MAINSTREAMING ANTI-CORRUPTION 
AT THE TOP: TRANSPARENCY AND 
ACCOUNTABILITY OF THE HIGHEST 
BODIES OF THE JUDICIARY

GROUP OF STATES AGAINST 
CORRUPTION, COUNCIL OF EUROPE 
DUE PROCESS OF LAW FOUNDATION

Corruption is a pervasive phenomenon in today’s world, but citizens 
are increasingly aware of their rights; hence, calls for reform are 
more pressing than ever nowadays. Public demands to their 
respective governments refer to greater assurances of transparency, 
integrity and accountability; they are particularly relevant for the 
judiciary given the prominent role it plays in fighting corruption at 
large.

However, perception indices show a growing disconnection between 
citizens and the judiciary. In recent years, public trust in key state 
institutions, including the judiciary, has progressively eroded over 
corruption probes. The situation is at variance around the globe. In 
many countries, judges still enjoy strong levels of confidence of 
society. In others, public polls reveal low levels of trust, and in a 
small but significant number of countries, judicial corruption is a 
decidedly topical matter. In some countries this gives rise to 
concerns about a culture of impunity.

The judiciary plays a key role in fighting corruption and ending 
impunity. For this reason, its fairness, legitimacy and credibility are 
cornerstone principles that must be preserved at all times. Hence, 
there is a special onus on its members to lead by example, hold 
themselves to the standards they demand of others and nurture a 
practice of honest public service within their own ranks.

This is all the more important for the hierarchies of the justice 
system, which are nowadays under greater public scrutiny and 
criticism. In this regard, public distrust is particularly rife towards the 
governing structures of justice which are often perceived as 
politicized, opaque and unaccountable. On many occasions, this 
criticism is also shared by the profession itself. When this is the 
case, internal independence and inclusive governance of the 
judiciary are at high risk.

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GROUP OF STATES AGAINST CORRUPTION, COUNCIL OF EUROPE

The Group of States against Corruption (GRECO) is the Council of Europe’s flagship anti-corruption body. It fulfills its mandate by monitoring compliance of its members with the Council of Europe’s anti-corruption standards, making sure that they are effectively implemented. GRECO seeks to identify deficiencies in national anti-corruption policies and legal frameworks.

DUE PROCESS OF LAW FOUNDATION

The Due Process of Law Foundation (DPLF) is an international, non-profit organization, based in Washington, D.C., dedicated to promoting the rule of law and human rights in Latin America, from a comparative perspective and using international law. For more than 20 years, DPLF has worked with local and regional organizations, providing analysis and legal technical assistance, promoting dialogue with government representatives and creating opportunities for exchange of information and experiences through all the region.

Main Issues:
Anticorruption and integrity policies have been developed over the last twenty years, but have primarily targeted the executive branch, or more generally, the political class. Transparency, integrity and accountability have proven to be a most valuable tool to deter malpractice and illicit deals, as well as to recast public confidence in institutions.

The reforms undertaken in the judiciary, during the same time period, have rather focused on the modernization of court infrastructure and efficiency in case management, with the ultimate goal of increasing legal certainty and thus promoting broader economic growth and development. It is a relatively recent development that the judiciary has been put under closer scrutiny. However, nowadays, significant efforts are being taken by the judiciaries around the world to show their commitment and determination to fight graft, corruption and malfeasance, including among its own members.

The principles of transparency, integrity and accountability are crucially important for the top echelons of an organization because of their decision-making powers and because they are the ones setting the tone for their base. Comparative experience shows that, precisely because of this, corruption networks seek to control these high officials, and in this way, guarantee impunity and utilize the justice systems in favour of their interests, exerting undue influence on their appointments, their functioning and even promoting structural reforms that weaken them.

This session focuses on the highest/governing bodies of the judiciary, notably, Councils for the Judiciary and Supreme Courts. These bodies hold key management and/or jurisdictional functions the integrity of which it is paramount to uphold. Their role varies quite significantly among countries. Wherever Councils for the Judiciary have been established, they are centrally involved in all matters related to the administration of the judiciary: appointment, promotion, transfers and dismissal of judges, disciplinary proceedings against judges and so on. They can also represent and be the voice of the national judiciary. In many countries, Supreme Courts do not only operate as a last instance jurisdiction (and/or the one that decides on high-ranking officials and major political cases), but they also hold important administrative functions. Some countries have mixed systems where both Councils for the Judiciary and Supreme Courts share administrative and managerial responsibilities. It therefore follows that the aforementioned bodies, in performing their tasks, play a primordial role in protecting the independence and impartiality of the justice system as a whole, as well as that of individual judges.
KEY OBJECTIVES:
- Explore anti-corruption reforms as applied to the highest bodies of the judiciary: Supreme Courts and Judicial Councils, with a particular emphasis on transparency and accountability tools in their appointment and functioning (operational and administrative aspects, as well as jurisdictional tasks)
- Discuss emerging trends and challenges
- Present good practices and elaborate on international standards
- Propose next steps for further advancements in this subject area

SPECIFIC QUESTIONS AND DISCUSSION POINTS:
The following topics will be explored in the session, including by providing specific country examples from different geographical areas around the world (Africa, America, Asia and Europe).

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 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.
Mainstreaming anticorruption at the top: transparency and accountability of the highest bodies of the judiciary

- 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)

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.
Mainstreaming anticorruption at the top: transparency and accountability of the highest bodies of the judiciary

- 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

This session intends to encourage the exchange of experiences from a critical, but constructive, angle, and to identify innovative ways to further advance on anti-corruption and transparency policies in the judiciary. It will collect on-going efforts, good practices and challenges across the world (Africa, America, Asia and Europe) in mainstreaming integrity in the governing structures of the judiciary.

Proposed Outcomes of the Session:

The panel takes the shape of an informal and semi-structured panel discussion. To ensure that the panel's focus is on interactive discussion and exchanges of ideas, the moderator will have an active role. Guiding questions for the panelists will be prepared in advance to avoid lengthy or open speeches or presentations.

The discussion will be structured accordingly: opening words and short introduction of the panel by the moderator, main discussion, with two or three rounds, describing and exploring the main topics, especially looking into particular examples of existing good practices, lessons learned, concrete suggestions and solutions to gaps in existing models, an agenda for action, Q&A’s from the public.

The panel is structured so that it results in “short lists” of recommended actions, strategies, best practices, collaborative activities or initiatives that participants can take back with them to their respective communities.