



Conference of the States Parties to the United Nations Convention against Corruption

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Good practices and initiatives in the prevention of corruption: Thematic discussion on integrity in the judiciary, judicial administration and prosecution services (article 11 of the United Nations Convention against Corruption)

Integrity in the judiciary, judicial administration and prosecution services (article 11 of the United Nations Convention against Corruption)

Note by the Secretariat

I. Introduction

1. In its resolution 4/3 entitled “Marrakech declaration on the prevention of corruption”, the Conference of the States Parties (hereinafter, the Conference) decided that the Open-ended Intergovernmental Working Group on Prevention (hereinafter, the Working Group) should continue its work and should hold at least two meetings¹ prior to the fifth session of the Conference which will be held in Panama from 25 to 29 November 2013.

2. In the same resolution, the Conference noted with appreciation that many States parties had shared information on their initiatives and good practices on the topics considered by the second intersessional meeting of the Working Group, and urged States parties to continue to share with the Secretariat and other States parties new as well as updated information on such initiatives and good practices.

3. Furthermore, it was decided, that in advance of each meeting of the Working Group, States parties should be invited to share their experiences of implementing

* CAC/COSP/WG.4/2013/1.

¹ The first of those two meetings was the third intersessional meeting of the Working Group, held in Vienna, Austria from 27 to 29 August 2012.



the provisions under consideration, preferably by using the self-assessment checklist and including, where possible, successes, challenges, technical assistance needs, and lessons learned in implementation. Also in advance of each meeting, the Secretariat should prepare background papers for the topics under discussion, based on the input from States parties, in particular if they related to initiatives and good practices.

4. The fourth meeting of the Working Group will focus its attention on the following topics, which were adopted during the last meeting.²

(a) Integrity in the judiciary, judicial administration and prosecution services (article 11 of the United Nations Convention against Corruption) and;

(b) Public education, in particular the engagement of children and young people and the role of mass media and the Internet (article 13 of the Convention).

5. In accordance with the request of the Conference, the present note has been prepared on the basis of information relating to the implementation of article 11 of the Convention provided by Governments in response to the Secretary-General's note verbale CU 2013/41 of 22 February 2013 and the reminder note verbale CU 2013/85 of 22 April 2013. By 4 June 2013 submissions had been received from 22 States. The submissions from the following 19 countries contained information relating to the topic of integrity in the judiciary, judicial administration and prosecution services (article 11): Algeria, Belgium, Burkina Faso, Burundi, Chile, China, Costa Rica, Ecuador, Germany, Kuwait, Mexico, Myanmar, Nigeria, Poland, Russian Federation, Spain, United States of America, Uruguay and Venezuela (Bolivarian Republic of).

6. With the agreement of the countries concerned, the full text of the submissions will be made available on the UNODC website of the meeting³ and will also be incorporated into the new thematic website developed by the Secretariat.⁴

7. The present note does not purport to be comprehensive, but rather endeavours to provide a summary of the information submitted by States parties and signatories. It also includes supplementary information on related initiatives within the United Nations system.

II. Analysis of submissions of States parties and signatories

A. Thematic background

8. A key element in any successful fight against corruption is a judiciary and a prosecution service which are viewed by the public as upholding the principles of integrity and rule of law. Maintaining a justice system that can fairly and effectively apply criminal and civil laws while maintaining public trust and confidence is an essential precondition to the fair and effective enforcement of anti-corruption laws.

² Both topics had been proposed prior to the meeting for the multi-year workplan of the Working Group. The second topic had been discussed and reformulated slightly before its adoption in the third intersessional meeting of the Working Group.

³ www.unodc.org/unodc/en/treaties/CAC/working-group4.html.

⁴ www.unodc.org/unodc/en/corruption/WG-Prevention/working-group-on-prevention.html.

9. The central importance of judicial and prosecutorial integrity in the fight against corruption is reflected in the United Nations Convention against Corruption, (hereinafter the Convention) primarily through article 11. Under paragraph 1 of this provision, State Parties must, bearing in mind the independence of the judiciary and its crucial role in combating corruption and in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary.
10. Paragraph 2 goes on to provide that measures of the same effect as those described above 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.
11. Reflected in the wording of article 11, and in particular its reference to the “fundamental principles” of the legal systems of State parties, is a recognition that due to the divergent roles played by both the judiciary and prosecution services in different legal systems, the specific measures that will be required to enhance integrity and reduce opportunities for corruption will also take different forms. In civil law systems, the role of the judge may encompass not only the task of adjudicating but also, in contrast to many common law countries, a role in leading the investigation of facts relevant to a case. In Islamic legal systems also, a central part of the role of the judge is to question witnesses and seek further information where they consider it necessary in order to be able to come to a decision. It should be noted that the justice systems of many States will combine some elements of these different approaches.
12. Similarly, the role of prosecutors can differ significantly depending on the legal traditions of State parties. Whereas in many countries with a civil law legacy, the prosecution authorities may be involved heavily in the investigation of a criminal case, countries with a common law heritage will generally differentiate more firmly between the investigation stage and the formal beginning of the prosecution process. In such systems, the police will generally have responsibility for conducting the investigation while the prosecution is tasked with objectively assessing whether there is sufficient evidence to prosecute and, where such evidence exists, presenting it in court. Finally, and as recognized in the wording of article 11, paragraph 2, prosecutors will, in many countries, officially form part of the judiciary and will therefore be covered by any measures taken by States to enhance the independence and integrity of the justice sector.
13. In light of these differing roles of the judiciary and prosecution service among States, the measures required to enhance integrity and accountability in carrying out those roles will also diverge. In this note, the Secretariat has attempted to highlight the relevance of the legal systems of State parties to the types of measures they have taken to implement article 11 of the Convention.
14. In considering the implementation of article 11 by States parties, reference can also be made to a number of internationally recognized standards which address in more detail the measures that States can take to enhance the independence and integrity of the judiciary and prosecution services.
15. In the field of judicial integrity, the United Nations Basic Principles on the Independence of the Judiciary provide a model framework for States seeking to

enhance the integrity of their judiciary.⁵ Containing twenty key principles and divided into the six key thematic areas, the Principles have been used as a blueprint for reform by a wide range of States. In addition, the Bangalore Principles of Judicial Conduct are recognized as a key reference point for States in this field. In a resolution adopted by the United Nations Economic and Social Council in 2006,⁶ the Bangalore Principles were recognized as representing a further development of the United Nations Basic Principles and the Council invited Member States to encourage their judiciaries to take them into consideration when reviewing or developing rules with respect to the professional and ethical conduct of their members. The principles have since formed the basis for new codes of judicial conduct in a number of States including Belize, Georgia and the Philippines and have been referenced by a number of State Parties in their submissions to the Secretariat ahead of the meeting of the Working Group.

16. In relation to prosecution services, the United Nations Guidelines on the Role of Prosecutors, adopted in 1990 at the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders⁷ assist Member States in ensuring that certain basic values and human rights protections underpin their prosecution services by promoting effectiveness, impartiality and fairness of prosecutors in criminal proceedings.

17. Those Guidelines may be supplemented by the Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors developed by the International Association of Prosecutors and endorsed by the Commission on Crime Prevention and Criminal Justice.⁸ This instrument prescribes minimum standards to be observed by prosecution agencies, addressing the areas of professional conduct, independence, impartiality, role in criminal proceedings, cooperation and empowerment.

B. Measures adopted by States to support the independence of the judiciary and prosecution services

18. Many countries, including Algeria, Burundi, Chile, China, Ecuador, Kuwait, Mexico, the Russian Federation, the United States, Uruguay and the Bolivarian Republic of Venezuela, emphasized the essential importance of supporting the independence of the judiciary. In doing so, a number of States indicated that they viewed such independence as a fundamental precondition for the implementation of measures aimed at enhancing integrity and preventing corruption in the judiciary.

19. In this regard, several constitutional provisions were cited by States that explicitly codified the independence of the judiciary as a fundamental principle in

⁵ See Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. D.2, annex.

⁶ ECOSOC Res. 2006/23.

⁷ A/CONF.144/28/Rev.1 at 189 (1990).

⁸ Resolution 17/2, Commission on Crime Prevention and Criminal Justice, Report on the seventeenth session (30 November 2007 and 14-18 April 2008), E/2008/30 and E/CN.15/2008/22, Annex, Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors.

their legal systems. As an example, Algeria cited article 147 of its Constitution which provided that the judiciary must be independent and its powers must be exercised within the framework of the law, and that the judge must be protected against any form of pressure, interventions or manoeuvres which prejudice his mission or the respect of his free will.

20. Similarly, in Chile, article 76 of the Constitution explicitly prohibits members of other branches of Government from interfering in judicial decision-making by providing; "... Neither the President, nor Congress can, in any case, exercise judicial functions, involve themselves in pending cases, review the substance or content of judicial resolutions or reopen closed cases". Again, in Burundi, article 209 of the Constitution provided that "the judiciary is impartial and independent from the legislative and executive powers".

21. The importance of financial independence of the court system, in addition to institutional independence, was also emphasized, with Ecuador and a number of other countries citing constitutional guarantees of sufficient financial resources in order that the judiciary can effectively carry out its functions. There, article 14 of the Law on Judicial Functions created a legal obligation to deliver sufficient resources to meet the needs of the judiciary, stating that a failure to do so would be considered as an obstruction to the administration of justice on the part of the State.

22. In this regard, Nigeria also noted that under its Constitution, the judiciary has financial autonomy from the executive since the funding of the judiciary was appropriated from the legislature based on budgetary proposals submitted by them without reference to the executive.

Appointment of senior judges

23. Beyond the declaratory nature of the constitutional guarantees summarized above, many States highlighted constitutional provisions regarding the appointment of senior judges as a key means of upholding the independence of the judiciary. However, in doing so, many States noted the challenge of striking the correct balance between protecting the independence of the judiciary while simultaneously ensuring some form of democratic supervision over the appointment process.

24. In this regard, the United States outlined the system of "checks and balances" provided by its Constitution under which while each branch of Government is formally separated from the other two, the Constitution often required cooperation among them. Under that system, the President appointed federal judges with the "advice and consent" of the Senate (article II, section 2). In practice, the President usually consulted senators or other elected officials concerning potential candidates for vacancies on the federal courts in advance of formal nomination. Through the confirmation process, Congress determined which of the President's judicial nominees ultimately became federal judges.

25. Nigeria and Chile highlighted similar mechanisms for the appointment of senior judges. In Chile, the President had the power to appoint members of the Supreme Court by selecting from five candidates put forward by the Supreme Court itself with the agreement of the Senate. In Nigeria, high-ranking judicial officers such as the Chief Justice of the Federation and Justices of the Supreme Court were also appointed by the President but, rather than being limited to a specified list identified by the court as in the case of Chile, the President was able to appoint on

the advice of the National Judicial Council. While not codified in law, it was also the practice of the Government to consult with the Nigerian Bar Association in the course of such appointments. In Chile, Nigeria and the United States, the appointment was subject to ratification by the Senate.

26. In recognition of the federalized nature of public administration in the country, Germany noted that federal level judges were appointed to their office by a committee consisting of representatives of the governments of all Länder and of members chosen by the federal parliament. This represented a different approach in comparison with other submitting States given the lack of either a formal role for the Court itself or the need for official approval of the national legislature.

Security of tenure

27. Many States emphasized the importance of security of tenure for members of the judiciary in order to support the independence of the court system. They noted that where such security was lacking, political pressure by other branches of Government might be exercised on the judiciary through the threat of removal.

28. Burkina Faso noted that, judges were legally protected from being removed from their position except where a court decision had been made on the grounds of disciplinary sanction. Uruguay also reported that the removal of members of the Supreme Court could only take place as a result of a judicial order where there had been a violation of the constitution or an equally grave offence.

29. Similarly in Germany, judges appointed permanently to full-time positions might be involuntarily dismissed, suspended, transferred or retired before the expiration of their term of office only by virtue of judicial decision and only for the reasons specified by law. Furthermore, applications for the impeachment of a judge on the grounds of infringing the principles of the Constitution might only be brought before the Federal Constitutional Court, which, by a two-thirds majority, might order that the judge be transferred or retired. The court may only order that the judge be dismissed where an intentional infringement had been established.

30. This approach was also reflected in Nigeria where judicial officers could only be removed from office by the President or Governor on the advice of the National Judicial Council. In respect of the category of judicial officers whose appointments were ratified by the Senate or state Houses of Assembly, a removal must be ratified by a two-third majority of the members of the institution which had originally ratified their appointment.

31. A number of States, including Germany, the Russian Federation and the United States, referred to the life-time appointment of senior judges as a key tool in ensuring judicial independence. In the United States, for example, Supreme Court justices, as well as federal lower court judges, served for life once appointed, unless they resigned, retired, or were removed by Congress through the process of impeachment and conviction. Similarly, according to the Law of the Russian Federation "On the Status of Judges in the Russian Federation," the powers of a judge of the Federal Court are unlimited in duration and a judge cannot be removed.

32. Chile indicated that judges would continue in their positions of office provided they carried out their tasks appropriately. Notwithstanding this, judges would cease to hold office when they reached 75 years of age, when they were incapable of

carrying out their functions or when they had been sentenced in criminal proceedings. It was for the Supreme Court, upon request of the President of the Republic, at the request of an interested party or ex officio, to declare that a member of the judiciary has not acted in accordance with the standards of good behaviour. Finally, it would then be for the Court of Appeal to decide, by majority, whether an individual judge should be removed.

Measures designed to support the independence of prosecution services

33. With regard to measures designed to support the independence of prosecution services, a number of States cited constitutional provisions while others noted recent institutional reforms. In Ecuador, the Constitution of 2008 established the Attorney General's Office as an autonomous body of the judiciary with the power to institute public proceedings, as well as to administer the system of protection and assistance to victims, witnesses and participants in the criminal process. Similarly, in Chile, the Chief Public Prosecutor was guaranteed autonomy from other branches of Government under the Constitution.

34. Poland also indicated that recent reforms had been undertaken to strengthen the independence of the prosecution service, in particular by separating the positions of the General Prosecutor and Minister of Justice in March 2010. Moreover, in September 2010, the National Prosecution Council had been established as a designated self-governing body and entrusted with the responsibility of securing and protecting prosecutorial independence.

C. Recruitment, professional evaluation and training of members of the judiciary and prosecution services

35. While noting the importance of the independence of the judiciary as a precondition for integrity and a reduction of corruption, many States simultaneously recognized that such independence must not come at the cost of effective and meaningful supervision. Where independence was prioritized to the extent of removing accountability, this could provide a fertile breeding ground for corruption.

36. As a result, many States parties outlined in detail the mechanisms they had put in place with regard to the recruitment, training, supervision and application of disciplinary measures to members of the judiciary. In some States, this extended to permitting criminal prosecutions even while the judge continued to hold office.

Recruitment of members of the judiciary and prosecution services

37. Most States noted the essential role that a transparent and objective system for the recruitment of judicial and prosecutorial officers played in enhancing integrity and establishing public trust in the justice system.

38. A distinction could be drawn in many countries between the systems for the appointment of senior judges and those at lower-level courts. As noted above, many countries had specific procedures, often outlined in the Constitution of the country, regulating the appointment of judges to serve in Courts of Appeal and Supreme Courts. That process would often involve other branches of government. In relation to those seeking appointment to lower-level courts, a number of countries

highlighted the importance of a transparent and competitive recruitment procedure involving objective and transparent examination processes.

39. In Algeria, judges were selected through a national competitive examination under the responsibility of the Legal Service Training College. To ensure transparency, the opening of competitive examinations for entry to the Legal Service Training College and the results of the examinations must be announced on the website of the College and in the media. A similar system was adopted in Mexico in relation to members of the prosecution services under which the holding of examinations must be published in national newspapers and online at least 30 days before an exam is held, with the results also being made available online.

Training of members of the judiciary and prosecution services

40. All States parties emphasized the importance of training to enhance the competence and integrity of the judiciary. The judicial and prosecutorial educational programmes cited in this regard can be divided into two themes: general judicial training and specific ethics-based training.

41. In the United States, complementing the role of the main Federal Judicial Center, the Judicial Conference Committee on Codes of Conduct developed and delivered continuing ethics education and published ethics education materials for all judges and judicial employees. Training on judicial ethics, including financial disclosure reporting requirements, was also provided at training programmes for newly appointed district and magistrate judges.⁹

42. Similarly, in Germany, a number of advanced training courses were offered specifically on the subject of judicial ethics, both by the Länder at the regional level and by the German Judges' Academy at the cross-regional level. The Academy, for example, held an annual one-week seminar entitled "Judicial ethics — bases, perspectives, global comparison of standards of judicial conduct". In Algeria, over 500 judges and examining magistrates had attended training sessions at the Legal Service Training College on corruption-related matters such as money-laundering, public contracts and crimes involving currency exchange and banking since 2006.

43. From an institutional perspective, a number of countries, including Algeria, Chile, Costa Rica, Ecuador, Germany, Kuwait, Nigeria and Uruguay reported on the important role played by specialized training institutes for members of the judiciary and prosecution services who had often been used to introduce ethics and anti-corruption training to all serving members of the judiciary. In this regard, Uruguay referred to the role of the Centro de Estudios Judiciales del Uruguay which acted as a central hub for the training of both aspiring and current members of the judiciary. Mirroring comments from a number of other countries, Uruguay also stated that the use of information technology to facilitate long-distance learning had enhanced their capacity to deliver training on a nationwide basis.

44. Nigeria similarly emphasized the important role played by the National Judicial Institute since it had been established as a centralized body for the training and continuing education of judicial officers. In addition to the broader legal training provided by the Institute, the main anti-corruption agencies in Nigeria, in

⁹ www.uscourts.gov/FederalCourts/UnderstandingtheFederalCourts/AdministrativeOffice/DirectorAnnualReport/annual-report-2012.aspx.

conjunction with UNODC, regularly held capacity-building sessions for judicial officers on corruption and integrity-related issues.

45. With respect to specialized training for members of the prosecution services, Poland outlined a series of courses provided by the National School of Judiciary and Prosecution. The School provided mandatory courses for candidates in the area of “Ethics of Prosecutor’s Work” which covered topics such as ethics, professional responsibility and discipline. Similarly, as part of a mandatory training plan introduced for members of the prosecution services in Ecuador in 2012, new thematic courses aimed at fighting corruption had been introduced. One of the specific courses introduced in this regard was the “Ethics, Transparency and Public Service” course which had been taken by 902 prosecutors in that year alone.

46. In China, a series of measures have been taken in recent years to address corruption and enhance integrity in prosecution services through education and outreach programmes. In that regard, the Supreme People’s Prosecutor had issued Implementation Guidelines on Integrity Education of Prosecution Service and organized touring exhibitions with a total attendance of 201,000 people, covering 87 per cent of the country’s prosecution service. Special educational initiatives had also been promoted to address underlying issues identified in China as giving rise to integrity challenges, such as the privileged mentality of some prosecutors and the arbitrary methods of work adopted by some.

47. A specific initiative highlighted by China in that regard was the holding of painting and calligraphy competitions to promote integrity-related themes. To date, members of the prosecution service and their families had submitted, on a nationwide basis, 14,876 pieces of work. Other awareness-raising activities included running education programmes, launching online education platforms, and organizing speech contests and theatrical festivals on the theme of integrity.

Supervision and disciplinary proceedings for members of the judiciary and prosecution services

48. In addition to highlighting the recruitment and training of officials as key tools in enhancing the actual and perceived integrity of the judiciary and prosecution services, many States noted the importance of ensuring effective professional oversight mechanisms and, where necessary, transparent and objective disciplinary procedures. As in relation to other integrity-related measures, attempts were made by States to maximize accountability and transparency while also seeking to maintain the independence of these institutions from other branches of government.

49. In an attempt to reconcile these dual objectives, a number of responding States including China, Ecuador, Germany, Kuwait and Mexico referred to the establishment of specialized bodies composed of members of the judiciary to supervise the day-to-day work of the judiciary and to apply rules relevant to the exercise of their duties, including ethics regulations. In Kuwait, individual bodies composed of a president and counsellors were responsible for inspecting the work of the first-instance courts, the Supreme Court and the prosecution services. A full inspection was carried out by these supervisory bodies on a biannual basis. Similarly, in Mexico, the Federal Judicial Council has instituted a system of inspection visits to district courts. Such visits can either be planned or made on an

extraordinary basis where the Council consider that irregularities may have been carried out by members of the relevant organ.

50. In China, individual discipline inspection departments had been established in people's courts nationwide to receive and act upon public complaints against the judiciary and to investigate alleged acts of corruption. Designated personnel worked as full-time or part-time integrity supervisors to provide daily supervision over the observance of integrity principles applicable to members of the judiciary. A top-down inspection system had been instituted whereby courts of a higher level could conduct inspections in relation to specific integrity issues in lower-level courts.

51. The National Judicial Council had been established under the Constitution in Nigeria, with the key mandate of ensuring the integrity of the judiciary. The Council was composed of the Chief Justice of the Federation as Chairman and other high ranking judicial officers as well as members of the Nigerian Bar Association. The key role of the Council was to advise the President and Governors on the appointment, discipline and sanctioning of judicial officers. The body also dealt with broad policy issues for the judiciary such as the enforcement of codes of conduct and related integrity issues.

52. Reflecting a similar attempt for the judiciary to self-regulate in non-criminal matters, the federal court system in the United States governed the non-criminal conduct of its members at the national level through the Judicial Conference of the United States. The Judicial Conference was a body of 27 federal judges, composed of the Chief Justice of the United States, who served as the presiding officer, the chief judges of the 13 courts of appeals, the chief judge of the Court of International Trade and 12 district judges from the regional circuits who were chosen by the judges of their circuits to serve terms of three years.¹⁰

53. Similarly in Ecuador, in accordance with article 178 of the Constitution, the Judicial Council was the organ responsible for the governance, administration, supervision and disciplinary mechanisms applicable to the judiciary. Within the Judicial Council, the Unit for Disciplinary Control had developed an electronic tool to assist in the fair and transparent application of disciplinary measures containing a database of precedents accessible on the web page of the Council.

54. Reflecting a slightly different approach, when an allegation of misconduct was made against a member of the judiciary in Uruguay, an instructor was appointed by the Supreme Court to investigate the complaint and submit a report explaining the reasons for their conclusions.

55. With regard to the supervision of prosecutors, Germany indicated that the authority to supervise and direct the work of the prosecution service was vested in the highest-ranking officials of the public prosecution offices and in the Federal Minister of Justice. Any instructions made must be lawful and in conformity with the principle of mandatory criminal prosecution and the relevant regulations under criminal law. The public prosecutor may raise an objection to unlawful instructions under this system.

¹⁰ www.uscourts.gov/FederalCourts/JudicialConference.aspx.

56. Adopting a similar approach to that taken in relation to the judiciary, China had also established a top-down supervision system for the prosecution service. Under that system, prosecutors at lower levels were subject to the supervision of those at higher levels. To date, the Supreme People's Prosecutor had assessed the performance of over 271 local prosecutors and 53 prosecution units in 29 different provinces. In turn, local prosecutors had themselves conducted a total of 137,000 sets of examinations of the performance of their subordinate bodies.

Criminal responsibility of members of the judiciary and prosecution services

57. Going beyond the application of self-regulated disciplinary mechanisms, a number of States also outlined cases in which criminal prosecutions had been brought against members of the judiciary for acts of corruption or related offences. In this regard, China reported the case of Huang Songyou, former Vice President of the Supreme People's Court who had been sentenced to life imprisonment in 2010 for acts of corruption including receipt of bribes worth RMB 5.1 million (equivalent to roughly \$820,000).

58. Similarly, in relation to members of the prosecution services, China outlined its efforts to investigate and prosecute corrupt behaviour. From 2008 to 2012, the supervision and discipline inspection departments within the prosecution service nationwide had conducted investigations in 883 cases involving 1,101 people.

59. Costa Rica provided a set of detailed statistics which demonstrated an increase in both the amount of corruption cases brought against members of the judiciary or prosecution services in recent years and an increase in the amount of those cases that are being successfully resolved. Burundi reported there were presently 20 members of the judiciary subject to criminal or disciplinary proceedings in relation to alleged acts of corruption, noting that these cases had come to light following the introduction of a newly-established mechanism for the reporting of acts of corruption by members of the public.

D. Measures to enhance transparency in the judiciary, judicial administration and prosecution services

60. One of the more diverse and dynamic areas of judicial integrity reforms described by responding States was in relation to measures aimed at enhancing transparency in the functioning of the judicial and prosecutorial process. A central aspect of these efforts in many States was the introduction and maintenance of effective reporting mechanisms for members of the public to make a complaint regarding members of the judiciary or prosecution services.

61. An important first step identified by many States in that regard was the identification and publication of a central body to which such complaints could be made. In Algeria, the General Inspectorate received complaints from citizens by post and e-mail. These were used to identify weak points in the judicial system, reveal instances of breach of professional duty and propose appropriate measures to be taken. The office of the Ministry of Justice published e-mail, telephone and fax contact details on its website so as to provide citizens the opportunity to voice any concerns, offer any opinions and communicate with the Ministry in general.

62. In Spain, any citizen could make a complaint regarding the actions of a prosecutor to more senior officials in the Attorney General's Office. In order to maximize the ability of members of the public to communicate with the Prosecutor's Office, a new web page had been established entitled "For the attention of the Citizen" aimed at all members of the public who might wish to make a complaint regarding the actions of an individual prosecutor or in relation to the institution as a whole. Members of the public were also encouraged through this platform to propose ways of improving the effectiveness of the justice system.

63. Mexico indicated that allowing the submission of anonymous complaints against members of the judiciary had increased the number of reports made to authorities, although such anonymous allegations had to be supported with documentary evidence.

64. A key role was also referenced by the majority of States for the media in holding the judiciary to account and exposing acts of corruption or breaches of integrity rules. To facilitate the reporting of such acts, many States emphasized the public nature of court hearings, meaning that media and the public can attend.

65. In that regard, among the majority of responding States a legal presumption had been instituted, either through constitutional rules or court practice, that all court hearings were to be open to the public. This was the case in Myanmar, for example, where judicial hearings would be made in open court, to which the public has access, except where the law specifically prescribed that a particular case must be held in closed court.

66. The United States also noted that each step of the federal judicial process was open to the public subject to certain very limited exceptions. An individual citizen who wished to observe a court in session could go to the federal courthouse, check the court calendar, and watch a proceeding. In Germany also, under the "direct audience" principle, hearings before adjudicating courts including the pronouncement of judgements and rulings, were public.

67. China indicated that it also accepted supervision from the media and the public more broadly through the introduction of measures such as public opinion boxes, complaint and report websites, press conferences and the engagement of the public as special consultants and supervisors in relation to the court system.

68. There were more differences among States, however, with regard to whether radio or television coverage should be permitted in court. Whereas in the United States the majority of state-level courts permitted the filming and broadcasting of court hearings, in Germany film, radio and television recordings intended for public presentation or publication of their content were explicitly prohibited.

69. Demonstrating an attempt to go beyond merely improving access by the media and the public to court proceedings, some States also described attempts to actively engage and educate the public so as to deepen their understanding of the judicial system. In this regard, in Algeria, the Ministry of Justice regularly held "open door" events to inform the public and the media on the work of judicial departments and the litigation process. In the United States, the Administrative Office of the federal courts also maintained a website that provided detailed information tailored for

various audiences, including teachers and students, media, jurors, researchers and legal professionals.¹¹

70. Many States also emphasized the increasing role of information technology in enhancing the transparency and efficiency of court systems. In this regard, Ecuador noted that the Judicial Council had created a web platform,¹² in which any member of the public could make proposals to increase the effectiveness and transparency of the judiciary.¹³

71. In the United States, the Case Management/Electronic Case Files system allowed courts to accept filings and provide access to filed documents over the Internet while also giving concurrent access to case files by multiple parties, and offering expanded search and reporting capabilities. The system also enabled pleadings to be filed electronically with the court and documents to be downloaded and printed directly from the court system.¹⁴

72. In recognition of the need to assign institutional responsibility for the promotion of transparency in the judiciary, Chile noted that in 2008 it had established a Commission for Transparency in the Judiciary with the aim of responding to requests for information to judicial authorities, facilitating the active publication of information for court users and more broadly promoting transparency in judicial work. A dedicated e-mail address had been established for the receipt of requests for information from the public.

73. In China, the Supreme People's Court had also issued guidance to all courts on promoting publicity of judicial affairs with a specific focus on improving the publicizing of court trials. As in other countries, the online publicity of judgements had also been introduced.

74. In the Bolivarian Republic of Venezuela, a wide range of technological tools had been introduced in an attempt to enhance participation in and understanding of the criminal justice process. The "Portal Vitrina" was introduced to increase the budget transparency of the Supreme Court. Under that system, members of the public could access information regarding individual procurement procedures by the court. A new automated electronic case management system had also recently been developed.

75. Transparency and impartiality in the allocation of cases to members of the judiciary was also highlighted by a number of other States as being central to ensuring both the existence and perception of integrity in the judicial process.

76. In the United States, judge assignment methods varied. The basic considerations in making assignments were to ensure equitable distribution of caseloads and avoid "judge shopping", with the majority of courts using some variation of random drawing. However, reflecting the submissions of others, the United States noted that despite the general presumption of random case allocation, it was necessary, in the interests of the efficiency of the court, to allow judges who

¹¹ www.uscourts.gov.

¹² www.todossomosjusticia.gob.ec.

¹³ General information on the functioning of the justice system is also available at www.funcionjudicial.gob.ec.

¹⁴ www.pacer.gov/cmecf/.

had special expertise to be assigned cases of a particular type, such as complex criminal cases, asbestos-related cases or prisoner cases.

77. Again reflecting the increasing use of technology in the case-allocation process, Ecuador reported that the State Prosecutor had developed an electronic system for the distribution of cases among prosecutors under which reports of offences were assigned to prosecutors automatically and on a random basis, thereby removing any discretion on the part of the State Prosecutor. Similarly, in the Russian Federation, an automated distribution of cases is carried out through the State Automated System.

E. Conflicts of interest, codes of ethics and asset declarations for members of the judiciary and prosecution services

78. Many State parties specifically addressed the challenge that conflicts of interest posed to the integrity of the judiciary and prosecution services, highlighting the tools used to prevent and address such conflicts from arising. Such measures also demonstrated relevant actions for the purposes of implementation of article 7, paragraph 4, and article 8, paragraph 5, of the Convention.

79. A common preventive measure instituted by responding States in that regard was the imposition of restrictions on the outside activities of members of the judiciary, including business interests and other outside sources of income. In Kuwait, members of the judiciary could not undertake any trade or any other work that would prejudice the independence or integrity of the judiciary, with potential criminal sanctions applicable in the case of a breach. In Ecuador members of the judiciary were banned from conducting advocacy in court, actively participating in the work of political parties or standing as candidates in elections, and the taking on of any outside job, whether in the public or private sector. This final prohibition was subject to a narrow exception permitting judges to teach in academic institutions outside of working hours. A similar system was also outlined by Uruguay.

80. Algeria also reported that the Basic Judiciary Law prohibited judges from possessing, in their own right or through a third party, business interests that could impede the normal execution of their duties or prejudice the independence of the judiciary in general. The law also required members of the judiciary to declare their assets upon appointment and every five years thereafter.

81. With regard to specific tools used by States to regulate and prevent conflicts of interest, China highlighted two specialized instruments, the Basic Norms for the Professional Ethics of Judges and a Code of Conduct for Judges, that had been issued by the Supreme Court. The Code of Conduct provided specific guidance for judges in the performance of their duties, covering areas such as case filing, court trial, litigation mediation, documentation and activities after work. Regulations on implementing integrity principles and preventing conflicts of interest had also been introduced with enforcement mechanisms available when members of the judiciary were found to have breached them. As an example of the application of these regulations, members of the judiciary were subject to a general prohibition from accepting “undue profits, gifts, treatments, trips, and entertainment that may interfere with the fair execution of the official duty”.

82. In Nigeria, the judiciary modelled its Code of Conduct for Judicial Officers on the Bangalore Principles of Judicial Conduct. This Code was administered by the National Judicial Council which monitored and sanctioned non-compliance.¹⁵ In addition, judicial officers were also subject to the Code of Conduct for Public Officers. While no specialized code of conduct had been developed for those working in the prosecution services, they remained bound by the requirements of that general code. The two major anti-corruption agencies responsible for prosecuting corruption offences had also developed internal measures aimed at ensuring the integrity of their specialized prosecutors. The Bangalore Principles were also cited by the Russian Federation as a key source in the development of a new Code of Judicial Ethics adopted in December 2012.

83. Burkina Faso noted that a code of ethics had been adopted by the Judicial Council in 2008, having been developed in cooperation with the members of the judiciary. The code laid out the key principles of independence, impartiality, integrity, equality and professional responsibility, drawn from international standards, and detailed what obligations come with being a member of the judiciary. Similarly, in 2010, a specialized code of ethics for judges had also been enacted in the Bolivarian Republic of Venezuela that governed the conduct of members of the judiciary and outlined the relevant disciplinary mechanisms applicable in case of breach.

84. In the United States, prosecutors were covered both by a general code of conduct applicable to all employees of the executive branch and a tailored set of standards for employees of the Department of Justice. The general standards of conduct covered subjects such as gifts from outside sources, gifts between employees, conflicting financial interests, impartiality in performing official duties, seeking other employment, misuse of position and outside activities. In addition, the supplemental standards of conduct for Department officials prohibited them from engaging in the practice of law, litigation, investigations or other matters in which the Department was a party.

85. While the imposition of codes of ethics and conflict of interest regulations with relevant disciplinary mechanisms was a commonly-cited measure by States in this area, other States provided their views regarding the limitations on the ability of Government to impose legally-binding rules in this area.

86. In that regard, Germany noted that, given the complexity of the issue of ethics, awareness-raising among judges of professional ethics issues was to be preferred over regulation. To that end, professional ethics-related subjects were discussed frequently and widely among the German judiciary. As well as initiatives by the Länder such as the establishment of Judicial Ethics Groups, there was a cross-regional “Network of Judicial Ethics” of the German Judges’ Federation.¹⁶ The Federation had also drawn up a discussion paper on judicial and prosecutorial ethics in the German Judges’ Federation and had compiled a collection of practical cases.

87. In Belgium, a professional ethics guide had been developed for members of the judiciary entitled “Magistrates guide: principles, values and qualities”. Belgium

¹⁵ The code can be accessed at www.nigeria-law.org.

¹⁶ Deutscher Richterbund — DRB, www.drb.de/cms/index.php.

noted that, with the exception of a general article in the judicial code which provided a general definition of the responsibilities of the position, the applicable codes of conduct did not address professional ethics. For this reason, the professional ethics guide had been developed to fill this gap. While not a disciplinary code, the guide contained a series of recommendations and important principles regarding ethical decision-making, with reference to concrete case examples. It had now been disseminated to 2,500 judges and other public officials.

88. Burkina Faso noted that while their professional ethics code had been in place since 2008, challenges existed in effectively applying it to the day-to-day work of the judiciary. A supervisory mechanism for enforcement of the code was envisaged in relevant legislation, but had not as yet been formally established.

89. Where conflicts of interest had been deemed to arise and judges or prosecutors had not taken the appropriate measures to address them, a number of countries outlined the disciplinary action taken. In Spain, the Disciplinary Service of the General Council of the Judiciary had, over the last three years, instituted nine sets of proceedings against members of the judiciary for the infringement of conflict of interest rules, with a sanction ultimately having been applied in seven cases.

III. Conclusions and recommendations

90. The submissions provided by State parties ahead of the meeting of the Working Group clearly demonstrate the significant breadth of relevant implementation measures in relation to article 11 of the Convention. While the implementation of other articles, particularly some in chapter III, might be achieved through legislative changes, implementation of this provision can span issues as diverse as constitutional frameworks, codes of conduct and ethics, case management systems, court transparency initiatives and judicial training programmes.

91. The multitude and diversity of potential implementation measures presents a challenge to States when considering whether they have met the requirements of the Convention. In an attempt to assist States in addressing this dilemma, the Secretariat is developing a new tool, an implementation guide and evaluative framework for article 11, which may help States to ensure they have considered the full range of issues when assessing their own implementation of this provision. The Working Group may therefore wish to discuss the challenge of implementing article 11 given the broad range of applicable implementation measures and the utility of the new implementation tool in this regard.

92. As part of its discussions, the Working Group may also wish to consider the relationship between measures aimed at supporting judicial and prosecutorial independence and those that seek to enhance integrity. While many States emphasized the mutually supportive nature of these principles, others noted that many of the measures aimed at supporting integrity in judicial and prosecutorial institutions necessarily involved some encroachment on the principle of independence. As noted by many States, finding the right balance between measures aimed at supporting these two key concepts addressed under article 11 of the Convention may be one of the most significant challenges States face in the implementation of this provision.

93. States parties may also wish to discuss the measures they have adopted to address the issue of ethics in the work of the judiciary and prosecution services. While a number of States had adopted legally-binding codes in this regard, with some also supported by disciplinary mechanisms, a number of responding States indicated that, given the complexity and case-specific nature of ethical decision-making in the justice system, this was best dealt with through measures such as training, awareness-raising initiatives and non-binding guidance materials.

94. Finally, the Working Group may wish to request UNODC to continue its efforts to gather information on good practices in relation to judicial and prosecutorial integrity.

95. In order to continue this process of mutual learning, States are encouraged to provide further updates and present new initiatives in the areas of discussion at the Working Group.
