or commission selected and appointed, and what criteria is applied in making such selections?

• Is civil society or the community represented on such council or commission?

• What is the perception of the community of the legitimacy of this council or commission?
- Are judicial vacancies, including for high judicial office, advertised?

- Is the appointment and selection criteria made accessible to the general public?

- Are the names of judicial candidates published?

- Does the council or commission conduct interviews of judicial candidates, and are these interviews open to the public?

- Is the media allowed to attend these interviews? Are they televised?

- Is appropriate training or qualifications in law an essential requirement for appointment to judicial office?

- Is a candidate’s social awareness and sensitivity, and other personal qualities (including a sense of ethics, patience, courtesy, honesty, commonsense, tact, humility and punctuality) and communication skills, taken into consideration?

- Are the political, religious or other beliefs or allegiances of a candidate considered to be a relevant factor in the selection process?

- Is due consideration given to ensuring a fair reflection in the judiciary of society in all its aspects.

- Are efforts made to attract qualified candidates from under-represented or disadvantaged groups?

- Are women proportionately represented in the judiciary?

- Is the selection of judges for promotion based on seniority?

- Are promotions made by the independent body responsible for the appointment of judges?
Security of tenure

- Has the judiciary been provided with its full complement of judges?

- Does the Constitution or other law guarantee tenure until a mandatory retirement age or the expiry of a fixed term of office?

- Are temporary or part-time judges appointed to the judiciary? How is the independence of such judges secured?

- Are any judges appointed on probation?

- Who decides whether or not to confirm a judge appointed on probation?

- Are judges subject to transfer to other jurisdictions, functions, or court locations?

- Are such transfers made pursuant to a system of regular rotation provided by law or formulated by the judiciary?

- Are such transfers made only by the judiciary or by an independent body?

- Will a judge be so transferred without his or her consent?

- Have any such transfers been made in the last five years as a punitive measure?

Remuneration of judges

- Are the salaries, conditions of service and pensions of judges guaranteed by law?

- Are the salaries, conditions of service and pensions of judges adequate, and commensurate with the status, dignity and responsibilities of their office?

- Have the terms of service and/or remuneration of any judge/judges been altered to their disadvantage after appointment?

Discipline of judges

- Has the law applicable to judges defined conduct that may give rise to disciplinary sanctions?
• Is there an established procedure for making a complaint against a judge in his/her professional capacity?

• Who may lodge a complaint?

• Is there a disciplinary authority established by law with responsibility for receiving complaints against a judge in his/her professional capacity?

• What is the composition of that authority?

• How is the independence of that authority secured?

• Does that authority include among its members persons other than serving or retired judges?

• Is the authority required by law to investigate a complaint in accordance with a procedure guaranteeing full rights of defence?

• Is the authority required by law to determine a complaint by reference to established standards of judicial conduct?

• Is there a time limit within which the investigation must be completed?

• Is the investigation kept confidential until a determination is made that evidence exists to substantiate the allegation?

• What are the possible outcomes of an investigation?

• In the event of an adverse finding or recommendation, is the judge entitled to appeal to a court?

• Is the complainant kept informed of the progress of the investigation?

• Is the final decision in any disciplinary proceedings against a judge involving a sanction against such judge published?

• How many judges have been disciplined during the past five years, and on what grounds?

The removal of judges from office
• On what grounds may a judge be removed from office?

• Where the legislature is vested with the power of removal of a judge, is such power exercised only after a recommendation to that effect of an independent tribunal?

• Is the judge entitled to full rights of defence before such tribunal?

• In the event of an adverse decision, is the judge entitled to appeal to a court?

• Have any judges been removed from office during the past five years, or during the current government’s administration?

• Was the outcome considered to be fair by the legal community, both national and international?

• Where courts are being restructured, what principles govern the reassignment of serving judges?

• Is restructuring developed in consultation with the judiciary?

The budget of the judiciary

• Is the budget of the judiciary established in collaboration with the judiciary?

• What steps are taken to ensure that neither the executive nor legislative authorities are able to exert any pressure or influence on the judiciary when setting its budget?

• Is the judiciary allocated sufficient funds and resources to enable each court to perform its functions efficiently and without an excessive workload?

• Does the judiciary actually receive the funds allocated in the budget?

• Where are the funds held? Who authorizes their disbursement?

• Are there delays, fiscal constraints or other obstacles in gaining access to these funds?
• How does the judiciary account for its expenditure? Is this accounting made public?

Measures to strengthen integrity among members of the judiciary

Code of Conduct

• Has the government complied with ECOSOC resolution 2006/23 of 27 July 2006 and encouraged the judiciary to develop rules with respect to the professional and ethical conduct of members of the judiciary?

• Has the judiciary developed such rules (hereinafter referred to as a code of conduct)?

• Has the code of conduct been disseminated among judges and in the community?

• Is there an established procedure to advise members of the judiciary on the propriety of their contemplated or proposed future conduct?

• Is there an established independent mechanism to receive, inquire into, resolve and determine complaints of unethical conduct of members of the judiciary?

• Is there sufficient lay representation in that mechanism to ensure public confidence in the process?

Measures to prevent corruption among members of the judiciary

Judicial training

• Have the necessary financial and other resources been allocated for the organization and supervision of judicial training?

• Is there a judicial training centre or other independent institution?

• Who develops the training curriculum for judges?

• Are training materials and curricula available for review?
• Who delivers the training?

• Are new judges assigned to a mentor or trainer for on-the-job training?

• Is continuing training required for all judges?

• Does the training include the special ethical obligations of judges?

• Does the training curriculum include human rights and fundamental freedoms recognized by national and international law?

• Are facilities available for duly appointed judges to receive an introduction to other fields relevant to judicial activity (e.g., management of cases and administration of courts, information technology, social sciences, legal history and philosophy, and alternative dispute resolution)?

• If the language of legal literature (i.e., law reports, appellate judgments, etc.) is different from the language of legal education, is instruction in the former being provided to both lawyers and judges?

• Do training programmes take place in an environment in which members of different branches and levels of the judiciary are able to meet and exchange their experiences and secure common insights from dialogue with each other?

• Is training delivered in more than one language in multilingual countries?

Court personnel

• Who is responsible for the appointment, supervision and disciplinary control of court personnel?

• Are positions of court personnel advertised?

• Is there transparency in the recruitment process?

• Is there a policy that the most qualified candidate should be appointed?

• Is there a policy on nepotism?

• Is there a policy of equal opportunity/non-discrimination?
• Do court personnel reflect the population?

• Are bilingual or multilingual personnel who speak ethnic minority languages recruited?

• Are the salaries of court personnel reasonable when compared to the local cost and standards of living?

• What initial training do court personnel receive? Are they geared to specific functions? Who provides the training?

• Is on-going training available for court personnel in other relevant areas (eg. skills, policy, professionalism, changes in the law and procedure)?

• What percentage of the court budget is allocated for the training of court personnel?

• Is the staffing sufficient to meet the court’s mandate?

• Do court personnel have a code of ethics or principles of conduct?

• Is the code or principles posted prominently in the court in public view?

• Do court personnel receive training in ethics?

• Have ethics advisory and review boards been established for court personnel?

Access to Justice

• Are courts located where they can be easily reached via public transportation? Are directions available on a court publication or on the internet?

• Do road/street signs point visitors to the court?

• Is the entrance accessible by those with physical disabilities?

• Are the different offices identifiable by clearly readable signs?

• Are hearing schedules and courtroom numbers posted in the court premises?
• Is the court facility well-maintained and clean?

• Is there an information counter/help desk in the court?

• Do court personnel speak the language of court users or have the ability to obtain the assistance of interpreters?

• Are standard, user-friendly forms and instructions, and clear and accurate information on matters such as filing fees, court procedures and hearing schedules, freely available in the court premises for the benefit of court users?

• Is the information referred to above available in ethnic minority languages?

• Is the information referred to above also disseminated via the internet or automated telephone systems?

• Is any assistance provided to court users who cannot read or write in their own language?

• Are court users provided with timely and efficient services, and the highest standards of ethical conduct, professionalism and accountability from court personnel?

• Is the Multi-Door Courthouse (MDC) concept applied in courts?

• Are there comfortable waiting areas for court users, including witnesses? Are they adequate?

• Are the needs of vulnerable persons (eg. children, victims of sexual violence or domestic violence, special need users) specially addressed?

• Do court users have access to safe, clean, convenient and user-friendly court premises?

• Are court users, including witnesses, of differing social, ethnic, religious, sexual and cultural backgrounds accorded patience, courtesy and dignity?
- Are initiatives taken by the judiciary, where appropriate and desirable, to encourage the legal profession to provide *pro bono* representation of selected litigants and/or to appoint *amici curiae* (friend of the court)?

- Are legal services being provided by bodies such as university legal clinics to protect interests that would otherwise be unrepresented in court proceedings?

- Is there provision for appropriate non-qualified persons (including paralegals) to represent parties before a court?

- Do judges ensure that the parties before court understand the language that the proceedings are being conducted in?

- Do judges seek the assistance of interpreters when it becomes apparent that one or other party cannot follow the proceedings in the language of the court?

- Is there sufficient seat space for the public inside the courtroom?

- Can spectators see and hear the proceedings from their seats?

- How easily can a court user obtain a copy of a judgment? How much does it cost? Is the cost waived for indigents?

- Are the work areas for court personnel adequate, and are they adequately equipped?

- Do judges have adequate and equipped office space where they can work securely and privately with their staff when not in court?

**Court administration**

- Is the principal responsibility for court administration vested in the judiciary or in a body subject to its direction and control?

- Is the judiciary supported by an Inspectorate.

**Case management**

- What paperwork is generated when a case/appeal is instituted?

- Is each case/appeal given a unique identification number?
- Is there an effective filing system for court documents within the case file?
- Are any of these functions automated?
  ✓
- How are case files tracked as they move about the court?
- Is there a way of tracking cases other than by reading each individual case file?
- Is there a reliable way of knowing when a particular time period is reached?
- Are lawyers allowed to remove the files from the file/record room?
- What is the procedure for finding files that have been misplaced or misfiled?
- What is the procedure for constructing a new file when a file is missing or lost?
  ✓
- Does the law provide for the recording of court proceedings?
- Are all court proceedings recorded? How? Are they tape recorded? Are they videotaped?
- How long and under what conditions are recordings of proceedings stored?
- Is there a court reporter who transcribes what is said verbatim?
- Where there is no verbatim recording, do court personnel or the judge summarize the proceedings in writing? Are parties allowed to challenge or submit corrections to these summaries?
- Are notes taken by the judge during proceedings included in the file?
- Who, and under what circumstances, will be allowed access to a judge’s notes?
- In the event of an appeal or review, are transcripts prepared for the lawyers and for the judges? Who pays for this service?
  ✓
- Does the judge actively monitor and control the progress of a case from institution to judgment, including the completion of all the post-judgment steps?
- Are competent staff available to assist the judge in the case management and monitoring processes?
Have any new measures been introduced in the last five years to improve case flow management?

**Assignment of cases**

- Is the division of work among the judges of a court, including the distribution of cases, ordinarily performed under a predetermined plan or protocol?
- Has such plan or protocol been agreed to by all the judges of that court?
- Has such plan or protocol been made known to lawyers and other court users?
- May a judge request a specific case?
- Are cases of a level of complexity individually assigned?
- Is there a rule or procedure that allows for expedited trials?
- Are any measures in place to prevent the manipulation of case assignment for corrupt purposes?
- Have there been allegations of improper assignment of cases? If so, how have these been dealt with?
- In what circumstances, or for what reasons, will a case be withdrawn from a judge?
- Are the reasons for such withdrawal made known to lawyers, court users and interested members of the public?
- In what circumstances, or for what reasons, may a judge recuse or disqualify him/herself from dealing with a case?
- Is there a procedure that has been established for recusal or disqualification?
- How often in the past year have judges recused or disqualified themselves from particular cases?
- How often, in the past year have judges declined to recuse or disqualify themselves after a request or an application that they do so has been made?
Communication technology

- Has the paper-based court record systems been complemented or replaced with electronic information and communication technologies (ICT)?
- Have case records been computerised?

Transparency in the exercise of judicial office

- Is the right to a public trial and to the public pronouncement of the judgment recognized by law?
- Are court proceedings, by law, open to the public and the media? Are there exceptions?
- Are judgments delivered in public?
- Is information regarding the time and venue of hearings made available to the public?
- Are adequate facilities provided for the attendance of interested members of the public?
- Is information pertaining to judicial proceedings, both pending and concluded, accessible by the public, the media and court users, whether on a court website or through application to the relevant authority?
- Does such information include reasoned judgments, pleadings, motions and evidence?
- Does such information include statistics on the caseload and case clearance rates?
- Does such information include budget-related data such as collection of court fees, and the use of budgetary allocations?
- Is it possible to obtain a certified copy of any such information from the relevant authority?
• Are judgments of appellate courts published in a series of law reports?

• Who is responsible for the publication?

• Who decides which cases will be reported?

• How regularly are law reports published?

• How are the law reports disseminated?

• Are the law reports distributed to all courts?

• Are they available to the public, the press, civil society organizations, lawyers, and legal scholars?

• Are they available on the internet?

• Are copies of law reports available in courts for members of the public to use as reference?

Promoting the quality and delivery of justice

• Are judgments reasoned?

• Are judgments delivered within a reasonable time?

• Do judgments consider or take into account the opposing views, discuss why challenged evidence is being admitted or excluded, and record objections so that they are preserved for appeal?

• Do judges have access to judgments of superior courts in other countries?

• Do judges have access to opinions or decisions of international tribunals and treaty monitoring bodies (eg. the Human Rights Committee established under the ICCPR)?

• Does the judiciary periodically review public satisfaction with the delivery of justice?

• Does the judiciary conduct regular case audits?

• Does the judiciary conduct regular surveys of court users and other stakeholders?
- Does the judiciary regularly conduct discussions with court user committees to endeavour to review public satisfaction with the delivery of justice and identify systemic weaknesses in the judicial process?

**Achieving and maintaining public trust**

- What needs to be done to gain and keep public trust?
- Has the judiciary formulated a comprehensive, system-wide strategy aimed at correcting negative public perceptions and eliminating inefficiencies that lead to such perceptions?
- Is there an effective and impartial complaint system in the courts?
- Does the judiciary publish an annual report of its activities, including any difficulties encountered and measures taken to improve the functioning of the justice system?
- Does the judiciary taken steps to educate the public about the functions it performs?
- Has the judiciary instituted an outreach programme to address misconceptions about the judicial system and educate the public on the role of the judiciary in society?
- What are the elements of the outreach programme?
- Has the judiciary initated the production of radio and television programmes?
- Has the judiciary published and disseminated awareness-raising materials such as court user guides providing basic information on arrest, detention and bail, criminal and civil procedures, and useful contacts for crime victims, witnesses and other users?

**Relations with the media**

- Do the media report freely on court cases?
- What is the public and legal community’s perception of the quality of media reporting?
- Do journalists receive training or an orientation on court procedures and legal issues?
- How does the court deal with inquiries from the press?
• Has the judiciary organized the training of journalists by providing them with basic knowledge about court procedures and legal issues,

• What action has been taken by the judiciary to build trust between judges and journalists?

• Have press or public affairs offices been established in courts?

• Which of the following tasks do these offices perform?
  o respond to and manage requests from journalists,
  o issue press releases
  o provide accurate information about judicial decisions and legal issues,
  o provide schedules of upcoming cases,
  o monitor the media for accurate reporting,
  o design media campaigns that promote public understanding of the judiciary.

Declaration of assets

• Is a judge required to declare his/her assets and liabilities?

• Is the judge required to declare the assets and liabilities of his or her spouse, children and other close family members, including parents?

• Are such declarations required to be regularly updated.

• Are such declarations audited from time to time by an independent official?

• Has such auditing uncovered any instances of corruption by judges?

• Are such declarations available for public inspection?

• Are court personnel required to declare their assets and liabilities? What level of personnel are required to do so? Are they audited? Has any enforcement action been taken on the basis of these audits?

Immunity of judges

• Is a judge criminally liable under the general law for an offence of general application committed by him or her?
- Where reasonable cause exists to warrant investigation by police and other public bodies of suspected criminal offences on the part of a judge, does that investigations take its ordinary course according to law?

- How many judges have been prosecuted during the past five years, and on what charges?

- How many of these judges were convicted?

- Does a judge enjoy personal immunity from civil suits for conduct in the exercise of a judicial function?

- Is a remedy available for judicial errors (whether in respect of jurisdiction, substance or procedure) in the form of an appropriate system of appeals or judicial review?

- Is a remedy for injury incurred by reason of negligence or misuse of authority by a judge available against the State without recourse by the State against the judge?

- Are judges tolerant of legitimate public criticism of judicial performance?

- Do judges generally avoid the use of the criminal law and contempt proceedings to restrict such criticism of the courts?

**Alternative dispute resolution**

- Is the use of alternative dispute resolution (ADR) mechanisms, whether traditional or otherwise, actively encouraged?

**Data collection**

- Has a mechanism been established to collect and make available for research, analysis and response, both nationally and internationally, information concerning the scope and variety of forms of corruption within the judiciary?

- What is the public perception of the justice system? Is it considered fair? Effective? Efficient? If not, why not?
• What are the perceived key issues facing the justice system?


• What is the public perception of the average individual judge? Fair? Competent? Diligent? Honest?

• Has the public perception about the judiciary changed over the past five years? What are the key factors in this change?

• How does the public regard court personnel?

• Are there any public perception surveys available?
Part II

THE PROSECUTION SERVICE

Organization and location

- Is the prosecution service an independent entity?

- Does the prosecution service reside within the executive branch of government or the judiciary?

- If part of the executive, to what extent is the prosecution service independent of other branches of the executive?

- If part of the judiciary, to what extent is the prosecution function separated from the judicial?

- Who appoints the chief prosecutor? What is the term of office? How is the chief prosecutor removed?

- To whom, if anyone, is the chief prosecutor responsible?

- To what extent does the judiciary or the executive branch of government play a role in the management of the prosecution service?

- Is either the executive branch of government or the judiciary legally allowed to give directions in specific cases?

Recruitment, training and discipline

- Are prosecutors required to have a law degree?

- Are prosecutors required to have been admitted to practise law?

- What are the selection criteria for prosecutors?

- How are prosecutor candidates vetted?

- Does the demographic makeup of prosecutors resemble the population?
• Are bilingual or multilingual prosecutors who speak ethnic minority languages recruited?

• Are prosecutor candidates required to file financial disclosure reports?

• What, if any, initial training do prosecutors receive?

• Does the training include the ethical obligations and their basis?

• Does the training include the constitutional and statutory rights of suspects and accused persons?

• Does the training include human rights and the fundamental freedoms recognized in national and international law?

• What ongoing training is available to prosecutors in the area of trial skills, investigative techniques, policy, professionalism, and forensic evidence?

• Is there a training budget? If so, what percentage of the budget of the prosecution service does it comprise?

• How are complaints against prosecutors handled?

• How are allegations of corruption handled?

• Is there a formal disciplinary system?

• What is the relationship of internal disciplinary proceedings with external disciplinary bodies, such as that of the Bar?

**Investigation of crime**

• Who is responsible for the investigation of crime?

• Does the prosecution service supervise investigations that are conducted by other agencies?
• Is supervision direct, or is the prosecution service kept informed of progress and offer advice on how to proceed?

• Is the prosecution service legally bound by the results of an investigation conducted by another agency?

• How does the prosecution service ensure that the investigating agency respects legal precepts and fundamental human rights?

Prosecutorial discretion

• Does the prosecution service have a written policy manual?

• Is it available to the public?

• How does the chief prosecutor guide the exercise of discretion among members of the prosecution service?

• Is discretion delegated to each individual prosecutor?

• What is the prosecution service policy on instituting prosecutions?

• Must a prosecution be instituted whenever an investigation shows that there is prima facie evidence of a crime?

• Is there policy guidance when diversion is appropriate?

• How often, and in what circumstances, does a prosecutor decline to prosecute?

• What is the policy of the prosecution service when it appears during a trial that the charge is unfounded?

• Does a prosecutor who declines to prosecute, or seeks to withdraw a prosecution, provide a reason for doing so? If so, are the reasons published?

• Can a decision to prosecute, decline to prosecute, or withdraw a prosecution, be overruled by a member of the executive branch of government?

• Can such decision be overruled by the judiciary?
• What is the policy of the prosecution service on pre-trial detention?

• If a prosecutor becomes aware that evidence provided by the investigating agency was obtained through illegal means, what is the ethical / legal / policy / obligation of the prosecutor?

• How does the prosecutor deal with investigators who obtained the evidence illegally?

• What is the policy of the prosecution service on the disclosure of evidence to the defence?

• Has the prosecution service, in the past five years (or under the current government’s administration) prosecuted any senior government officials for corruption or abuse of power?

**Code of conduct**

• Has the prosecution service developed an ethical code or code of conduct?

• Does it encourage prosecutors to consult with a superior officer or an ethics officer when ethical questions arise or are anticipated?

• How are complaints of ethical misconduct dealt with?

**Liability**

• Can a prosecutor be sued for an act arising in the course of his/her work?

• Is potential liability limited to acts of gross negligence or unlawful intention?

• Is a prosecutor who makes an error while acting in good faith and following legal procedure, protected from liability?

**Public relations**

• What is the public perception of the criminal justice system?
• How does the public view the prosecution service?

• What is the public perception of the average individual prosecutor?

• Does the prosecution service conduct community outreach?

• Does the prosecution service seek to involve the community in addressing criminal justice priorities?

• Does the prosecution service facilitate or restrict access to public information relating to cases that it is prosecuting?