

## Breakout Session Report

High-Level Meeting of the Global Judicial Integrity Network

(25-27 February 2020, Doha, Qatar)

**Mainstreaming anti-corruption at the top: transparency and accountability of the highest bodies of the judiciary**

Group of States against Corruption, Council of Europe (GRECO)

Due Process of Law Foundation (DPLF)

**I. SESSION ORGANIZER**

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**II. RAPPORTEUR<sup>1</sup>**

Rapporteur:	Úrsula Indacochea
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Organization:	Due Process of Law Foundation

**III. MODERATOR AND PANELLISTS:**

Moderator:	Marin Mrcela
Position:	Vice-President of the Supreme Court of Croatia, President of GRECO
Organization:	Group of States against Corruption (GRECO), Council of Europe

**PANELLISTS**

Name:	Jose Igreja Matos
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<sup>1</sup> Responsible for drafting the session report.

Position:	Judge, GRECO expert
Organization:	Group of States against Corruption (GRECO), European Association of Judges, International Association of Judges
Topic of presentation:	<i>Preventing judicial corruption in Europe: standards, good practice and emerging challenges for governing bodies</i>
Summary of presentation:	Politicization and absence of transparency in the appointment of members of Judicial Councils and Supreme Courts in Europe has become a major problem. This is particularly important when cases of political corruption are on the rise and the effective separation of powers is not respected. It also affects public confidence in the system. According to an ENCJ (European Networks of Councils for the Judiciary) survey (2019), judges viewed non-objective election and promotion of high-court judges as a most salient problem. This situation calls for priority action, including by establishing clear standards on, for example, reasoned appointments, merit-based criteria that are publicly accessible, a high degree of transparency and remedies to challenge or review the outcomes, etc. Nevertheless, it is also important to avoid the use of the anti-corruption fight as an excuse or a trap to allegedly reform the judiciary, affecting its independence, for example, by carrying out draconian background checks by security services.

Name:	Claudia Escobar
Position:	Former Judge, Court of Appeals in Guatemala
Topic of presentation:	<i>Strengthening accountability mechanisms of the high bodies of the Judiciary as a strategy to combat corruption in Latin America</i>
Summary of presentation:	In Latin America, corruption is the vehicle that organized crime has used to guarantee impunity for their crimes, seeking control of the courts and other judicial bodies through unduly influencing the selection and appointment of high-court members, but also by co-opting or controlling the bodies in charge of the assessment of candidates. Strengthening the independence of the judiciary is key to fight corruption, especially in this subject-matter. If selection and appointment depend on political powers, or if the basic standards are not followed, there is a high risk that the justice system could be corrupted. In order to guarantee the participation of citizens, some justice systems have incorporated in the Judicial Councils the participation of civil society, scholars or law schools, and bar associations, but the effect has been the opposite: they have been corrupted or politicized. This calls for caution and reassessment. Accountability processes must also be properly articulated. Finally, there must be an adequate regulatory framework, an active and trained civil society to monitor and demand transparency and efficiency.

Name:	Hannah Okwengu
Position:	Justice, Kenya Court of Appeal.
Topic of presentation:	<i>Kenya's experience in mainstreaming anti-corruption in the governing</i>

	<i>bodies of the judiciary</i>
Summary of presentation:	The current Constitution of Kenya anchors international best practices for combating corruption, as it provides for transparency, accountability, integrity, equality, independence of the judiciary and the rule of law. Law must also be reflected in practice and efforts are ongoing in this respect. Goodwill, a culture of integrity and a multiagency coordinated approach to combating corruption are essential, otherwise, the judiciary anti-corruption efforts can easily be derailed. A complete paradigm shift in societal values is necessary to develop a culture of integrity and zero tolerance to corruption, and this engenders support from all.

**IV. SUMMARY OF THE SESSION:**

The session addressed anti-corruption and integrity policies on the higher bodies and governing structures of the judiciary, particularly Councils for the Judiciary and Supreme Courts. While their role varies quite significantly among countries, they are generally vested with key responsibilities relating to the administration of the judiciary: appointment, promotion, transfers and dismissal of judges, disciplinary proceedings against judges, etc. They can also represent and be the voice of the national judiciary. They consequently play a primordial role in protecting the independence and impartiality of the justice system as a whole, as well as that of individual judges. Because of their decision-making powers and because they set the tone for their base, it is crucial that they embrace strong standards of transparency, integrity and accountability. Moreover, precisely because of their leading position, corruption networks seek to control these bodies, and in this way, guarantee impunity and instrumentalize justice in favor of their interests, exerting undue influence on their appointments, their functioning, and even, promoting structural reforms that weaken them. By comparing the experience of different regions of the world (Europe, Africa and America), the session explored emerging trends and challenges, as well as good practices and lessons learned.

During the discussion, the panelists, as well as the participants in the room, agreed that selection and appointment of the members of these bodies is fundamental, and that this processes have to maximize their safeguards, in terms of transparency, objectivity and social monitoring. A second topic which emerged during the session was related to risks derived from the participation of political powers on these processes, and the need to guarantee that in such cases, judicial high officials are not appointed by political considerations.

**V. HOW THE SESSION SUPPORTS THE OVERALL OBJECTIVE OF THE GLOBAL JUDICIAL INTEGRITY NETWORK OF STRENGTHENING JUDICIAL INTEGRITY AND PREVENTING CORRUPTION IN THE JUSTICE SYSTEM:**

The session addressed three main areas where anti-corruption and integrity-related considerations must be mainstreamed from the start:

Independence and appointment

The governing bodies of the judiciary are the guardians of the independence and impartiality of the judicial system as a whole and that of individual judges. A balance must be struck between guarding against undue external influence and a system where the preponderance of judges gives rise to concerns about self-protection, self-interest and cronyism. A number of countries have started to

open up the selection process of members of judicial governing bodies to broader sectors of society (e.g. mixed composition of selection boards, public hearings, etc.); as a minimum, the general public should have a general insight into the selection and appointment procedure of judicial governing bodies. Likewise, measures can be taken to ensure diversity so that no one is, or feels, excluded on the basis of gender or ethnicity from the judicial profession. Ensuring diversity also serves to better guarantee the independence of the judiciary so that the public do not perceive the highest ranks of the judiciary as being drawn predominantly from a specific group or class of society.

Prospective members, whether judges or not, must be appointed on the basis of their competence, experience, understanding of judicial life and culture of independence. Also, they should not have significant links to political bodies or be members of the executive or the legislature.

Members of governing bodies should be granted guarantees for their independence and impartiality; their remuneration and working conditions should be commensurate to their position and workload.

- *Composition (solely of judges/mixed composition of judges and non-judges, number of members and decision-making procedures)*
- *Election/selection (qualification of members, selection methods)*
- *Diversity*
- *Term of office (duration of mandate, re-election, status of members, remuneration)*
- *Participation of civil society*

#### Transparency and management

Internal judicial independence requires that individual judges be free from directives or pressure from governing bodies. It is therefore important to ensure transparency and accountability over the decisions of such bodies. In particular, decisions must be reasoned and subject to challenge. Likewise, the judiciary has a transparency duty vis-à-vis the general public. This requires a proactive information policy, transparent procedures, as well as accessible, timely, simple and clear decisions.

Moreover, because of the multiplicity of responsibilities that the top echelons of the judiciary may perform, tensions could arise between the different functions (e.g. advice on ethics and discipline matters). Ways must be sought to avoid such conflict and to prevent concentration of decision-making powers over judicial careers in a limited number of persons.

- *Working methods (presidency, required majority, publicity of sessions and decisions)*
- *Separation of functions*
- *Challenging channels*
- *Public reporting mechanisms*

#### Preventing conflicts of interest

Systemic safeguards should be in place to avoid situations of conflicts of interest where personal goals may prevail over the neutrality and objectivity of a given process. These safeguards may encompass self-recusal mechanisms, rules on incompatibilities, post-employment and accessory activities, bans on gifts and other benefits, confidentiality requirements, etc. Financial disclosure and interest declarations have also proven to be powerful tools to uncover corruption; when applicable, such a system should always be in line with the principle of proportionality and with due regard to privacy and security concerns.

It is important that members of judicial governing bodies are also given the opportunity to have proper guidance (dedicated advisory channels, training, guidelines) on how to behave when faced with ethical dilemmas, and that they actually make effective use of those as any other judge.

- *Incompatibilities*
- *Self-recusal*
- *Financial and interest disclosure*
- *Advice and training on integrity matters*

#### Accountability and immunity

Allegations of corruption at the highest levels of the judiciary have a very detrimental effect on the perceived integrity of the judiciary as a whole. While it is recognized that functional immunity from civil and criminal liability may be necessary to protect impartiality and independence of the judiciary, it is also important to ensure that members of judicial governing bodies are accountable.

- *Disciplinary and criminal liability*
- *Immunity and other liability waivers (absolute/limited)*
- *Specialized mechanisms to fight judicial corruption*

#### **VI. PROPOSED OUTCOME(S) OF THE SESSION AND THEIR ACHIEVEMENT:**

The session intended to encourage the exchange of experience from a critical, but constructive, angle, and to identify innovative ways to further advance on anti-corruption and transparency policies in the judiciary. It explored ongoing efforts, good practices and challenges across the world (Africa, America and Europe) in mainstreaming integrity in the governing structures of the judiciary.

The panel achieved its goal of identifying recommended actions, strategies, best practices, collaborative activities, or initiatives that participants can take back with them to their respective communities.

#### **VII. CONCLUSIONS OF THE SESSION AND RECOMMENDATIONS TO THE GLOBAL JUDICIAL INTEGRITY NETWORK:**

- Judicial Integrity can only exist if judges perform their duties in an independent and impartial manner. A crucial element for the integrity of any judicial system is the composition of their top institutions and the selection and appointment of its members.
- The lack of transparency and merit criteria in the appointment of the members of top judicial bodies creates an irreparable damage on judicial integrity and seriously endangers the fight against corruption.
- It is fundamental to ensure the independence and interdependence of the judiciary from the other arms of government without compromising the anti-corruption initiatives. The involvement of political powers in the selection and appointment of members of the highest bodies of the judiciary generates risks that need to be addressed with special safeguards, particularly when cases of political corruption are on the rise.
- Civil society monitoring and participation is also important, especially through academics and bar associations, but it is important to introduce safeguards to prevent politicization of those actors.

- There are different ways of developing accountability processes to the courts in general and to the judges in particular. Also, it is important that accountability mechanisms are not used to exert pressure or undue influence over judicial officials and judges. The anti-corruption fight cannot be used as an excuse or a trap to allegedly reform the judiciary, affecting its independence.

### **Recommendations to the Global Judicial Integrity Network**

- Develop and implement special Guidelines on the Procedure for Appointment (Selection) of members to those bodies, particularly Judicial Councils and Supreme Courts, in order to publicize and disseminate best standards and good practices. International mechanisms to monitor and observe the appointment of members of the higher bodies would be an asset.
- Develop and implement special Guidelines on the Accountability Procedures within the governing bodies of the judiciary, particularly Judicial Councils and Supreme Courts.
- Focus on research and training on how to maintain a balance between judicial independence and judicial accountability.
- Develop alliances with civil society and other international organizations that work on justice issues to promote compliance with international standards of judicial independence and also design protocols to denounce attacks on judicial independence.
- Include prosecutors and prosecutorial independence in the agenda of the Global Judicial Integrity Network.