

Judicial Integrity - Assessing Challenges and Results of Capacity Development Interventions

Consolidated Summary of E-Discussion

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LAUNCH MESSAGE

Dear colleagues,

We are pleased to launch the e-discussion on ***Judicial Integrity: Assessing Challenges and Results of Capacity Development Interventions***. The e-discussion will take place from 4 November to 3 December 2013. It will be cross-posted on Teamworks, the Worldwewant2015 website, the UNDP knowledge networks (DGP-Net, the AP-INTACT Network, and the Asia-Pacific Access to Justice Network).

An independent and impartial judiciary is a cornerstone of the rule of law and of a democratic state. It serves to protect human rights and people's liberties, to ensure accountability of other branches of government, and to support economic growth and social progress.

Judicial integrity has received growing attention and support in recent years from the development community, highlighting the necessity to address this issue as a development problem and how the issue can be targeted from a rule of law and anti-corruption perspective.

Measures to ensure integrity of judicial and prosecutorial action, such as the adoption of codes of judicial conduct, must be matched by initiatives to strengthen judicial capacity to effectively institutionalize these standards and change the behaviour of the institutional actors, as well as include measures that ensure judicial accountability. Therefore, strengthening judicial capacity and integrity go hand in hand.

The e-discussion seeks to learn from practitioners and examine current and past experiences with country-based programmes supported by the United Nations Development Programme (UNDP), the United Nations Office for Drugs and Crime (UNODC), non-government organizations, and other development actors aimed at strengthening judicial integrity. The e-discussion will capture lessons learned from programming in this thematic area and integrate such lessons into programmatic guidelines for more effective interventions in this area. The discussion will run in two phases:

Phase I - Stocktaking of Judicial Integrity Programmes (4 to 18 November 2013)

- Are there public surveys or expert reports available on the performance of the judiciary? If so, what do they tell about people's perception with regards to the fair and equal delivery of justice?
- What are good examples of enhancing judicial integrity? What was their impact?
- Have the Bangalore Principles or UNCAC's requirements been instrumental in judicial reform projects and in what form? What evidence exists on its impact?
- What are the bottlenecks to engage with development projects that address judicial independence and integrity?

Phase II - Identifying Indicators of Judicial Integrity (19 November to 3 December 2013)

- What are existing monitoring mechanisms and indicators of judicial capacity and integrity?
- In what ways have the Bangalore Principles or United Nations Convention Against Corruption (UNCAC) requirements already been used as an evaluative framework to measure judicial integrity?
- How can we increase the evidence base on the impact of judicial capacity and integrity initiatives on corruption prevention?

The e-discussion is organized by UNDP's Democratic Governance Group, Bureau of Development Policy (BDP), in partnership with the U4 Anti-Corruption Resource Centre at the Chr. Michelsen Institute (CMI), the United Nations Office on Drugs and Crime (UNODC), and the Asia-Pacific Integrity in Action Network (AP-INTACT).

You can participate in the e-discussion:

- by joining the discussion space on UNDP Teamworks (<https://undp.unteamworks.org/node/16917#dashbanner>)
- by sending your contribution to ap-intact@groups.undp.org or pacde@undp.org

All contributions submitted during the e-discussion will be disseminated on the networks that are cross-posting the discussion.

We encourage you to read the [Concept Note](#) and take part in this e-discussion to help map lessons learnt and best practices on strengthening judicial integrity.

We look forward to energized and thoughtful exchanges!

Sincerely,

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Responses were received with thanks from:

- Nicholas Booth, *Policy Advisor – Governance, Access to Justice and Human Rights, United Nations Development Programme Asia-Pacific Regional Centre, Bangkok, Thailand*
- Virgjina Dumnica, *Justice Portfolio Manager, United Nations Development Programme, Pristina, Kosovo*
- Nancy Fashho, *Attorney and Legal Consultant, Jordan*
- Nihal Jayawickrama, *Sri Lanka; Coordinator, Judicial Integrity Group; co-founder of the Bangalore Principles on Judicial Conduct*
- Arlette Jreissati, *Counselor Judge at the Court of Cassation, Lebanese Republic*
- Monjurul Kabir, *Policy Adviser and Team Leader, Rule of Law, Governance, Human Rights and Justice, United Nations Development Programme Regional Centre for Europe and the CIS*
- Narayan Manandhar, *anti-corruption and governance expert, Nepal*
- Thusitha Pilapitiya, *Decentralization and Local Governance Advisor, United Nations Development Programme Asia-Pacific Regional Centre, Bangkok, Thailand*
- Patrick Rafolisy, *Kenya.*
- Elodie Beth Seo, *Regional Anti-Corruption Advisor, United Nations Development Programme Asia-Pacific Regional Centre, Bangkok, Thailand*
- Oliver Stolpe, *Senior Adviser, Stolen Asset Recovery (StAR) Initiative, The World Bank*
- Tek Tamata, *Programme Analyst, Justice and Human Rights, United Nations Development Programme Nepal*
- Tsogt Tsend, *Judge, Administrative Court of Appeals, Mongolia*
- Daniela Cavallini, *University of Bologna, Italy*
- Francesco Contini, *Research Institute on Judicial Systems, National Research Council of Italy, Bologna, Italy*
- Cristina Dallara, *National Research Council of Italy, Bologna, Italy*
- Philipp C. Jahn, *Deutsche Gesellschaft für internationale Zusammenarbeit (GIZ), Germany*

For the full text of responses, please see Annex A (Phase I) and Annex B (Phase II).

Summary of responses:

Phase I - Stocktaking of Judicial Integrity Programmes

Phase I of the e-discussion sought to take stock of effective UN country programme and development partners' support to the strengthening of judicial integrity. Experiences from Jordan, Nepal, Kosovo, Sri Lanka, Lebanon, Malawi, Mongolia, and Europe/CIS highlighted people's perceptions of the judiciary, lessons learned, challenges and results, and how these have informed the justice sector reform initiatives of UN country offices. Responses were received from UNDP colleagues, development partners, governance experts, academics, and members of the judiciary.

Public perception and expert reports. Responses to this phase of the e-discussion pointed to the need for more regular, systematic, and empirical-based review of how the judiciary performs and how it is regarded by the public. Various contributors (e.g. Kosovo, Mongolia, Nepal) provided relevant examples of national corruption assessments of public institutions, including the judiciary.

In general, the e-discussion called for more gathering of evidence on the patterns of corruption in the judiciary that is actionable for undertaking reforms. There is a need for more precise and context-specific assessments that provide clarity on the nature and extent of the problem and specific directions for how reform can address the problem of judicial corruption and the challenges related to strengthening judicial capacity and integrity.

The most common sources of information on the problem are global indices, such as the Global Corruption Barometer and the World Justice Project. Although these underline the extent of the problem of corruption in the judiciary, these are primarily perception-based. They lack precise guidance on how these problems can be addressed in particular contexts. In some country contexts, more specific surveys or reports can be found. For example, the contribution from Nepal showed that between 1999 and 2013, a total of 8 relevant reports had been published (global and locally developed) providing specific figures on measured confidence in the judiciary and judicial actors. However, as is the case of Nepal, these types of reports are often part of particular projects and might not be produced systematically or on a regular basis. They are therefore limited in their use as tools to track change over time or to provide clear baseline and benchmark data that could inform the design of specific interventions.

The contributions provided interesting examples of how interventions to strengthen judicial capacity and integrity can be effectively based on assessments. UNDP Kosovo has published "public pulse reports", a series of reports that analysed since August 2002 the major trends in the satisfaction of the general public with the work of the public institutions. The reports provide valuable analysis of public perceptions. Following the public pulse reports, UNDP Kosovo develops an Action Paper, which aims to address the problems highlighted in the report, containing follow-up actions for addressing the specific issues.

The Kosovo Judicial Council (KJC), an independent oversight body responsible for the appointment and evaluation of judges and for ensuring independence and impartiality of the judiciary, was selected as the first institution to receive the Action Paper, primarily because public satisfaction with the work of the judiciary was critically low. The experience demonstrates that when such an assessment is accepted by national institutions, it generates critical "buy-in" and strengthens ownership for the subsequent intervention that addresses the problem.

In Nigeria, Sri Lanka and Uganda, the Chief Justices initiated surveys of stakeholders to ascertain and understand the causes of the negative public image of the judiciary, and to solicit suggestions on measures that could be employed to reverse that image. A key lesson from these experiences is that the Judiciary at the highest levels has to take ownership of the outcomes of the assessment, and move forward with determined political willingness to employ those measures needed to increase accountability of judicial actors.

Among the **bottlenecks to engagement** with judicial integrity is the fear of breaching the important principle of judicial independence. A sound assessment of the problems within the judiciary might provide the necessary legitimacy to support engagement on these sensitive issues, once the results of the assessment are acknowledged by the judiciary itself.

UNDP's Regional Service Centre in Bangkok and the Stolen Asset Recovery Initiative (STAR) from the World Bank and UNODC both called for conducting assessments to create the necessary evidence-base on which interventions should be planned. One such example is the survey tool on the "independence, impartiality and integrity of the judiciary," part of the Criminal Justice Assessment toolkit developed by UNODC. These assessment tools help to define:

- capacity gaps;
- shared understanding on priority areas for reform;
- plans for action; and,
- a baseline and benchmark for monitoring.

While these assessments can give a comprehensive outline of the problem and the issues to be addressed, they also have their limitations. They can turn out to be expensive, require advanced research and analytical capacity, which is often not available in the respective environments, and require a comparatively long time to complete.

A recent study by UNDP in the Europe & CIS region (covering Bosnia Herzegovina, Kazakhstan, Kosovo, Kyrgyzstan and Serbia) analyzes the barriers faced by marginalized groups such as women, persons with disabilities (PWDs) and minorities. The study found that the lack of awareness and knowledge about the specific demands of these groups form "institutional capacity and knowledge gaps" in judicial institutions to be able to effectively address the needs of these target groups, that is, the rights holders. The experience of unfulfilled rights of specific social groups will furthermore have a negative impact on the public perception of the functioning of the judiciary.

Beyond the Bangalore principles: coupling codes of conduct with internal and external oversight. The contributions provided practical country programme experiences from Jordan, Kosovo, Lebanon, Malawi, Mongolia, and Nepal on judicial integrity. These examples illustrate different approaches, from training and dialogue within the judiciary directly on integrity issues, based on the Bangalore principles (Kosovo, Jordan, Malawi, and Nepal), to strengthening parliamentary and civil society oversight to enhance transparency and accountability (Malawi and Nepal), to enhancing internal oversight mechanisms (Jordan, Lebanon, Mongolia, and Nepal).

In Malawi, the Chief Justice gave his support for capacity development efforts within the judiciary, thus providing political backing to the initiative from the highest level. This created the necessary space for the judges and judicial operators to commit to the activities. Training sessions were conducted to help the judiciary understand its role in safeguarding accountability for the rule of law, and the critical nature of the judiciary's own integrity. Subsequent dialogues were facilitated

in all districts of Malawi that enabled the judiciary to come together at different levels to talk about the practical problems in enforcing judicial integrity. At the same time, funds were provided for CSOs to perform oversight activities and reporting on judicial actions. The experience demonstrated that the involvement of other relevant actors, such as civil society and bar associations, can provide effective (external) oversight to the process of strengthening judicial capacity and integrity.

In Kosovo and Nepal, the Bangalore principles have served as guidelines for training judicial operators on integrity issues and for drafting codes of conduct. This has been coupled with other measures to prevent corruption and promote accountability. In Kosovo, oversight within the judiciary has been strengthened through internal disciplinary mechanisms and an enhanced ability to investigate and prosecute cases of corruption. In Jordan, a code of ethics for judges has been adopted by the judiciary and an ethics course is continually taught to judges. Chief Judges of courts are involved in monitoring judges' performance including their personal behaviour and their adherence to the code of conduct. Such a process gives Chief Judges important insights into the judges' work habits and provides a basis to engage with judges on those ethical issues that have been highlighted as a result of the monitoring.

In Lebanon, to fight delays in the court's proceedings, the Minister of Justice, with the agreement of the Supreme Judicial Council, tasked a specific judge to realize a statistical analysis of the output of the judges' performance. Those statistics are forwarded to the Judicial Inspection Authority and to the Supreme Judicial Council in order to undertake appropriate measures. Those statistics led to a substantial improvement in the judiciary in 2013, compared to the year 2012. Furthermore, in order to strengthen judicial independence, the Ministry of Justice has prepared a draft law to be submitted to parliament, changing the rules for the election of members to the Supreme Judicial Council. Upon implementation of this law, the members to this council will now be elected by their peers, instead of being appointed by the Executive. This measure will strengthen judicial independence from the Executive.

In Mongolia, an important tool has been developed to address judicial integrity. Judges are obliged to disclose any improper attempts to influence a case through 'Improper Influence Disclosure Statements'. If a statement is reported, then the General Council of the Courts (GCC) is responsible to pursue it until it is properly addressed. In cases where someone is proven responsible for an attempt at undue influence then that person must be punished according to law.

In Nepal, UNDP has targeted judicial integrity within broader capacity development efforts in the justice system. Court Client Information Desks have been piloted within several districts. These desks are enhancing accountability among the judicial actors and increasing confidence of people in the court system. Also, the interim constitution now includes a provision that requires public hearings during the parliamentary appointment of Supreme Court judges. This provides an opportunity for civil society to voice concerns, as already has been the case on various occasions. The increased numbers of cases and complaints concerning malpractice and maladministration in the court system has also led to efforts to promote a better understanding about the court, codes of conduct for judicial operators, and accountability among the people.

How effective have these measures shown to be, based on conducted monitoring and evaluation of these interventions? Do recent expert or public surveys demonstrate impact? The lack of contributions in response to this question on the measurement of effectiveness of judicial integrity interventions is notable. It would be important to know whether this reflects a weakness in or a lack of specific monitoring and evaluation of the impact of judicial integrity interventions.

For all responses in Phase I of the e-discussion, please visit the Teamworks space at <https://undp.unteamworks.org/node/405648>.

Phase II - Identifying Indicators of Judicial Integrity

Phase II of the e-discussion sought to identify indicators to assess judicial integrity. Participants were invited to share their knowledge of effective monitoring mechanisms and indicators for measuring the impact of initiatives aimed at strengthening judicial integrity. Colleagues from UNDP, development partners, and academics shared their views and experiences.

What are existing monitoring mechanisms and indicators of judicial capacity and integrity?

Monitoring mechanisms and indicators for judicial capacity and integrity are usually closely interlinked with capacity monitoring, which appears more evolved than the monitoring of judicial integrity per se. It seems that where capacity and performance monitoring and indicators are most established, aspects of judicial integrity are considered part of capacity and subsumed under capacity monitoring.

Many countries, such as Kosovo (see [Virgijna Dumnica](#) UNDP Kosovo) start the strengthening of judicial reform with the adoption of a code of conduct for judges and prosecutors. The challenge lies in the institutionalization of integrity standards and actual behavioural change. Often it is a judicial council that monitors compliance with the code of conduct and initiates disciplinary measures where misconduct has occurred.

Daniela Cavallini from the University of Bologna provided four examples from Europe that highlight the importance of keeping disciplinary proceedings transparent and allow for some degree of public scrutiny. In Italy, misconduct concerning the discharge of judicial functions, private and social misconduct, or violations of the code as a result of a criminal offence can be punished. The General Prosecutor of the Supreme Court reports every year on the activity of the Disciplinary Commission and summaries of the disciplinary decisions are available on the website of the Superior Council of the Magistracy. Moreover, the disciplinary hearings can be transmitted by national radio, unless the disciplined judge asks for confidentiality.

In France, disciplinary sessions have been opened to the general public (except when this is opposed by the judge being disciplined) and the disciplinary decisions are published in the magistracy's annual report and on its website. Moreover, a compendium of all the reported and punished misdeeds was compiled and put at the disposal of the magistracy.

In England, the Office for Judicial Complaints is required to consider all complaints and disciplinary conduct matters against judicial office holders (among which are judges and magistrates), including consideration of the complaint merits and recommendations on appropriate actions. If the complaint is upheld the Lord Chief Justice and the Lord Chancellor may decide to take disciplinary action against the judge (except for senior judges, who may be removed only by the Queen following an address in both Houses). An annual report is published on complaints and disciplinary activity.

Enhancing transparency and knowledge of the disciplinary cases, both based on quantitative data and qualitative information (number and type of violations dealt with, number of sanctions/acquittals, grounds of the decisions) can increase the awareness of judicial duties by judges and civil society and contribute to prevent future violations. Systematic analysis of this information could also provide important information on how the disciplinary control is actually being carried out and if it is effective for the protection of judicial integrity and capacity.

Another important issue that has been pointed out is the relevance of the local context, for example, judicial reform in the Balkans and Southeast Europe must be understood within the broader context of transition to democracy and the challenge of transforming non-democratic judicial institutions into fully democratic and well performing institutions. Christina Dallara, IRSIG-CNR, reported on the recently launched project for the Judicial Capacity Assessment in Southeast Europe by the European Bank for Reconstruction and Development (EBRD). This capacity assessment targets seven key dimensions pertaining to the courts' output in dealing with commercial disputes, impartiality being one of them. Notably, impartiality (understood as procedural equality) is not a distinct concept but considered part of judicial capacity. The report also stressed the importance of political will and public awareness of the problems, before policy solutions are sought.

Francesco Contini provided an example of a comprehensive quality management tool for the judiciary in the Netherlands, RechtspraakQ. It comprises quality regulations defined by each court based on blueprints developed in cooperation with the Council for the Judiciary; measuring instruments such as a court-wide position study, staff satisfaction survey, audits by courts staff themselves, visitation by an external committee, and a customer evaluation survey. The 'customers' are litigants, members of the Bar, the Public Prosecution Service and other 'repeat players'. In the customer evaluation survey the various customer groups are asked about all aspects of the service provided by a court, for example, how the judge interacts with litigants, the readability and comprehensibility of a decision and whether the hearing starts on time. Courts also often make use of customer panels in order to examine the results of the survey in more depth. In addition a uniform complaints procedure was introduced in 2002 to handle complaints concerning the actions of judges and support staff and how the court operates as a whole and a peer review schema.

Francesco Contini also shared a good example of monitoring judicial capacity and integrity currently under development in 14 Pacific judiciaries under the UNDP Pacific Judicial Development Programme (PJDP) funded by the New Zealand government. 15 so-called "Cook Island indicators" have been selected to measure progress against baseline data in five areas: (1) case management; (2) affordability and accessibility for court clients; (3) published procedures for the handling of feedback and complaints; (4) human resources; and, (5) transparency.

In what ways have the Bangalore Principles or UNCAC requirements already been used as an evaluative framework to measure judicial integrity? While for many countries the Bangalore Principles have been an important reference for the development of codes of conduct, information on the actual implementation of these codes of conduct has been "scattered", as one contributor put it.

German Development Cooperation has supported the dissemination of the Bangalore Principles since 2005 and has recently piloted a so-called "integrity scan" in Georgia (2012) and the Ivory Coast (2013). The integrity scan, consisting of a desk-study to be conducted by local legal experts and the judiciary itself, and in-depth interviews with relevant stakeholders based on a questionnaire that draws on the Implementations Measures to the Bangalore Principles. Philipp Jan from GIZ highlighted that besides being an assessment tool per se, these scans can be used as tools to engage with the judiciary and other relevant stakeholders to identify reform priorities. In a comment on the integrity scan tool, Patrick Rafolisy of Kenya asked for more information on how the tool helped to advance ownership and engagement of stakeholders.

Francesco Contini reported that the Cook Island indicators are deemed to cover the missions of the Pacific island judiciaries and reflect key judicial values stated by the Bangalore Principles of

Judicial Conduct and the Suva Statement on the Principles of Judicial Independence and Access to Justice. Both international standards were used to identify principles and values to be measured by the indicators.

No contributions were made as regards the UNCAC requirements being used as an evaluative framework for judicial integrity. This may just be a matter of time. The Implementation Guide to Article 11 of the UNCAC was presented at the 5th Conference of State Parties to the UNCAC while this e-discussion was underway. The Implementation Guide is meant to provide a framework to assess states' fulfilment of UNCAC measures relating to the judiciary and prosecution services.

How can we increase the evidence base on the impact of judicial capacity and integrity initiatives on corruption prevention? Contributors have shared experiences with several tools that have been used to assess the status of judicial capacity and integrity generally (see also question 1). Regular studies over time will help us assess whether judicial reform initiatives have been successful. Increased capacity of judiciaries to collect relevant information regularly (monitoring) would not only help increase the evidence base, but would also allow for learning and timely adjustment of reform approaches (where necessary).

To gain better evidence, it was also stressed that knowledge of past studies and methodologies is essential and that a good mix of approaches will provide a more comprehensive picture. Elodie Beth Seo, Regional Anti-Corruption Advisor, UNDP Asia-Pacific Regional Centre, emphasized that corruption risk assessments^[1] should consider country context and make use of both qualitative (direct experiences of relevant stakeholders) and quantitative data (e.g., audit reports, review of cases, complaints). She also highlighted the importance of capturing the perspective of various actors in the justice system while safeguarding judicial independence.

If anything, this e-discussion has highlighted a continued **need for learning based on concrete country experiences on what works and what does not work when it comes to preventing corruption in the judiciary**. The organizers of the e-discussion will continue to gather country examples of strengthening judicial capacity and integrity, so as to broaden the evidence base and the set of good practices.

While this e-discussion was underway, at the Second International Summit of High Courts, 15 principles and commentaries addressing judicial transparency were adopted in the **Istanbul Declaration on Transparency in the Judicial Process**.

Last but not least, the ABA – UNDP International Legal Resource Centre (ILRC) shared a selection of recently published resources specifically addressing judicial corruption, as well as assessment methodologies for reviewing compliance with international standards regarding judicial integrity, and legal and programmatic efforts to improve judicial integrity. These include both country-specific documents, and reports that address judicial integrity from a global perspective.^[2]

For all responses in Phase II of the e-discussion, please visit the Teamworks space at <https://undp.unteamworks.org/node/410218>.

Conclusion and next steps

The e-discussion brought forward concrete country experiences and expert views on current challenges to strengthen judicial integrity. This summary provides an outline of the main points raised and discussed during the discussion. The following can be emphasized:

- The discussion highlighted the importance and relevance of conducting corruption risk and other forms of diagnostic assessments prior to interventions to strengthen judicial integrity, and how these assessments also create the necessary evidence-base and ensure “buy-in” from key stakeholders within the justice system.
- There is a significant need to increase the evidence-base of successful strategies and practices used to address judicial integrity; and of monitoring and evaluation to assess the impact of current efforts, initiatives and approaches.

Future steps and engagement on judicial integrity will build on the insights gained from this e-discussion.

UNDP will support a regional initiative in the Asia-Pacific to develop and pilot a participatory methodology that applies corruption risk assessments in the justice sector. Support will be provided to an initial set of country offices for conducting these assessments. This work will be coordinated with UNDP’s partners (UNODC, AP-INTACT, CMI/U4, GIZ) and will integrate existing policy guidance and lessons learned into the methodology.

CMI/U4 will continue to build on the insights from the e-discussion by developing various knowledge products, for example on community court monitoring, asset declarations in the judiciary, and an exploration of the relevance of anti-corruption tools from other sectors for judicial reform.