



UNITED NATIONS
Office on Drugs and Crime



ACCESS TO JUSTICE

The Independence, Impartiality and Integrity of the Judiciary

Criminal justice
assessment
toolkit

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UNITED NATIONS OFFICE ON DRUGS AND CRIME
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Criminal Justice Assessment Toolkit



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1. INTRODUCTION TO THE ISSUE

This tool guides the assessment of the judiciary, with a focus on integrity, independence, and impartiality, and their impact on access to justice. In conducting assessments of the judiciary, the assessor should use this tool in conjunction with **Access to Justice: The Courts**.

In all countries, judiciaries play an important role in stabilizing the balance of power within government, and their performance can enhance public confidence in the integrity of government. Historically, common law and civil law systems differed in their conceptualisation of the institution of the judiciary. In recent decades, however, these systems have evolved and been influenced toward increased commonality. It is therefore important not only to understand the historical background to a country's judiciary, but also to recognize and acknowledge the changes that have been made in recent years.

In systems with roots in the common law, the judiciary has traditionally enjoyed significant power and independence. The separation of powers model has always viewed the judiciary as a separate and independent arm of government. Common law system judges typically have security of tenure, and considerable autonomy over their budgets and internal governance. A disadvantage associated with such systems however can be that the judicial appointments procedure in some countries is political--in some jurisdictions judges may be popularly elected--, rather than merit-based, and may lack transparency.

In some civil law systems, the judiciary has not been necessarily viewed as a separate arm of government, but rather placed under the governance of a "judicial council", including the Head of State and the Minister of Justice. However, in many countries with a civil law tradition, the appointment of judges is based on a career and promotion track, rather than an appointment process.

Over the past several decades, many states have merged aspects of good practice from other systems into their own. Several civil law countries have adopted reforms that enhance the independence and authority of the judiciary. In common law countries, the appointments of judges are now often undertaken or at least vetted by councils or commissions that include representatives from the executive, judiciary and the legislature, as well as members of the public. The legal profession and even legal educators may have a role in these processes in some countries.

The trend worldwide is toward increased autonomy and self-governance. Increased security of tenure is considered an important feature that protects judges from outside pressures. Appropriate appointment, promotion, and disciplinary measures that are transparent, predictable and objective are viewed as the best protections for security of tenure.

In countries undergoing transition from one political system to another, the challenges are greater as the judiciary itself is often required to transform its role under the previous regime while working to build public trust in the new regime. This often takes place against a backdrop of political and economic struggles to articulate what the profile of the new state will be, as well as problems with crime and corruption that are often present in transitional societies. Acts of corruption may tear down in moments the hard-won trust in public institutions. In few systems is public trust more critical to fulfilling its mandate than to an independent judiciary, for how can there be justice without fairness, impartiality and integrity? While the challenge may be greatest to judiciaries in transitional societies, all judiciaries must earn and maintain the public trust in its ability to deliver justice on a daily, case-by-case basis.

The right to a competent, independent, and impartial tribunal is articulated in the **Universal Declaration of Human Rights** (Article 10) and the **International Covenant on Civil and Political Rights** (Article 14), as well as in regional treaties and conventions including the **European Convention for the Protection of Human Rights and Fundamental Freedoms** (Article 6), the **American Convention on Human Rights** (Article 8), and the **African Charter on Human and Peoples' Rights** (Article 7). Recognizing the essential role played by a competent, independent and impartial judiciary in the protection of human rights and fundamental freedoms, in 1985, the seventh United Nations Congress on the Prevention of Crime and Treatment of Offenders adopted and the General Assembly endorsed the **Basic Principles on the Independence of the Judiciary**, which are to be “taken into account and respected by Governments within the framework of their national legislation and practice and be brought to the attention of judges, lawyers, members of the executive and the legislature and the public in general.” The Principles cover the independence of the judiciary; freedom of expression and association; qualifications, selection and training; conditions of service and tenure; as well as discipline, suspension and removal. As such, the Guidelines provide a framework of the international standards with which to assess the judiciary of a state.

As further recognition that judges must conduct themselves in a manner that supports the key values of an independent judiciary, the UN Economic and Social Council adopted in July 2006 a resolution entitled: “**Strengthening the basic principles of judicial conduct**” that seeks to finalize the principles of judicial conduct set down in the **Bangalore Principles of Judicial Conduct**. Though subject to revision after further review by an intergovernmental expert group, the **Bangalore Principles of Judicial Conduct** establish the standards for the ethical conduct of judges and provide both guidance to judges as well a framework in which the judiciary may regulate judicial conduct. The Principles are organized around the key values of: independence; impartiality; integrity; propriety; equality; and competence and diligence. The Principles are clearly written to assist both executive and legislative branch officials, lawyers and members of the public to understand and support the judiciary. As such, that framework will be used to provide the assessor guidance in assessing the standards of judicial conduct essential to an independent judiciary.

This Tool will further guide the assessor in evaluating the role, capacity and resources of the judiciary, its relationship with other stakeholders in the criminal justice system, and its accountability to the public it serves. Finally, the Tool will guide the assessor in evaluating the extent to which the judiciary’s policies and practices promote access to justice for the victims, witnesses and the accused and builds public trust in the criminal justice system.

In addition to developing an understanding of the strengths and weaknesses of a given system, the assessor should be able to identify opportunities for reform and development. Technical assistance targeting the judiciary and the criminal justice system in the context of a broader strategic framework may include work that will enhance the following:

- Support the development of legislation that will allow the judiciary to function independently.
- Enhance the capacity for the judiciary to train and educate judges and judicial officers.
- Enhance both judicial integrity and develop effective and transparent mechanisms to prosecute instances of corruption.
- Enhance capacity of the judiciary to uphold human rights standards and norms in criminal cases.
- Foster and develop good communication and co-operation between all the stakeholders involved in the criminal justice systems.
- Develop collaborative systemic responses to the challenges confronting the criminal justice system.
- Provide improved access to justice.

2. OVERVIEW

2.1 STATISTICAL DATA

Please refer to **Cross-Cutting Issues: Criminal Justice Information** for guidance on gathering the key criminal justice statistical data that will help provide an overview of the caseload, workload and capacity of the criminal justice system of the country being assessed. Listed below are additional indicators that are specific to this TOOL.

Some countries may not have this information available. It is advisable to request it in advance, as it may take time to obtain it. Occasionally, officials may be reluctant to share the information that exists. If possible, the assessor should record what kind of information is available and to whom, even if the numbers themselves are not made available to the mission.

In evaluating statistical information, it will be important to obtain an understanding of what is meant by a criminal case or filing and whether such filings reflect individual charges for a single criminal act or the aggregate of charges filed against an individual or a group charged for one or more criminal acts. Similarly, it is important to understand what is meant by the various descriptors of case events, resolutions or outcomes, as this may vary even among the various institutions and agencies that produce statistical reports within a single criminal justice system.

Written sources of statistical information may include, if they exist:

- Court Annual reports
- Ministry of Justice reports
- Ministry of Interior/National Police Crime reports/Penal System reports
- Nongovernmental organisation reports on the criminal justice system

The contacts likely to be able to provide the relevant information are:

- Ministry of Justice
- Senior Court personnel
- Registrars or Court Managers
- Non-governmental organisations working on criminal justice matters
- Donor organisations working on the criminal justice sector

In some cases, it may be that the court system does not keep statistical records at all. If a court system does not have the capacity to collect data on caseload and workload or does not perform case flow analysis, technical assistance interventions to develop these capacities may be appropriate.

Where such information is available, it will be helpful in helping identify what blockages exist in the system and where opportunities for technical intervention might be. For example, if cases are on the court roll for long periods of time, technical assistance may be targeted at ways of reducing the length of the pre-trial period.

- A. Are the following statistics available, by year:
- Number of court levels at which criminal matters are heard?
 - Number of judges authorized per level?
 - Number of judges on the bench at each level?
 - Number of judicial officers who possess limited judicial authority and exercise a limited role in criminal cases (sometimes known as magistrates, court commissioners, justices of the peace, master)?
 - Overall court caseload?
 - Overall criminal caseload?
- B. What is the number of cases assigned to each judge in a given time frame (annually, per term)?
- What is the number of criminal cases assigned to each judge in a given time frame (annually, per term)?
 - What is the number of cases decided/reaching a verdict by each judge in that same time frame (annually, per term)?
 - What is the number of criminal cases decided/reaching a verdict by each judge in a given time frame (annually, per term)? Number sentenced?
 - Average, median, high, low resolved caseload per judge, by level/assignment

- Average, median, high, low pending caseload per judge a, by level/assignment
 - Average, median, high, low resolved criminal caseload per judge, by level/assignment
 - Average, median, high, low pending criminal caseload per judge, by level/assignment
 - Average/Median time to disposition for any case by court level. /assignment
 - Average/Median time to disposition for any criminal case by court level/assignment. Can this be calculated for the minor criminal caseload? The serious criminal caseload? For criminal cases in which the defendant is detained?
- C. What percent of the criminal caseload is resolved within the statutory or otherwise mandated time frame? What percent exceeds the statutory or mandated time frame? By more than 50%? By more than 100%
- D. Backlog of court's caseload, if known? Backlog of the criminal caseload, if known. Are the backlogs increasing? Decreasing?
- E. What percentage of criminal cases is appealed at each level? What percent are overturned on appeal? What percent are sent back for further proceedings, including re-trial?
- F. Can the above statistics be broken down (disaggregated) by judge?
- G. How many complaints were received by the judicial disciplinary body, if one exists?
- How many complaints were investigated?
 - How many complaints were dismissed as unfounded after investigation?
 - How many complaints were substantiated by an investigation?
 - How many judges were the subjects of formal disciplinary action?
 - How many were reprimanded? Privately? Publicly?
 - How many were removed from the bench?
 - How many were prosecuted criminally? Convicted?
- H. Is this statistical information publicly available? Portions of it? How is it made public? By request, via annual or other reports?
- I. If not, to whom is it made available? Is it known to criminal justice officers at least at a senior level?
- J. If statistical information is NOT available, why is it not? (Is this policy or lack of capacity or both?) What would it take to enable the judiciary to produce statistical information requested above?

3. LEGAL FRAMEWORK AND STRUCTURE OF THE JUDICIARY

3.1 LEGAL FRAMEWORK

The following documents are likely to be sources from which to gain an understanding of the legal and regulatory framework for the judiciary. [Please see **ANNEX 2, CRIMINAL LAW AND CRIMINAL PROCEDURE** for background on legal frameworks that support international standards and norms]:

- The Constitution should contain provisions delineating the general structure of the judiciary, the courts, and the administration of justice. Other constitutional provisions concerning the rights of offenders, if implemented, --such as the right to be brought before court within a certain number of hours after arrest, the rights of male and female detainees to be detained separately, the separation of children in conflict with the law from adults will affect the organization and operation of the courts.
- Acts of the legislature and regulations to those Acts: The kinds of Acts likely to contain this information include laws on the administration of justice, including a Law on the Courts, criminal law codes and criminal procedure laws.
- Court Rules: There are often multiple sets of court rules, often generated by the judiciary, with different sets of rules for each level of the court, including appeals. The Rules may be a source for determining on a policy level the manner in which the judiciary intends to administer justice for the court and the administration of justice to function on a day-to-day basis. It is useful to get a sense of the rule-making process, i.e. who makes the rules, who has final authority to approve them, and whether the rule-making bodies obtain input from the legal community or the community at large. Some countries may also have a "Judge's Bench Book" that sets out the rules and procedures of courts.
- Government and Court policy documents, "standing orders", circulars and opinions often contain the detailed information that regulates the running of the courts on a day-to-day basis.

The essential counterpart to determining how the legal and regulatory framework intends for the judiciary to function is to examine how it actually does function. In addition to examining the reports of the relevant government departments or ministries on the judiciary, law reports (reported cases), independent reports by NGOs, and academic research papers, it is important to conduct site visits to a number of representative courts and to interview judges and judicial officers at multiple levels, including rural and urban settings, in both relatively well-to-do and impoverished locales. Where specialized courts exist, site visits are useful to be able to compare and contrast the judicial function in that context with that of the general criminal courts.

The authority granted to the judiciary by the Constitution and any enabling statutes are critical in determining the role of the judiciary and what the relationship among the branches of government will be. The source of authority for the administration of justice will be found not only in statutes, including the criminal law and criminal procedures codes, but also in Rules that are promulgated, often by the courts themselves, often with input from representatives of other stakeholders in the criminal justice system. Absent such authority, the judiciary may define its authority in rulings and opinions, but this tends to be the exception. The above also are the primary sources for the legal basis for any framework or organization that regulates the behaviour and conduct of judges. A close analysis is required to determine whether the existing framework/mechanisms support the independence and integrity of the judiciary or inappropriately impinge on those key values by granting supervisory authority to another branch of government.

The **UN Basic Principles on the Independence of the Judiciary** set out the elements of the independence of the judiciary in Principles 1-7. As a basic premise, the independence of the judiciary must be guaranteed by the State and enshrined in the Constitution or in the law of the country.

The judiciary must decide matters impartially on the basics of facts and the application of law, without any restrictions, improper influences, inducements, pressures, threats or interferences. The courts themselves shall decide whether they have jurisdiction to hear a matter. There must be no unwarranted interference with the judicial process, including the assignment of judges, by the other branches of government (legislative and executive).

The government may not displace the jurisdiction of the ordinary courts with a tribunal that does not follow established legal procedures. As such, all citizens shall have the right to be tried by ordinary courts or tribunals using established legal procedures. (Alternative processes may be established, such as truth commissions or special tribunals; however, these cannot be ad hoc, must be duly established by law, and must afford the minimum guarantees established by international law.)

The judiciary has the authority and obligation to ensure that judicial proceedings are conducted fairly and that the rights of parties are respected.

Judicial decisions may not be revised by other branches of government with the exception of commutation of sentences by appropriate authorities such as prison officials or parole boards or a valid executive pardons process.

The provision of adequate resources so that the judiciary is able to function properly is a final prerequisite for independence.

- A. Does the Constitution or other legislation set out the powers of the judiciary? Does the Constitution or legislation expressly guarantee independence of the judiciary?

Principle 1, UN Basic Principles on the Independence of the Judiciary

- B. Does the Constitution or law grant the judiciary jurisdiction to decide all judicial matters? Does it grant the judiciary the power to determine whether it has jurisdiction over a particular matter?

Principle 3, UN Basic Principles on the Independence of the Judiciary.

Does it do so in practice?

- C. Does the Constitution or law grant the judiciary the final say about existing laws? May only a higher court reverse a judicial decision?

Principle 4, UN Basic Principles on the Independence of the Judiciary.

Has the authority to revise the rulings of the court been granted to another body under the Constitution or law? Which body? How often is this authority exercised?

- D. Does the Constitution or law grant judges the authority to strike down or invalidate laws on the basis that a law is unconstitutional or in conflict with a binding human rights treaty? To review executive actions? Do all judges at all court levels have this authority? If the authority has not been explicitly granted, has judiciary defined this authority for itself? Has this authority been granted to another body under the Constitution or law? If so, which?

- E. Has the legislative branch passed legislation that have retrospectively rendered judges' decisions moot?

- F. Does the Constitution or law vest any part of the judiciary with advisory jurisdiction with regard to the executive branch?

- G. Does the Constitution or law place limits upon the powers of the judiciary?

This may range from laws that legitimately guide judicial discretion—examples include mandatory sentencing guidelines or protocols or mandatory minimum sentences—to improper restrictions under international standards and norms.

Is any area of legislative or executive action deemed by the Constitution or the law to be beyond the review of the court?

- H. Has the government established ad hoc courts or tribunals that bypass the normal courts and the authority of the judiciary?

- I. Are there any military courts in operation? Can civilians be tried by military courts? Generally? Under what specific circumstances defined by law? Is there a right to appeal to a civilian court?

- J. Does the Constitution or law provide for any special courts or tribunals? Are any currently in operation? Does the law define the judges' roles in these tribunals?

- K. Under the law, is an order or decision by a court binding? Upon whom? Does this include governmental bodies? Are judgments enforced? If not, why not?

- L. Do judicial precedents add to the body of the law? Are they legally binding? When the highest court renders a decision, is it binding upon the entire country? Regionally?

- M. Have judges been granted have contempt powers to enforce judicial orders and to maintain the decorum of the court? Does this include the power to detain? Are contempt powers used by the court? What mechanisms are in place to prevent abuse of contempt powers?

3.1.1 Legal Framework and Judicial Officers

- A. Does the law grant judges immunity from civil and/or criminal liability in judicial matters? Is this absolute or is it limited?

Principle 16, UN Basic Principles on the Independence of the Judiciary, provides for personal civil immunity for judges for improper acts or omissions in the exercise of judicial functions. Judicial immunity from liability is an element of judicial independence because it allows the judges to do their work without fear of unreasonable civil or criminal actions. This immunity is not necessarily absolute, with some limitations including that judges must act lawfully, with due care, and with good faith intent. The personal civil liability of a judge must be viewed separately from the liability of government for gross errors or unlawful conduct on the part of its judges. A person injured in this way should have a right to bring suit against the government for damages. Similarly the immunity urged by Principle 16 does not prejudice disciplinary proceedings that might be pursued against a judge who committed an improper act or neglected to perform a necessary act.

- B. Does the law establish the terms of service and set the remuneration for all judges?

Principle 11, UN Basic Principles on the Independence of the Judiciary

Can this be retrospectively modified? Has this occurred during periods of political conflict with other branches of government?

- C. Does the Constitution or law guarantee judges tenure until a mandatory retirement age or their term of office expires?

Principle 12, UN Basic Principles on the Independence of the Judiciary

If it does not, what other provisions exist, if any, to protect judges from politically or otherwise improperly motivated attempts to remove judges? Are the grounds on which a judge can be suspended or removed set out in law?

Principle 18, UN Basic Principles on the Independence of the Judiciary requires that judges be suspended or removed only for reasons of incapacity or behaviour that renders them unfit to discharge their duties.

Can judges be removed at the urging of another branch of government? Can judges be removed for being overturned on appeal on more than one occasion?

- D. Do the law or Rules establish an ethics code for judges? Who developed the ethics code? If the judiciary did not, has it been endorsed or adopted by the judiciary? What does the ethics code cover?

Principle 19, UN Basic Principles on the Independence of the Judiciary requires that all disciplinary, suspension or removal proceedings be determined in accordance with established standards of conduct.

- E. Is the ethics code enforceable? Do the Law or Rules provide the legal framework for a disciplinary system to uphold the ethics code and hold judges who violate the code accountable? Is there an established procedure and process by which complaints are investigated and, if substantiated, prosecuted? Do judges have the right to a fair hearing? To confidentiality at the investigative stage? To independent review of the proceedings?

Please see **Principle 20, UN Basic Principles on the Independence of the Judiciary**.

Although they are independent, judges are not above the law and do need to be held accountable. A code of ethics is a useful beginning, as well as a mechanism for the reception and consideration of complaints about judges. There should be room for legitimate public criticism of judges as a means of ensuring accountability. (Contempt proceedings, however, are not appropriate mechanisms for dealing with such criticism, though they have been used to that end.) Accountability mechanisms must be carefully balanced so that judges do not fear arbitrary removal if they deliver judgments that go against a powerful branch of government or individual. Grounds for removal should therefore be limited to inability to perform their duties and serious misconduct.

3.2 STRUCTURE OF THE JUDICIARY

- A. How does the Constitution or law direct the organization of the judiciary? Does it establish the judiciary including all its component levels as a single institution? Are all judicial officers accorded similar status?
- B. What is the basic structure of the judiciary, type of system, and the role played by judges?
- C. Describe the levels of the judiciary (for example, judges, magistrates, lay judges, masters, commissioners, justices of the peace) and their civil and criminal jurisdiction (types of cases, sentencing powers, extent of judicial authority for court officers with limited judicial authority). What is the complement of judges and judicial officers at each level?
- D. Where are the courts physically located? Are they located outside of the capital and large cities? Are circuit courts in use, that is, the court and judge travel to convene court sessions in different specific locations in a geographic region?
- E. What functions do the judicial officers perform at each level? Do they relieve judges of some of the workload? Do they handle minor cases? Preliminary matters?
- F. How does each court level's jurisdiction (that is the type of case they are legally authorised to hear) affect the different levels of the judiciary? Are the judges of the lower courts overwhelmed by a large general caseload, for example?
- G. Are there investigating judges within the system? What is their role in criminal cases? At what point in a criminal investigation do they become involved? How is their role defined in relation to the prosecutor, if there is a prosecutor? Are they functionally separated from the judges who will hear the case and render a verdict? Are they allowed to conduct investigations without interference from other judges or other branches of government or private individuals?

Investigating judges belong to the civil law tradition of criminal justice. An investigating judge becomes involved prior to the trial to direct the collection of evidence and in some systems is responsible for deciding whether or not a case will go to trial. Investigating judges have been a feature of a number of special courts or tribunals set up in post-conflict societies, and are also provided for in the draft Model Code of Criminal Procedure. Please see **Access to Justice: The Prosecution Service, Section 3.2** for further examination of the role of the investigating judge.

4. MANAGEMENT AUTHORITY AND FISCAL CONTROL

4.1 MANAGEMENT AUTHORITY

- A. Is there an official government policy on the judiciary? Who develops it? Whose input is sought? To what extent do the Ministry of Justice or the executive branch determine policy on the judiciary? Does the policy recognize the independence of the judiciary?
- B. Has there recently been any restructuring of the judiciary? Is any such restructuring planned? What are the reasons for such restructuring?
- C. Is there a strategic plan on improving the functioning of the judiciary? Who participates in strategic planning for the judiciary? To what extent do other governmental branches participate? Whose input is sought? How many years into the future does the strategic plan project? What are the strategies it will employ to improve:
- Access to justice?
 - Integrity of judicial processes and functions?
 - The day-to-day functioning of the judiciary?
 - Timely resolution of the caseload and reduction of any backlogs that may exist?
 - Its capacity to handle specialized or complex crimes, including corruption?
 - Services/support provided to victims? To vulnerable populations?
 - Its accountability to the public it serves?
- D. If there is no strategic plan, why is there not? Does the judiciary have the capacity to engage in strategic planning? Is there a lack of data upon which to base strategic planning? Is the leadership overwhelmed by day-to-day administration?
- E. What is the leadership/management structure of the judiciary? Is there a supervising body like a Judicial Council? What role does it play? What is its relationship to the Ministry of Justice? Who sits on it? Is the chief judge or justice of the highest court the leader of the judiciary? How is the chief judge chosen? Does the Chief Judge have administrative authority over all of the courts? Is there a senior judge with administrative authority in each court? To what extent has the day-to-day operation of the court been delegated to an administrator or court manager? In practice, how has the delegation of authority to judges and administrators affected the independence of individual judges? Have senior judges, for example, directed judges on matters of substantive law in individual cases?

The delegation of authority to supervise the court system must be balanced so that the independence of individual judges is maintained. **Principle 2 of the UN Basic Principles on the Independence of the Judiciary** requires that judges decide cases impartially and without improper influence, pressure, or interference from any quarter or for any reason. **Principle 1.4 of the Bangalore Principles of Judicial Conduct** requires that judges be independent of judicial colleagues in making decisions that a judge is required to make independently.

PLEASE REFER TO **ACCESS TO JUSTICE: THE COURTS** FOR COMPREHENSIVE GUIDANCE ON ASSESSING COURT MANAGEMENT AND SERVICE DELIVERY.

4.2 FISCAL CONTROL

Adequate funding is often lacking for the judiciary, both in terms of institutional resources and also with regard to the salaries of judges. It is generally accepted that proper funding is an important ingredient for the operation of an effective, independent judiciary. **Principle 7 of the UN Basic Principles on the Independence of the Judiciary** and **Procedure 5 of the UN Procedures for the Effective Implementation of the Basic Principles on the Independence of the Judiciary** reiterate the need for “adequate resources for the functioning of the judicial system, including appointing a sufficient number of judges in relation to caseloads, providing the courts with necessary support staff and equipment, and offering judges appropriate personal security, remuneration and emoluments.”

- A. How is the judiciary funded? What is the budgetary process under the law? Does the judiciary have a specified budget? Who is involved in planning the initial budget? Who prepares and submits the operating budget? Under the law, who manages the budget? Does the judiciary oversee its own spending? Is the budget sufficient for the judiciary to carry out its mandates?
- B. Does the judiciary actually receive the funds allocated in its budget? Are there delays, fiscal constraints or other obstacles to gaining access to these funds? Where are the funds held? Who authorizes their disbursement?
- C. How does the judiciary account for its expenditures? Is this accounting made public?
- D. How are the terms of service, compensation, etc. determined for judges? By law or regulation? What is the range of salary for judges? Are the salaries paid? On time? Are salaries legally secured against reduction, once established? Have judicial salaries been the subject of or used in political disputes?
- E. Does a lack of resources cause the judiciary to make compromises that might be injurious to independence – for example sharing offices with prosecutors or travelling together with prosecutors when undertaking circuit court work?

5. JUDGES and JUDICIAL OFFICERS

5.1 QUALIFICATIONS, SELECTION, AND TRAINING

5.1.1 Qualifications

Principle 10 of the UN Basic Principles on the Independence of the Judiciary requires that “(p)ersons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law”. While determining ability and qualifications may be relatively simple, the quality of integrity is more elusive. The method of appointments is important in ensuring that appropriate persons are selected. The **Basic Principles** prohibit discrimination (with the exception of citizenship requirements), but do not further describe processes for selection, other than urging that the process employs safeguards that prevent appointment for improper motives. Some countries go further than following the non-discrimination principle and in fact promote the appointment of certain previously or currently disadvantaged groups through legal provisions or through policy.

- A. What are the minimum qualifications for judges for each level of court? For lesser judicial officers? Do the qualifications include characteristics that would reflect integrity? Are the qualifications gender and ethno-culturally neutral, that is, non-discriminatory? Do they require that the candidate be a citizen? How are judicial candidates vetted? Do they undergo formal background checks? What disqualifies a candidate from eligibility/consideration? Are the background checks updated each time they stand for appointment to a higher level court?

- B. From where are new judges generally drawn? (For example, private legal profession, the prosecution service, academia, lower ranks of the judiciary)
- C. Does the demographic makeup of judges and judicial officers resemble the population? Is it reflected at senior levels? Is any group over- or under-represented? Are women proportionally represented? Have they been historically part of the judiciary? Are efforts being made to attract qualified candidates from under-represented or disadvantaged groups? Are bilingual or multilingual judges and judicial officers who speak ethnic minority languages recruited? If not, why not?

5.1.2 Selection

In some countries, in particular those with common law roots, the usual approach has been for judges to be drawn from the ranks of practicing senior lawyers. The appointments procedures often differ for the judiciary of the lower and superior courts. The appointment is often made by the executive, and this has led to political interference in a number of common law countries. In other countries, judges run for office or may be appointed initially and then must stand for election.

In other systems, more typical of those with a civil law heritage, the approach is based at least in part on qualifications, with candidates sitting exams to be considered for the judiciary. Even relatively recent law graduates may be appointed to serve as judges, though they will start at the lower court level and work their way up through the "career path" rather in the manner of any other civil servant.

In practice, there are many hybrids in the approach to selection of candidates. A judicial council that sits to decide on judicial appointments is traditionally a civil law institution, but has become increasingly popular as a reform measure in common law systems. The role of a judicial council may differ from one country to another. In some they may deal only with appointments, in others their functions include disciplinary measures and removal of judges. The question of where the members of such councils should be drawn, and how they should be appointed, is one that draws varied responses. The ideal appears to be to keep a balance between the organs of government, including judges, and to allow a role for civil society, perhaps through the involvement of the legal profession or the law teachers profession. The key ingredient is the avoidance of domination by any arm of government or any political elite.

The transparency of the process is as important as how the council is constituted. The vacancies should be advertised; the backgrounds of the candidates must be made public. Some judicial councils or commissions allow for media to be in attendance and even, in some cases, for the interviews of judges to be televised. The transparency of the process is a key issue in the reform of judicial selection.

- A. What is the process of appointment to judicial office? Is it formalised in the law or Rules? Is the process known to the legal community in particular and the public in general? Are vacancies within the judiciary advertised? Are the candidates' names made known to the public?
- B. Is there a judicial appointments/nominating committee or council? What is the role of such a council? Who sits on it? For how long a term? What bodies or institutions are represented? Is there any civil society participation in the council? How are the council members themselves appointed? Is the work of such a council guided by regulations or protocols?
- C. Does the judicial nominating or appointment council or commission, if one exists, hold its sessions in public? If the council conducts interviews of judicial candidates, are those interviews open to the public? Are the media allowed to attend interviews of judicial candidates? Are they allowed to be televised? What is the public/legal community's perception of the legitimacy of the appointment/ nominating council?
- D. Have efforts been made to increase appointments and/or accelerate promotion of disadvantaged or previously disadvantaged groups, that is groups that have suffered previously from discrimination? How has this been received?
- E. Is it possible for a recently qualified lawyer to become a judge by sitting an examination? Can a junior judge reach the highest levels of the judiciary via a career path? Does this occur?

- F. Is the judge/judicial officer required to be sworn in or otherwise make a solemn commitment to uphold the Constitution and the law upon being appointed to judicial office?

5.1.3 Training

Many countries have judicial training centres, and the location of these institutions is considered an important issue in relation to the independence of the judiciary. Some judges are understandably resistant to being trained by a government run institution and would prefer to have the training schools run by the judiciary, with the curriculum to be developed and the training to be delivered by the judges themselves, sometimes in partnerships with university law professors. Training curricula vary, some focusing on theory, others on practical issues, and still others on ethics and on issues associated with the transitional systems. Training in international law and human rights is considered very valuable, particularly in transitional countries or newly established democracies. In such countries there is often a deluge of law reform, so the judges must be constantly updated on changes to the law.

- A. Does a special course of study/training exist for those who want to become judges or lesser judicial officers? What are its components? Officers?
- B. What, if any, initial training do judges/judicial officers receive? Is it mandated by law or rule? Policy? Who develops the training curriculum for judges? Who delivers the training? Is there a judicial training centre or other independent institution? How long is the training period? Are new judges/judicial officers assigned to a mentor/trainer for on-the-job-training? What topics are covered? Does the training include the special ethical obligations upon judges/judicial officers and their basis? Does the training include the constitutional and statutory protections of the rights of suspects as well as victims? Does training cover human rights and the fundamental freedoms recognized by national and international law?
- C. Is continuing training/education required for all judges? How often? Does it occur? What topics does it cover? Is it adequate? Are training materials and curricula available for review? Does it include relevant developments in international law, in particular those related to human rights norm? How do judges keep informed of changes in the law or the passage of new laws?
- D. If judges sit in specialized courts, have they received any special training to develop their competence in dealing with those cases, i.e. juvenile courts, drug treatment courts, etc.? What are the sources of specialized training?

Principle 6.3 of the Bangalore Principles of Judicial Conduct, in support of the key values of competence and diligence require judges to take reasonable steps to maintain and enhance knowledge and skill, including taking advantage of training. Principle 6.4 requires that judges keep themselves informed about developments in international law.

- E. Do judges and other judicial officers participate in joint training with other criminal justice officials? Are members of the legal defence bar included? Has participation with other official generated any allegations of lack of impartiality or independence?
- F. Is training accessible to all judges in the country, including those in remote areas? How is training delivered to judges/judicial officers in remote areas? Is training delivered in more than one language in multilingual countries?

5.2 CONDITIONS OF SERVICE AND TENURE

Principles 11-13 of the UN Basic Principles on the Independence of the Judiciary requires that term of office, independence, security, conditions of service, pensions and age of retirement be adequately secured by law.

- A. What is the status of judges and judicial officers? Is their remuneration consistent with their position? Is their salary reasonable when compared to the local cost and standards of living? Do they receive benefits other than salary as part of their compensation? Do they receive pensions upon retirement?

PLEASE see also **Section 3.1.1 LEGAL FRAMEWORK ON JUDICIAL OFFICERS**, Questions B and C for legal provision and protections associated with the independent status, terms of service and tenure. Please also see Question D, **Section 4.2 FISCAL CONTROL** regarding judicial salaries.

- B. What measures are taken to provide security for judges and judicial officers?

PLEASE refer to **Access to Justice: The Courts, Section 10** for further guidance on adequacy of security provided within the court facility.

Are judges and judicial officers provided security outside the court facility? For example, do they have secured parking for their private vehicles, are they escorted to those vehicles, do they have drivers? Are judges provided security measures for their homes? In general or only when a threat has been made? Is it common for judges or judicial officers received threats associated with their official functions? Have they or their family members been attacked? Is there a sense a relative safety or risk among judges? Do judges handling organized crime or other high-level criminal cases received enhanced security as a matter of policy or on a case-by-case basis?

- C. Do judges receive performance evaluations? On what basis are they evaluated? Who is responsible for evaluating the judge's performance? Do the evaluations deal with how well a judge functions administratively or do they also assess how well a judge applies the law? What are performance evaluations used for? Can they be used to dismiss a judge? Have they been abused?
- D. How are judges promoted? Is this an appointment process? Is promotion based on seniority? Are some leadership positions elected by members of the judiciary? Appointed by the Chief Judge?
- E. Are judges subject to transfer to other court locations? Has this been used punitively?
- F. Where courts are being restructured or consolidated, what process is being used to govern the reassignment of judges? Are the judges subject to such restructuring given choices about where they will sit? Is the process viewed as fair? Was it developed with the participation of the judges affected by the restructuring? Has the process become politicised?
- G. Are judges and judicial officers required to submit financial disclosure reports? Must they declare any gifts or honoraria they have accepted? Do they do so? Are the financial reports audited? By whom? Have these audits uncovered any instances of corruption by judges? How were these handled?

5.3 FREEDOM OF EXPRESSION AND ASSOCIATION

Members of the judiciary, like other citizens, are entitled to freedom of expression, belief, association and assembly. However, in exercising such rights, judges must always conduct themselves in a manner that preserves the dignity of their office and the impartiality and independence of the judiciary.

Principle 8 of the UN Basic Principles on the Independence of the Judiciary, mirrored by **Principle 4.2 of the Bangalore Principles of Judicial Conduct**. **Principle 9 of the UN Basic Principles** endorses the formation of and participation in judges' associations.

- A. Are judicial officers free to form and join an association of judges and other organisations? Is there a national or regional association of judges? What issues and activities has it focused upon? Is it considered an effective voice for the judges? What other organizations do judges belong to? What is their role?

- B. Do the law, Rules, the ethics code or the judiciary itself via policy provide guidance to judges about what forms of expression are allowed and what should be limited or restricted in order to maintain the dignity of the office and impartiality and independence of the judiciary? For example, may judges attend and speak at public forums? Are judges allowed to be politically active? Are judges allowed to defend themselves when criticised in the press? Have judges' activities in this arena generated controversies? How have they been resolved or do they continue? Have these been the sources of disciplinary proceedings against any individual judge?
- C. Are judges involved or consulted in the law making process? What is their role? Do judges testify, for example, before legislative committees about proposed legislation or the need for legislation in an area where it may be unclear, conflicting or lacking?

5.4 INTEGRITY IN THE PERFORMANCE OF JUDICIAL FUNCTIONS

- A. How are cases allocated to individual judges? May a judge request a specific case? Are any measures in place to prevent the manipulation of case assignment for corrupt or preferential purposes? Have there been allegations of improper assignment of cases? How have these been dealt with?

Principle 14 indicates that the assignment of case to judges is an internal matter of judicial administration. However, the process by which this occurs needs to be transparent, whether assignment is done by the senior judge or court staff. Preferential assignment of cases at best creates the appearance of impropriety and has long been an area vulnerable to corruption. If case assignment is not done on a random basis, then the manner in which cases are assigned must follow personality neutral protocols.) Please see also **Access to Justice: The Courts, Section 8, Case Flow Management, Question D.**

- B. Does the ethics code or judiciary policy provide direction on when a judge must recuse or disqualify him/herself from handling a case? Is there a procedure that has been established for this action?

This may include cases in which the judge is related to or is close friends with or was otherwise closely associated with one of the principles in a case, i.e. defendant, victim, defence attorney, prosecutor. Please see **Value 4 (Propriety) of the Bangalore Principles of Judicial Conduct** for other examples in which judges would be expected to disqualify themselves to prevent the appearance of partiality or impropriety.

- C. How often do judges disqualify or recuse themselves from particular cases? What is the procedure for recusal? Do judges sometimes disclose that they know someone in a case and ask the parties whether they object to the judge's continued participation? Are the parties expected to waive their objections? Do judges typically recuse themselves if there is an objection/ this considered?
- D. To what extent are the judges' and lesser judicial officers decisions free from restrictions, improper influences, inducements, pressures, threats or interferences by/from other branches of government? From any other quarter? (For example, by organised criminal syndicates or gangs, political or religious groups or even internal factions within the judiciary.)
- E. Do judges typically exclude illegally obtained evidence? Where an allegation has been made that torture or mistreatment has been used to obtain evidence, do the judges pursue that allegation? Is there a pattern of allowing illegally obtained evidence to be used?
- F. What is the quality of the decisions rendered by the judiciary? Are judgments reasoned, given in public and within a reasonable time? Do rulings consider or take into account the opposing view, discuss why challenged evidence is being admitted or excluded, document objections so that they are preserved for appeal? Does the conclusion, decision or even the verdict comport logically with the reasoning of the

decision or does there seem to be an arbitrary shift in logic? What are the possible reasons for cases with illogical outcomes?

- G. Do judges issue written decisions promptly especially with respect to appeal deadlines? Is there a habit among judges or a particular judge of taking a case under advisement for long periods of time?

Please see Principle 6.5 of the Bangalore Principles of Judicial Conduct.

- H. Does a judicial officer have the legal authority to control the amount of time that a case takes? Do they exercise that authority? For example, may he/she refuse an unreasonable request for a further postponement if the accused had been in custody for a lengthy period? Must a senior judge rule upon requests for delays that require special findings justifying those delays?

5.4.1 The Rights of Suspects and the Accused

The integrity and independence of the judiciary is integrally intertwined with the integrity of judicial process and the extent to which the public perceives the criminal justice process as fair and just. The extent to which judges properly uphold the international standards and norms in conducting criminal trials and proceedings reflects upon both the integrity of the judge, the court and the system of justice.

- A. Do judges allow the accused to waive his/her right to be present in court as a matter of course? Is court transport a source of delay in cases? Do judges order the transport of defendants who are detained?
- B. Does the court have a legal duty to enquire as to whether the rights of the suspect or accused have been respected? Where allegations of abuse or torture are raised, does the court make its own inquiry into the allegation?
- C. Do judges visit prisons or police cells? Are they required to do so by law? What is the frequency of such visits? What is the purpose of such visit?
- D. Where prisoner transport may be an issue, do judges hold detention hearings at the prisons, detention centres or police cells rather than at court? Has this been considered? If it was rejected, what are the perceived obstacles?
- E. If an accused person appears before the court undefended, does the judicial officer have an obligation to enquire whether legal representation is needed? If the accused person is ineligible for legal aid, does the judge become more inquisitorial or participate more actively in the proceedings? Is this required by law (or legal precedent)? For example, if the accused does not bring a formal bail application, does the judicial officer conduct a bail enquiry of his/her own accord, without a motion from either the defence or prosecution?
- F. Does the judge have the ability to appoint counsel for unrepresented accused persons or defendants? Can the judge simply appoint the legal aid service, which will then choose specific counsel? Is the appointment process a transparent one? Are there allegations that the appointments process may be tainted by corrupt practices or favouritism toward certain lawyers whose advocacy may be less zealous on behalf of their clients?
- G. Do judges ensure that defence counsel are present before proceeding with a hearing? Do judges require their presence? Do they conduct hearings without them? Have any defence counsel been held in contempt for failing to appear or been otherwise sanctioned or disciplined?

- H. Do judges ensure that the defendant understands the language that the proceeding is being conducted in? Do the judges obtain interpreters when it becomes apparent that the defendant cannot follow the proceedings in the official language? Do they proceed without an interpreter?
- I. How are accused persons/defendants treated by the court? Are they addressed with patience, courtesy and dignity consistent with others appearing before the court? Are defendants of minority ethnic, racial or religious backgrounds treated in the same manner as majority defendants? Are there disparities in the resolution of their cases? Sentences?

PLEASE see the principles of **Value 5 (Equality) of the Bangalore Principles of Judicial Conduct.**

5.4.2 Victims and Witnesses

Access to justice for victims and witnesses is a crucial element of fair and effective criminal justice systems. Particular attention should also be paid to vulnerable groups. Please refer to **ACCESS TO JUSTICE: THE COURTS, Section 6.3**, Special Services for Victims and Witnesses for guidance on assessing the services courts may be providing victims and witnesses. PLEASE see **Cross-Cutting Issues: Victims and Witnesses, the Declaration of the Basic Principles of Justice Victims of Crime and Abuse of Power 1985** and the **UN Guidelines on Child Victims and Witnesses of Crime 2005** for further background.

- A. Is there a victims and witnesses unit in the courts?
- B. Do the judges or court unit make the victims aware of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information?
- C. Do the judges allow victims to express their views and concerns at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system?
- D. Do the judges order measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation?

An effective witness protection programme is often an essential tool in the fight against crime. Those who face investigation and criminal prosecution may attempt to frustrate the course of justice through intimidation or by causing physical or other harm to witnesses or their relatives. Hence the need for protection to prevent the justice system from getting paralysed due to uncooperative witnesses. Witness protection measures are particularly crucial in the investigation and prosecution of serious crimes where there is normally so much at stake.

- E. Do the judges work to avoid unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims?
- F. Do the judges refer, if possible and appropriate, cases to informal/alternative mechanisms for dispute resolution, including mediation, arbitration and customary justice or indigenous practices, to facilitate conciliation and redress for victims?
- G. How do the judges treat victims and witnesses? Are they addressed with patience, courtesy and dignity consistent with others appearing in court? Are victims and witnesses of differing social, ethnic, and cultural backgrounds accorded patience, courtesy, and dignity?

Please see the **Principles of Value 5 (Equality) of the Bangalore Principles of Judicial Conduct.**

5.5 DISCIPLINE, SUSPENSION, AND REMOVAL

Principles 17-20 of the UN Basic Principles on the Independence of the Judiciary provide guidance for the fair and appropriate investigation and responses to complaints or allegations made against judges, balancing the need to respond to valid allegations and to protect the judge from allegations that are made without basis. Please see also **Section 3.1.1 LEGAL FRAMEWORK ON JUDICIAL OFFICERS**.

- A. Is there an established procedure for making a complaint against a judge in his/her professional capacity? Who may lodge a complaint? May anyone or must the complainant be an attorney? Are attorneys reluctant to file complaints?
- B. Does the disciplinary framework define the types of judicial misbehaviour that constitute judicial disability? Has the disciplinary system become a second avenue of appeal of rulings or the verdict in a case?
- C. Who investigates the complaint? Is there a time limit within which such an investigation must be completed? Can extensions be granted upon showings of good cause? Is the investigation kept confidential until a determination is made that evidence exists substantiating the allegation?
- D. What are the possible outcomes of an investigation? For example, reprimand, suspension, removal?
- E. Once such a finding/recommendation is made, is the judge entitled to a hearing? Before what court?
- F. Is it possible for the judge to be charged criminally as well? Are simultaneous criminal charges possible? Are they consolidated into one trial? Who prosecutes a case against a judge? Have any been prosecuted? What were the outcomes?
- G. Are the findings of lower courts regarding judicial disability subject to review by a higher court? Does any other branch of government have the right to review the judicial disciplinary proceeding findings of the highest court?
- H. Have any judges been removed from office during the past five years or during the current government's administration? On what basis? Were the legal procedures followed? Was the outcome considered fair by the legal community/public?

6. PUBLIC ACCOUNTABILITY AND TRUST

- A. What is the public perception of the criminal justice system? Is it considered fair? Effective? Efficient? If not, why not? What are the perceived key issues facing the criminal justice system?
- B. How does the public view the judiciary? Is it considered fair? Impartial? Independent? Effective? Efficient? Competent? If not, why not? Is it considered a source of criminal justice integrity and/or reform? Is the judiciary perceived to be dealing effectively with public corruption?
- C. What is the public perception of the average individual judge? Fair? Competent? Diligent? Honest?
- D. What does the judiciary do with regard to educating the public about the functions it performs and how well it performs them? Does the judiciary conduct community outreach? Does the judiciary seek to involve the community in addressing criminal justice priorities? How? Does it reach out to ethnic, religious and minority communities with the same level of effort?
- E. Does the judiciary facilitate or restrict access to public information about criminal cases that are pending in court? Is there a public information capacity so that press and individual citizens may obtain public information about cases? What is the relationship with the press?
- F. How has public perception about the judiciary changed over the last five years? What are the key factors in this change? What else needs to be done to gain and keep public trust?

7. PARTNERSHIPS AND COORDINATION

7.1 SYSTEM COORDINATION

A competent judiciary recognizes the need to coordinate responses to criminal justice issue, as well as its own critical role in their success. Judiciaries can and do implement initiatives and reforms in a collaborative fashion without risking independence. By seeking stakeholder input and commitment, courts provide responsible leadership in developing a responsive and effective court system that anticipates and meets challenges.

- A. At what level do the criminal justice agencies co-ordinate their activities -national, regional, local? What form does this take, i.e. ad hoc working groups, formal commissions? Is there a Law Reform or Criminal Justice Coordinating body? Are judicial officers involved in it? Do the co-ordinating bodies work well together? Have they been effective in resolving issues? Is there a history or at least an instance of stakeholder participation in the development of initiatives to address the issues facing the criminal justice system? Who are the key players who have worked collaboratively in the past or who need to be brought on board in the future?
- B. Do user committees exist? Who sits on them? Are members of the minority communities included? Have they been effective in contributing to the development of criminal justice initiatives?

- C. Are there any partnerships with the legal community or the community at large (e.g. victim support, legal assistance, referral from or to traditional courts)?
- D. Are there trial monitoring groups working in the courts? What are their findings about the manner in which trials are conducted? What are the key issues they have identified that interfere with the capacity to deal with cases fairly and impartially?
- E. Do other civil society organizations monitor what is happening at courts? Do some provide services? (List them and the type of activity e.g. assistance to child offenders or to support for victims of sexual abuse, domestic violence)

7.2 DONOR COORDINATION

Understanding what donor efforts are underway, what have previously been implemented (successfully and unsuccessfully) and what is planned is critical to developing recommendations for future technical assistance interventions.

- A. Identify the donor strategy papers for the justice sector and amount of money earmarked for the justice sector.
- B. Is this subject (independent judiciary) discussed in individual donor country action plans/or strategy papers?
- C. Where direct budget support is supplied, identify how much has been set aside for the justice sector?
- D. Where a Medium Term Expenditure Framework is in place, indicate what is allocated for justice in general and the judiciary/courts in particular?
- E. Which donor/development partners are active in judicial and criminal justice issues? Is the approach by donors targeted to the institution concerned (i.e. developing a judicial training centre, child offenders, legal assistance) and divided between donors, or sector wide (i.e. taking the issue of criminal justice reform as a whole)?
- F. What projects have donors supported in the past; what projects are now underway? What lessons can be derived from those projects? What further coordination is required?

ANNEX A. KEY DOCUMENTS

INTERNATIONAL

- Universal Declaration of Human Rights, 1948
- International Covenant on Civil and Political Rights 1966
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984
- Basic Principles on the Independence of the Judiciary 1985
- Procedures for the Effective Implementation of the Basic Principles on the Independence of the Judiciary 1989
- Declaration of the Basic Principles of Justice for Victims of Crime and Abuse of Power 1985
- Guidelines on Justice Matters involving Child Victims and Witnesses of Crime 2005
- Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters 2002
- Basic Principles on the Role of Lawyers, 1990
- Standard Minimum Rules for Non-Custodial Measures 1990
- Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment 1988
- Standard Minimum Rules for the Treatment of Prisoners 1955

DRAFT

- Declaration on the Right to a Fair Trial and a Remedy
- Bangalore Principles of Judicial Conduct, subject to revision, 2006
- Model Code of Criminal Procedure

PLEASE NOTE: *The Model Code of Criminal Procedure (MCCP) is being cited as a model of a code that fully integrates international standards and norms. At the time of publication, the MCCP was still in DRAFT form and was being finalised. Assessors wishing to cite the MCCP with accuracy should check the following websites to determine whether the finalised Code has been issued and to obtain the finalised text, as referenced Articles or their numbers may have been added, deleted, moved, or changed:*

<http://www.usip.org/ruleoflaw/index.html>

or

http://www.nuigalway.ie/human_rights/Projects/model_codes.html.

The electronic version of the Criminal Justice Assessment Toolkit will be updated upon the issuance of the finalized codes.

REGIONAL

- African Charter on Human and Peoples' Rights 1981
- Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and People's Rights
- African Commission on Human and People's Rights Resolution on Fair Hearings
- African Charter on the Rights and Welfare of the Child 1990
- European Convention for the Protection of Human Rights and Fundamental Freedoms 1950
- American Convention on Human Rights 1978
- Latimer House Guidelines for the Commonwealth on Parliamentary Supremacy and Judicial Independence 1998 (updated 2002)
- Proposed Principles of Judicial Independence for the SADC Region (Part of the Blantyre Rule of Law/Separation of Powers Communiqué 2003)
- Council of Europe, Convention for the Protection of Human Rights and Fundamental Freedoms
- Council of Europe: Consultative Council of European Judges, Opinion No 1 (2001) on standards concerning the independence of the judiciary and the irremovability of judges (Recommendation No R(94)12 on the independence, efficiency and role of judges and the

relevance of its standards and any other international standards to current problems in these fields);

- Opinion No 2 (2001) on the funding and management of courts with reference to the efficiency of the judiciary and to Article 6 of the European Convention on Human Rights;
- Opinion No 3 (2002) on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality;
- African Charter on Human and Peoples' Rights
- African Commission on Human and Peoples' Rights, ACHPR/Res.41(XXVI)99: Resolution on the Right to Fair Trial and Legal Aid in Africa (1996)

Generally Applicable

- Guidance for Promoting Judicial Independence and Impartiality (USAID, Office for Democracy and Governance, Washington, 2002)
- The Model State of the Judiciary Reform: A Strategic Tool for the Promoting, Monitoring and Reporting on Judicial Integrity Reforms (Henderson and Autheman, IFES 2003)
- Measuring Progress towards Safety and Justice: A Global Guide to the Design of Performance Indicators Across the Justice Sector (Vera Institute of Justice, New York 2003)
- White Paper: Global Best Practice: Judicial Councils: Lessons Learned from Europe and Latin America (V Autheman, S Elena, K Henderson, 2004)

ANNEX B. ASSESSOR'S GUIDE / CHECKLIST

The following are designed to assist the assessor in keeping track of what topics have been covered, with what written sources and with whom:

	TOPIC	SOURCES	CONTACTS	COMPLETED
2.1	STATISTICAL DATA	<ul style="list-style-type: none"> ▪ Court Annual Reports ▪ Ministry of Justice reports ▪ Ministry of Interior reports ▪ National Police Crime reports ▪ Penal System reports ▪ NGO reports: criminal justice system 	<ul style="list-style-type: none"> ▪ Ministry of Justice ▪ Ministry of Interior ▪ Senior Court personnel ▪ Court Administrator ▪ Registrar/Court Manager ▪ NGOs working on criminal justice matters ▪ Donor organisations working on the criminal justice sector 	
3.1	LEGAL FRAMEWORK	<ul style="list-style-type: none"> ▪ The Constitution ▪ Acts of Parliament and regulations to those Acts ▪ Court Rules/ Judge's Bench Book ▪ Ethics Code ▪ Judicial/Government policy documents, "standing orders", circulars ▪ Law Reports (reported cases) ▪ Independent reports made by non-governmental organisations. ▪ Legal textbooks or academic research papers. 	<ul style="list-style-type: none"> ▪ Chief judge or Justice ▪ Ministry of Justice ▪ Judicial Council, if one exists ▪ Association of Judges or equivalent, if one exists ▪ Legislative committee dealing with judiciary ▪ Bar association ▪ Legal non-governmental organizations (NGOs) ▪ Senior Court personnel ▪ Court Administrator ▪ Registrar/Court Manager ▪ Law Schools ▪ Internet sites ▪ NGOs working on criminal justice matters ▪ Donor organisations working on the criminal justice sector 	
3.1.1	LEGAL FRAMEWORK: JUDICIAL OFFICERS	See above	<ul style="list-style-type: none"> ▪ See above 	
3.2	STRUCTURE OF THE JUDICIARY	See above	<ul style="list-style-type: none"> ▪ See above 	
4.1	MANAGEMENT AUTHORITY	<ul style="list-style-type: none"> ▪ Constitution ▪ Acts of Parliament and regulations to those Acts ▪ Government and judiciary policy documents, "standing orders", circulars 	<ul style="list-style-type: none"> ▪ Legislative offices ▪ Ministry of Justice ▪ Judicial Council, if one exists ▪ Chief Judge/Justice ▪ Senior Court personnel ▪ Court Administrator ▪ Registrars or Court Managers ▪ NGOs working on criminal justice matters ▪ Donor organisations working on the criminal justice sector ▪ 	
4.2	FISCAL CONTROL	SEE ABOVE PLUS: Budget documents/reports	SEE ABOVE	

	TOPIC	SOURCES	CONTACTS	COMPLETED
5.0	JUDGES AND JUDICIAL OFFICERS			
5.1	QUALIFICATIONS, SELECTION, AND TRAINING	<ul style="list-style-type: none"> ▪ Acts of Parliament and regulations to those Acts ▪ Court rules/Bench books ▪ Judiciary policy documents, “standing orders”, circulars, instructions, opinions ▪ Court Policy/Procedure Manuals, handbooks, circulars ▪ Training Manuals/Curricula ▪ Training materials ▪ Ethics Code <p>SITE VISITS</p>	<ul style="list-style-type: none"> ▪ Chief Judge ▪ Senior Court personnel ▪ Court Administrator ▪ Judicial Council, if one exists ▪ Nominating or Selection Commission/Committee ▪ Judicial Training Centre Director ▪ Bar Associations/Lawyer’s groups ▪ Legal assistance programs ▪ NGOs as above ▪ Public defence agency (Legal Aid) ▪ Prosecutor’s Office ▪ Law Schools ▪ Donor organisations as above ▪ Media representatives 	
5.1.1	QUALIFICATIONS	SEE ABOVE	SEE ABOVE	
5.1.2	SELECTION	SEE ABOVE	SEE ABOVE	
5.1.3	TRAINING	SEE ABOVE	SEE ABOVE	
5.2	CONDITIONS OF SERVICE AND TENURE	SEE ABOVE	SEE ABOVE	
5.3	FREEDOM OF EXPRESSION AND ASSOCIATION	SEE ABOVE	SEE ABOVE PLUS : Judges’ association	

	TOPIC	SOURCES	CONTACTS	COMPLETED
5.4	INTEGRITY IN THE PERFORMANCE OF JUDICIAL FUNCTIONS	<ul style="list-style-type: none"> ▪ Acts of Parliament and regulations to those Acts ▪ Court rules/Bench books ▪ Judiciary policy documents, “standing orders”, circulars, instructions, opinions ▪ Court Policy/Procedure Manuals, handbooks, circulars ▪ Ethics Code ▪ Trial monitoring organization reports <p>SITE VISITS</p>	<ul style="list-style-type: none"> ▪ Chief Judge/Justice ▪ Senior Court personnel ▪ Court Administrator ▪ Registrar/Court Manager ▪ Mid-level & entry level court support staff ▪ Court Visitors (random) ▪ Bar Associations/Lawyer’s groups ▪ Legal assistance programs ▪ NGOs ▪ Trial Monitoring Organization ▪ Public defence agency (Legal Aid) ▪ Prosecutor’s Office ▪ Law Schools ▪ Donor organisations 	
5.4.1	THE RIGHTS OF SUSPECTS AND THE ACCUSED	<ul style="list-style-type: none"> ▪ Constitution ▪ Acts of Parliament & regulations to those Acts ▪ Court Rules & Court Policy ▪ Procedure Manuals, handbooks, ▪ Government policy documents, “standing orders”, circulars ▪ Ethics Code ▪ Trial monitoring organization reports <p>SITE VISITS</p>	<ul style="list-style-type: none"> ▪ Chief Judge/Justice ▪ Senior Court personnel ▪ Court Administrator ▪ Registrar/ Court Manager ▪ Court Interpreters ▪ Prosecutors ▪ Defence Attorneys ▪ Public defence agency (Legal Aid) ▪ NGOs ▪ Trial Monitoring Organization ▪ Donor organisations 	
5.4.2.	VICTIMS AND WITNESSES	SEE ABOVE	SEE ABOVE PLUS : <ul style="list-style-type: none"> ▪ Victim/witness Unit staff, if exists ▪ NGOs working with victims 	
5.5	DISCIPLINE, SUSPENSION AND REMOVAL	<ul style="list-style-type: none"> ▪ Acts of Parliament and regulations to those Acts ▪ Judiciary policy documents, “standing orders”, circulars, instructions, opinions ▪ Court rules ▪ Court Policy/Procedure Manuals, handbooks, circulars ▪ Judicial Disciplinary procedures ▪ Bench Books ▪ Ethics Code ▪ Trial monitoring organization reports <p>SITE VISITS</p>	<ul style="list-style-type: none"> ▪ Chief Judge/Justice ▪ Senior Court personnel ▪ Judicial Disability/Disciplinary body ▪ Judges’ association ▪ Bar Associations/Lawyer’s groups ▪ Legal assistance programs ▪ NGOs ▪ Trial Monitoring Organizations ▪ Public defence agency (Legal Aid) ▪ Prosecutor’s Office ▪ Law Schools ▪ Donor organisations 	

	TOPIC	SOURCES	CONTACTS	COMPLETED
6.0	PUBLIC ACCOUNTABILITY AND TRUST	<ul style="list-style-type: none"> ▪ Constitution ▪ Acts of Parliament and regulations to those Acts ▪ Court Rules/Bench Books ▪ Court Policy/Procedure Manuals, handbooks, circulars ▪ Press releases ▪ Media reports ▪ Trial monitoring organization reports <p>SITE VISITS</p>	<ul style="list-style-type: none"> ▪ Chief Judge ▪ Senior Court personnel ▪ Court Administrator ▪ Registrar/Court Manager ▪ Court Visitors (random) ▪ Bar Associations/Lawyer's groups ▪ Public defence agency (Legal Aid) ▪ Prosecutor's Office ▪ NGOs ▪ Trial Monitoring Organizations ▪ Donor organisations ▪ Members of the media 	
7.1	SYSTEM COORDINATION	<ul style="list-style-type: none"> ▪ Acts of Parliament and regulations to those Acts ▪ Court Rules ▪ Court Policy/Procedure Manuals, handbooks, circulars ▪ Government policy documents, "standing orders", circulars ▪ Reports of coordinating bodies/Minutes of meetings ▪ Reports of NGOs <p>SITE VISITS</p>	<ul style="list-style-type: none"> ▪ Ministry of Justice ▪ Heads of other Criminal Justice entities: <ul style="list-style-type: none"> ○ Prosecutor ○ Director of Penal System ○ Police Chief ▪ Chief Judge or Justice ▪ Court Administrator/ Registrar/Court Manager ▪ Judicial Council, if one exists ▪ Coordinating body ▪ Judicial Training Centre ▪ Association of Judges, if exists ▪ Bar associations/Lawyers' associations ▪ Legal assistance programs ▪ Public defender agency, if any ▪ Law Schools ▪ Legal/Justice/Criminal Justice NGOs ▪ Donor organizations 	

	TOPIC	SOURCES	CONTACTS	COMPLETED
7.2	DONOR COORDINATION	<ul style="list-style-type: none"> ▪ Donor Strategy papers ▪ Progress reports by donor organizations ▪ Independent studies/reports conducted by universities/NGOs 	<ul style="list-style-type: none"> ▪ Donor organisations ▪ Ministry of Justice ▪ Heads of Criminal Justice entities: <ul style="list-style-type: none"> ○ Prosecutor ○ Director of Penal System ○ Police Chief ▪ Chief Judge or Justice ▪ Court Administrator/ Registrar/Court Manager ▪ Judicial Council, if one exists ▪ Coordinating body ▪ Judicial Training Centre ▪ Association of Judges, if exists ▪ Bar associations/Lawyers' groups ▪ Legal assistance programs ▪ Public defender agency, if any ▪ Law Schools ▪ Legal/Justice/Criminal Justice-focused non-governmental organizations (NGOs) 	



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