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Policy Position

TRANSPARENCY INTERNATIONAL
the global coalition against corruption



Judicial Accountability and Discipline

The judiciary needs to be independent of outside influence, particularly of political and economic entities such as government agencies or industry associations. But judicial independence does not mean that judges and court officials should have free rein to behave as they please. Indeed, judicial independence is founded on public trust and, to maintain it, judges must uphold the highest standards of integrity and be held accountable to them. Where judges or court personnel are suspected of breaching the public's trust, fair measures must be in place to detect, investigate and sanction corrupt practices.

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The judiciary must be accountable to the law, in the sense that the decisions made are in accordance with the law and are not arbitrary. Like other branches of government, it must also be accountable to an external body.

1. Accountability to whom and for what?

In everyday terms, accountability is simply the ability to hold an individual or institution responsible for its actions. The question for the judiciary is accountability to whom and for what? Broadly speaking, the judiciary must be accountable to the law, in the sense that the decisions made are in accordance with the law and are not arbitrary. Like other branches of government, it must also be accountable to the general public it serves. Holding the judiciary accountable to an external body, such as a ministry of justice, however, raises questions as to whether this same body could be used to undermine judicial independence. External accountability mechanisms can expose the judiciary to the risk of harassment or intimidation by aggrieved parties. On the other hand, reliance on internal accountability mechanisms alone raises issues of legitimacy and transparency.

Developing codes of judicial conduct can also provide an important means of fostering judicial accountability, since they serve as both a guide to and a measure of judicial conduct.

2. How to achieve judicial accountability

Fostering a culture of independence, impartiality and accountability among judges is a vital step towards ensuring the overall integrity of the judiciary. This is particularly the case in countries where there is a lack of accountability in other branches of government. Developing codes of judicial conduct can also provide an important means of fostering judicial accountability, since they serve as both a guide to and a measure of judicial conduct. Strong and independent judges associations, meanwhile, can provide a safe point of reference for judges, allowing them to interact with the state in an accountable, yet robustly independent manner. Ultimately, though, the judiciary must be responsible to the citizens of a country, and civil society actors, including the media and NGOs, must play an enhanced role in demanding judicial accountability.

Incorporating whistleblower protection or anti-corruption telephone hotlines as part of judicial systems can help improve detection of corruption in the judiciary.

3. Detecting corruption in judicial systems

Judges are expected to take decisions about breaches of law by individuals, governments and companies, but what happens if it is the judge who breaks the law? While judicial independence requires that judges have some limited measure of immunity and that they should be protected from trivial or vexatious complaints, mechanisms must be in place to ensure that corruption by judges or court personnel is detected, investigated and properly sanctioned.

Incorporating whistleblower protection or anti-corruption telephone hotlines as part of judicial systems can help improve detection of corruption in the judiciary. It is often courageous members of the public or individuals of integrity within the judicial system itself who speak out against specific instances of corruption. Such action can be encouraged by developing a confidential and rigorous formal complaints procedure so that lawyers, court users, prosecutors, police, media and civil society organisations can report suspected or actual corruption in a judicial system.

It is essential that any disciplinary mechanism is independent, fair and rigorous.

4. Ensuring effective judicial discipline

There are different models for judicial discipline, though all models tend to operate at two levels: first, a disciplinary system that can admonish, fine or suspend judges for misdemeanours; and, second, a system of removal of judges for serious misconduct, including corruption.

It is essential that any disciplinary mechanism is independent, fair and rigorous. In particular, a judge has the right to a fair hearing, legal representation and an appeal in any disciplinary matter. In some instances, an appellate body or judicial council may have disciplinary functions. In others, supreme courts may be responsible for disciplining lower court judges, while supreme court judges themselves may be removed by parliament. All types of procedures should be balanced to, on the one hand, protect judicial independence and, on the other, provide accountability to command public confidence. Importantly, mechanisms for judges' removal from office must be fair, transparent and take the principle of security of judicial tenure into account.

5. Key recommendations

- **Limited immunity** for actions relating to judicial duties should be in place. This allows judges to make their decisions free from fear of civil suit; though immunity should not apply in corruption (or other criminal) cases.

- **Disciplinary rules** should ensure that the judiciary carries out initial rigorous investigations of all allegations. **An independent body must investigate complaints** against judges and give reasons for its decisions.

- Strict and exacting standards should apply to the removal of a judge. **Removal mechanisms for judges of all levels** must be clear, transparent and fair, and reasons need to be given for decisions. If there is a finding of corruption, a judge is liable to prosecution.

- A judge should have the **right to a fair hearing**, legal representation and an appeal in any disciplinary matter.

- A **code of judicial conduct** serves as a guide to and measure of judicial conduct, and should be developed and implemented by the judiciary. Breaches of the code must be investigated and sanctioned by a judicial body.

- A **confidential and rigorous formal complaints procedure** is vital so that lawyers, court users, prosecutors, police, media and civil society organisations can report suspected or actual breaches of the code of conduct, or corruption by judges, court administrators or lawyers.

- An **independent judges association**, elected by judges, should represent them in their interactions with the state and its other organs. It should be accessible to all judges; support individual judges on ethical matters; and provide a safe point of reference for judges who fear that they may have been compromised in some way.

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

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

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

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

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