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**Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms**

## **Independence of judges and lawyers**

### **Note by the Secretary-General**

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, submitted in accordance with resolution 17/2 of the Human Rights Council.

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\* A/67/150.



## Report of the Special Rapporteur on the independence of judges and lawyers

### *Summary*

The present report addresses two aspects of the phenomenon of corruption: judicial corruption; and combating corruption through the judicial system.

The first part presents an analysis of the effects of judicial corruption, as well as the elements necessary to safeguard the judiciary and judicial actors from conditions conducive to corruption and strengthen their capacity to counter and combat all manifestations of judicial corruption. Given that the judicial system serves to check the other public institutions, a judiciary that is independent and not corruptible is paramount in upholding the rule of law and human rights and monitoring the appropriate performance of public functions.

Because of such attributes, the judicial system is also in an ideal position to reinforce the combat against the wider phenomenon of corruption. In this regard, there is an elaboration in the second part of the report on the role of the judiciary and other actors in the justice system in effectively combating corruption. The importance of respect and support for the independence of judges, prosecutors and lawyers and the separation of powers is underlined, as is the need for institutional and efficient security for all actors in the justice system, especially when dealing with cases of so-called grand corruption.

The report concludes with a series of recommendations, which the Special Rapporteur indicated should be read in the light of previous reports on the independence of judges, prosecutors and lawyers. She believes that those recommendations should be placed at the centre of policies of States and other actors that are aimed at preventing and combating corruption and strengthening the rule of law.

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## I. Introduction

1. The prevalence of corruption and the deleterious effects that it has on economic and social development has become an increasingly important issue for States and the international community alike. There have been many diverse attempts to address this phenomenon but the results are mixed. It seems however that few concerted efforts have so far addressed judicial corruption as a separate and distinct issue with its own unique requirements, and with the direct involvement and participation of the actors in the judiciary.

2. The existence of corruption in the judiciary, which is being denounced by stakeholders across both the public and private sectors, directly undermines the rule of law and the ability of the judiciary to guarantee the protection of human rights. This realization has placed the focus in many States on issues of judicial accountability and the need for detailed principles to guide the execution of the judicial function. In such an environment, the Bangalore Principles for Judicial Conduct (E/CN.4/2003/65, annex) were drafted and adopted by judges of different States and legal traditions to provide guidance on universal judicial ethics and strengthen judicial integrity. The Bangalore Principles have been accepted gradually by different sectors of the judiciary, culminating in States adopting them at the national level or modelling their own principles of judicial conduct on them.

3. Section III includes an analysis of the effects of judicial corruption and the parameters necessary to safeguard the judiciary and judicial actors from conditions conducive to corruption and strengthen their capacity to counter and combat all manifestations of judicial corruption. The Special Rapporteur addresses in particular the existing tension between judicial independence and judicial accountability. Given that the judicial system serves to check other public institutions, a judiciary that is independent and not corruptible is fundamental in upholding the rule of law and human rights and monitoring the appropriate performance of public functions.

4. Because of these attributes, the judicial system is in a position to investigate, prosecute and punish acts of corruption. Section IV includes an elaboration of this essential role of the judiciary and other actors in the justice system. The importance of respect and support for the independence of judges, prosecutors and lawyers and the separation of powers is highlighted, as is the need for institutional and efficient security for all actors in the justice system, especially when they are dealing with cases of so-called grand corruption.

5. The Special Rapporteur has endeavoured to address the different factors that enable judicial corruption to grow and the measures that can and should be taken to prevent and combat corruption within the State and in the justice system. The analysis and recommendations are based on the international standards of the independence of judges, prosecutors and lawyers, which together with national and international legislation on corruption provide adequate guidance on how to tackle issues related to judicial corruption while respecting the independence of the judiciary and human rights.

## II. Activities of the Special Rapporteur

6. The activities carried out by the Special Rapporteur since the previous report to the General Assembly are listed in her report to the Human Rights Council (A/HRC/20/19). Since then, she has participated in various activities, as outlined below.

7. From 4 to 6 May 2012, the Special Rapporteur participated in the annual meeting of the California Academy of Appellate Lawyers, in Carmel, California, United States of America.

8. From 19 to 29 May 2012, she undertook an official visit to Pakistan. The report on that visit will be presented at the Human Rights Council in June 2013. The Special Rapporteur wishes to thank the Government of Pakistan for its excellent cooperation. She also would like to thank the Governments of El Salvador and the Russian Federation for their invitations to visit in the second half of 2012 and in 2013 respectively.

9. From 4 to 6 June 2012, the Special Rapporteur participated as a speaker in two conferences: the first on the role of the Special Rapporteur on the independence of judges and lawyers and universal standards at the Universidad Católica Andrés Bello in Caracas and the second at the forty-eighth Annual Conference of the Inter-American Bar Association on Margarita Island in Venezuela (Bolivarian Republic of).

10. On 25 June 2012, the Special Rapporteur presented her annual thematic report to the Human Rights Council (A/HRC/20/19), as well as reports on her official visits to Romania, Bulgaria and Turkey (A/HRC/20/19 and Add.1-Add.3), in May and October 2011, respectively. Her thematic report focused on the individual and institutional parameters to ensure and strengthen the objectivity, impartiality and independence of prosecutors and prosecution services, as well as their accountability. She also presented an advance report on her global thematic study on human rights education and the training of legal professionals (A/HRC/20/20). During the twentieth session of the Council, on 26 June, she participated as a panellist in a side event on the theme of stoning, focusing on what the actors in the justice system can do, and even have the duty to do, on the issue of the stoning of women.

11. The Special Rapporteur sent visit requests or reminders to the following States in 2011 and 2012: Argentina, China, India, Iran (Islamic Republic of), Malaysia, Maldives, Nepal, Philippines, Togo, United States and Venezuela (Bolivarian Republic of). She wishes to encourage them to consider extending an invitation to visit in the near future. She also wishes to thank the Governments that have already responded positively to her requests for a visit.

## III. Judicial corruption

12. Throughout her tenure, the Special Rapporteur has observed corruption as a major obstacle pervading all layers of society. She is particularly concerned about reports of corruption in the judiciary, which threatens the very essence of the independence of the judiciary and the actors in the legal profession. She believes that, while corruption is a multifaceted phenomenon which is difficult to prevent,

detect and sanction, measures can still be taken to provide an environment and conditions in which corruption can be identified and addressed. It is of the utmost importance to establish within those measures, which need to reflect international standards and domestic legal, political, economic, societal and cultural contexts, a specific set of measures aimed at preventing and combating corruption in the judicial system.

13. Corruption is a cross-cutting issue that cannot be overlooked when addressing aspects of the independence of judges and lawyers. Corruption within the judicial system usually undermines the efforts of all other institutions and may lead to impunity (see, e.g., A/65/274, para. 44). At the same time, corruption is insidious and may permeate various sectors of society, whether public, such as the executive and legislative branches of government, or private. All three branches of the State should create mechanisms to implement national and international legislation, but police, prosecutors and judges are in the best position to tackle corruption by adequately investigating, prosecuting and placing sanctions on acts of corruption, whether through the criminal, civil or administrative justice systems.

14. A judiciary of undisputed integrity is an essential institution for ensuring compliance with democracy and the rule of law. The Special Rapporteur shares the view that at both the domestic and global levels even when all other protections fail, the judiciary provides a bulwark to the public against any encroachments on rights and freedoms under the law.<sup>1</sup>

## A. Context and framework

15. Preventing and combating corruption has been a major challenge for States. In numerous international documents, corruption has been recognized as a scourge throughout the world. While the scope and extent of corruption is often difficult to grasp, there are certain factors and conditions that have been identified as contributing to the creation of environments in which corruption is allowed to flourish. When such factors are countered, corruption is more easily detected and deterred.

### Definition of corruption and context

16. Transparency International defines corruption as “the abuse of entrusted power for private gain”.<sup>2</sup> Such a definition therefore includes both financial or material gain and non-material gain. In addition, a distinction is made between grand and petty corruption. Grand corruption involves large sums of money and implies the participation or complicity of highly placed officials. Grand-scale corruption can affect or even jeopardize the entire economy of a particular State. Petty corruption refers to smaller amounts of money, usually involving actors attempting to supplement their low salaries.

17. It is important to note at this stage that cultural and social contexts play an important role in defining what constitutes corruption. Behaviour and conduct can be appraised and interpreted in different ways. In some cultures, certain kinds of

<sup>1</sup> United Nations Office on Drugs and Crime, *Commentary on the Bangalore Principles of Judicial Conduct*, September 2007.

<sup>2</sup> Transparency International, *Global Corruption Report 2007: Corruption in Judicial Systems*.

behaviours, such as gift-giving, will not necessarily be seen as corruption. Thus, the thin line between proper cultural behaviour and corruption becomes blurred. When for various reasons the cultural and social context has integrated certain acts of corruption as acceptable conduct, this will have a serious negative impact on any measures taken to reduce the prevalence of corruption. For instance, in places where wealth is associated with extreme glorification and elevated status, regardless of the manner in which it is obtained, it is unlikely that legislation against corruption will be enforced.

### **Legal framework**

18. The legal framework for the present report is based on article 14 of the International Covenant on Civil and Political Rights, which recognizes the principle of equality of all persons before courts and tribunals and the guarantee of a competent, independent and impartial tribunal established by law, and the United Nations Convention against Corruption (General Assembly resolution 58/4, annex).<sup>3</sup> That Convention is aimed at ensuring the criminalization of a wide range of forms of corruption and obliges Member States to take effective preventive steps to protect the integrity of their institutions and to provide a framework for improved international cooperation.<sup>4</sup> It provides for a non-exhaustive list of specific types or acts of corruption that should be combated and prevented, including bribery, embezzlement, trading in influence, abuse of functions, illicit enrichment, laundering of the proceeds of crime and obstruction of justice.

19. The Special Rapporteur believes that the Convention against Corruption is an important legal instrument containing general provisions on measures for prevention, criminalization and law enforcement, international cooperation, asset recovery, technical assistance and information exchange, all of which involve the public and private sectors, judiciary and prosecution services, as well as the participation of civil society.

20. The Basic Principles on the Independence of the Judiciary, the Bangalore Principles for Judicial Conduct, the Guidelines on the Role of Prosecutors, the Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors and the Basic Principles on the Role of Lawyers also form part of the legal framework for combating corruption.

### **Judicial corruption**

21. According to Transparency International, judicial corruption includes any inappropriate influence on the impartiality of the judicial process by any actor within the court system.<sup>2</sup> In 2004, the previous Special Rapporteur noted that the

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<sup>3</sup> Other relevant international and regional legal instruments include but are not limited to: General Assembly resolutions 55/25 and 51/191; the African Union Convention on Preventing and Combating Corruption; the Council of Europe's Civil Law Convention on Corruption, its Criminal Law Convention on Corruption, and resolution (97) 24 of the Committee of Ministers of the Council of Europe on the Twenty Guiding Principles for the Fight against Corruption; the Council of the European Union's Framework Decision on Combating Corruption in the Private Sector; the Economic Community of West African States Protocol on the Fight against Corruption; the Organization of American States Inter-American Convention against Corruption; and the Southern African Development Community Protocol against Corruption.

<sup>4</sup> United Nations Office on Drugs and Crime, *Compendium of International Legal Instruments on Corruption*, Second ed., Vienna, 2005.

phenomenon of corruption within the judiciary worldwide went far beyond economic corruption in the form of embezzlement of funds allocated to the judiciary or bribes. In particular, it was pointed out that judicial corruption could concern administration within the judiciary or take the form of biased participation in trials and judgements as a result of the politicization of the judiciary, party loyalties of judges or any type of judicial patronage (E/CN.4/2004/60, para. 39).

22. Judicial corruption extends from pretrial investigations and procedures through the trial proceedings and settlement, to the enforcement of decisions by court bailiffs or the executive.<sup>2</sup> The Special Rapporteur confines her assessment to judicial corruption involving judges, prosecutors and members of the legal profession. While she recognizes that corruption among the police, court personnel and officials in charge of the enforcement of judicial decisions is an issue of utmost importance and is directly related to judicial corruption in a strict sense, the limited length of the present report does not allow for in-depth study of the particular features of the wider scope of corruption with regard to the justice system.

23. To formulate any measures against judicial corruption it is necessary to identify several facets of corruption of judges, prosecutors, lawyers and the system as an institution. Bribery in the form of cash, gifts or hospitality, including sexual favours, dining, entertainment and holidays abroad, have been reported as a direct form of judicial corruption. Favoursing a particular law firm, close association with selected lawyers, the promise of opportunities after retirement from either government sources or public corporations, or consultancy work from law firms are the most insidious forms of corruption, and may be more difficult to prevent and detect.

24. There are also some internal factors in the judiciary, for instance exchanging favours between judges at different levels of jurisdiction, nepotism, lack of objective criteria and transparency in the administration of justice (judges' careers, fund and personnel management, case assignments) and lack of accountability, which can all facilitate corruption in the judiciary.

25. According to a 2007 study by Transparency International, two main types of corruption are said to affect judiciaries prevalently: political interference in judicial processes by either the executive or legislative branches of government and bribery. Through political interference, judges and court personnel face pressure to rule in favour of powerful political or economic entities rather than according to the law. Such interference is carried out through a variety of actions, including threats, intimidation, bribery, manipulation of judicial appointments and pressure on salaries and/or conditions of services.<sup>2</sup>

26. According to the same study, bribery can occur at every point of interaction in the judicial system: court officials may extort money for work they should do anyway; lawyers may charge additional "fees" to expedite or delay cases or to direct clients to judges known to take bribes for favourable decisions.<sup>2</sup> Judges themselves can accept bribes to delay or accelerate cases or accept or deny appeals; they can actively seek to influence other judges or simply decide a case in a way that is not in accordance with established legislation and rules.

27. Prosecutors and prosecution services are also the target of such interference and can be pressured to drop investigation or prosecution of cases or to disregard evidence when cases involve high-profile persons.

28. Corruption in the legal profession seems to be less well documented than that of institutional members of the judiciary. This does not mean that lawyers may not actively or passively engage in corruption-related actions or do not have an essential role to play in detecting and combating corruption. In addition, lawyers and law firms can be used as intermediaries in fraudulent business transactions, for example by setting up a legal structure presented as lawful, but that is in fact used for laundering funds. Recently the International Bar Association cooperated with the United Nations Office on Drugs and Crime and the Organization for Economic Cooperation and Development in launching a project entitled “Anti-corruption strategy for the legal profession”, an initiative that focuses on the role of lawyers in combating corruption. A survey carried out under the auspices of that initiative revealed that a large number of lawyers indicated they had been approached or knew lawyers that had been approached to be involved as intermediaries in a corruption scheme. A large number of lawyers also indicated they had lost business to corrupt law firms or lawyers.<sup>5</sup>

## **B. Consequences of judicial corruption**

29. According to the Convention against Corruption,

Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organized crime, terrorism and other threats to human security to flourish.<sup>6</sup>

While corruption concerns all States, no matter their size or economic situation, it is reported to hurt the poor disproportionately by diverting funds intended for development. Corruption represents “one of the main obstacles to peace, sustainable development, democracy and human rights around the globe”.<sup>7</sup>

30. The Special Rapporteur wishes to underline the fact that an independent and honest judiciary will encourage fair competition and economic growth, as there is a clear correlation between the level of economic activity in a country and an effective judiciary combating corruption.

31. One expert summed it up as follows:

Access to one’s universal rights, including the right to the fair, effective and efficient administration of justice, requires an independent, impartial judiciary with integrity that can protect all of the rights of the parties involved, including the universal right to a fair trial. It follows that if the judiciary is corrupt or if corruption impairs any of these universal rights, then basic human rights are being violated.<sup>8</sup>

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<sup>5</sup> Anti-corruption Strategy for the Legal Profession: “Risk and threats of corruption and the legal profession”, Survey and Report, International Bar Association, United Nations Office on Drugs and Crime and the Organization for Economic Cooperation and Development, 2010.

<sup>6</sup> United Nations Office on Drugs and Crime, Foreword, by the Secretary-General to the United Nations Convention against Corruption, 2004.

<sup>7</sup> “The Lima Declaration against Corruption”, adopted at the eighth International Anti-Corruption Conference, 11 September 1997.

<sup>8</sup> Excerpt from address by Mr. Keith Henderson to the thirteenth International Anti-Corruption Conference, Athens, 30 October to 2 November 2008.

32. Corruption has already been acknowledged by the Special Rapporteur as one of the most serious obstacles to the promotion and protection of human rights (A/HRC/14/26, para. 73). Judicial administration is indeed essential to the protection and implementation of human rights, as well as to upholding the rule of law. Corruption in administration weakens national institutions. It also dramatically reduces public trust in the institutions of States, in particular, the judiciary. A non-independent, partial or corruptible court system cannot effectively hold to account the executive and legislative arms of States as prescribed in democratic regimes.

33. Whether or not corruption is endemic to the justice system of a State, its existence at any stage of the judicial process presents a substantial impediment to an individual's right to a fair trial and severely undermines the public's confidence in the judiciary. Where corruption raises the cost for judicial services, which keeps on rising through competition, judicial services are difficult or even impossible for those who cannot afford to obtain them, thus litigation is driven by corruption instead of by the legal process.<sup>9</sup>

34. According to the Open Society Justice Initiative,<sup>10</sup> around the world millions of people are locked up in pretrial detention because of corruption. The pretrial stage of criminal justice systems, from the time of arrest to trial, is said to be particularly vulnerable to corrupt practices. As is often the case, such corruption affects most severely the poor and disenfranchised, which is of serious concern to the Special Rapporteur, who encourages more scrutiny of all actors involved in the pretrial phase of criminal processes, including prosecutors, lawyers and judges.

35. Judicial corruption therefore has a strong potential for victimizing those who do not have the means to play by the informal rules set by a corrupt system. It also forms part of a vicious circle: both corruption and pretrial detention flourish under the same circumstances, so a dysfunctional justice system leads to corruption and that corruption further adversely affects the justice system.<sup>10</sup>

36. Looking beyond acts of corruption, the fact that the public in some States perceive the judiciary as a corrupt authority is of particular concern. A lack of trust in the justice system is detrimental to democracy and development and encourages the perpetuation of corruption. Public perception of independence and impartiality is of particular importance to the credibility of the entire justice system.

37. Calls for accountability of judges and prosecutors frequently occur in situations where there exists a perception that the judiciary has been lenient in the imposition of sentences on offenders or in situations where it appears that a victim's interests have not been given due consideration during the judicial procedure.

38. Apart from generating distrust and even fear, corruption in the judiciary discourages people from resorting to the formal justice system, thereby diverting dispute settlements towards informal systems, which themselves often do not abide by the basic principles of impartiality, fairness, non-discrimination and due process.

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<sup>9</sup> Technical paper delivered at the Economic Commission for Africa Ad Hoc Expert Group Meeting on Deepening the Judiciary's Effectiveness in Combating Corruption, held in Addis Ababa from 19 to 21 November 2007.

<sup>10</sup> Global Campaign for Pretrial Justice, Open Society Justice Initiative.

39. Finally, the Special Rapporteur is particularly concerned about the fact that judicial corruption is often most costly to victims seeking, or even simply trying to gain access to, redress for wrongs or human rights violations in the formal justice system.

### **C. Safeguards against judicial corruption**

40. The fundamental nature of the principles of safeguarding the independence of the judiciary requires that any strategies pursued in the fight against corruption in the judiciary must take place within an established framework. The elements that have an impact on the corruptibility of judges, prosecutors and lawyers are hereafter analysed in the light of the international standards regarding the independence of the judiciary. Even if judicial corruption is influenced by many factors, in particular the State's specific legal, social, cultural, economic and political environment, common problems can be identified and should be addressed.

41. While analysis of such problems and related safeguards focuses on judges and prosecutors as institutional actors, measures to ensure the prevention and punishment of corrupt behaviour among members of the legal profession are also essential. The Special Rapporteur has tried to address the particular situation of the legal profession, but is aware that more research is required on the aspects and specificities of corruption among legal professionals (apart from the judiciary) in order to be able to provide solutions that are better tailored to the needs of those professionals.

#### **Judicial independence**

42. Strengthening the judiciary from within, as well as providing all the safeguards for its independence vis-à-vis other public officials and private actors, is essential in combating and preventing instances of judicial corruption. A judiciary that is not independent can easily be corrupted or co-opted by interests other than those of applying the law in a fair and impartial manner. In order to combat corruption, judicial independence needs to be firmly institutionalized. Further, in order to prevent corruption, both financial and functional independence are necessary, as is constitutional or legal independence.

#### *Judges*

43. The requirements for the independence of judges are enshrined in the Basic Principles on the Independence of the Judiciary. A report of the Special Rapporteur on the independence of judges and lawyers, Leonardo Desprouy, focused on the parameters, both individual and institutional, necessary to effectively guarantee the independence of judges (see A/HRC/11/41).

44. In principle 8, it is emphasized that judges should always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary. This illustrates that the requirement of independence and impartiality does not exist for the benefit of the judges themselves, but rather for the court users, as part of their inalienable right to a fair trial.

45. The processes of appointing and selecting judges emerge as critical when the issue of judicial corruption is examined. Judicial appointments can easily be manipulated by the executive or legislative branches or by private sector interests in

the election of specific lawyers financing their campaigns, which can lead to the selection of non-independent judges or judges biased towards particular political or economic interests. It is stipulated in principle 10 that “[a]ny method of judicial selection shall safeguard against judicial appointments for improper motives”.

46. The Special Rapporteur believes that an appointment body acting independently of both the executive and legislative branches of Government contributes greatly to avoiding the politicization of the appointment of judges and their potential improper allegiance to interests other than those of fair justice. When selection criteria used by such bodies are objective, clear, based on merit, transparent and well publicized, public understanding of the process and the basis for the appointment of judges increases, and the perception of unfair selection or appointments tainted with corruption is avoided.

#### *Prosecutors*

47. The Special Rapporteur has underlined that it is essential that in the discharge of their functions prosecutors should be able to play their roles independently, impartially, objectively and transparently (see A/65/274, para. 19, and A/HRC/20/19, para. 24). A lack of autonomy and functional independence will expose prosecutors to undue influence and corruption and thereby erode their credibility vis-à-vis other actors in the justice system, as well as undermining public confidence in the effectiveness of the system. The appointment and selection of prosecutors should be based on objective criteria and be done through a public competitive selection process. Ideally, the majority of members of recruitment bodies should be composed of those from within the profession in order to avoid possible political or other forms of external interference (see A/HRC/20/19, para. 62).

#### *Lawyers*

48. With regard to the legal profession, the Basic Principles on the Role of Lawyers require Governments to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or other improper interference. While lawyers are not expected to be impartial in the same way as judges, they must be as free from external pressures and interference as judges are. When guarantees (see A/64/181) are not in place to enable lawyers to discharge their duties in an independent manner, the door is open to all sorts of pressure and interference, whether from public or private actors who seek to have an impact on judicial proceedings.

49. In this light, it is important that the legal profession be organized by a self-regulating, independent professional association. Such an organization would provide an umbrella of protection for its members against undue interference in their legal work. States should support such professional organizations of lawyers, which very often take the form of bar associations, without exercising any influence. Bar associations should also play an essential role with regard to the regulation of the process of admitting candidates to the legal profession. It follows that the institutional independence of such professional associations is of great importance as well. Not only would they act as a safeguard for their members against undue pressures, threats or influence, but they would also monitor and report on their members' conduct.

**Terms and conditions of service**

50. The terms and conditions of service of both the judiciary and prosecution services should be safeguarded by law in order to ensure that there is no manipulation by the executive or the legislature to punish or reward conduct and rulings. Such terms and conditions of work also are directly correlated to the potential corruptibility of members of the judiciary and prosecutors. Indeed, the better the benefits offered by their profession, the less incentive judges and prosecutors would have to engage in corrupt activities that could jeopardize the very position and status they enjoy.

*Tenure and promotion*

51. Principle 12 of the Basic Principles on the Independence of the Judiciary requires guaranteed tenure for judges until they reach mandatory retirement age or until the expiry of their term of office where such provisions exist. Security of tenure for judges should be guaranteed and not be subject to renewal; otherwise, there is a high risk that judges would modify their conduct and judgements in order to keep their position. The Special Rapporteur would like to highlight as a good practice lifetime tenure for judges and prosecutors, as such an arrangement tends to shield them from corruption and strengthens their independence in general.

52. The Special Rapporteur is especially concerned about reports of the increased use of temporary judges, who, because of the uncertainty of their position, may be more likely to be corrupted or pressured and who are less likely to report inappropriate behaviour or corrupt acts if they witness them.

53. The promotion of judges should be based on objective factors, in particular ability, integrity and experience.<sup>11</sup> In addition, final decisions on promotions should be taken by an independent body in charge of the selection of judges; the majority of that body should be composed of judges (see A/HRC/11/41, para. 71). If not, the coherence and fairness of any decision taken in relation to a judicial career could be jeopardized, which would definitely facilitate manipulation and corruption and undermine the independence of the judiciary. The assignment of judges to particular court locations, and their transfer to others, should equally be determined by objective criteria.

54. While the tenure of prosecutors depends on how the prosecution service is structured in a given State, security of tenure is an important element that reinforces prosecutors' autonomy, impartiality and independence. There is concern about instances where transfer systems are used as a punishment or reward mechanism depending on the level of allegiance of an individual prosecutor. It is equally important that promotion processes in prosecution services be transparent in order to avoid undue influence, favouritism or nepotism (see A/HRC/20/19, paras. 67 and 68).

*Working conditions and status*

55. Remuneration is often perceived as an important factor influencing the corruptibility of the judiciary, including prosecutors. In the Convention against Corruption, it is recommended that States take measures to promote the adequate remuneration of public officials (article 7 (c)). Low salaries and salary arrears are

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<sup>11</sup> Principle 13 of the Basic Principles on the Independence of the Judiciary.

critical factors contributing to corruption within judicial systems. Dissatisfaction regarding the level of remuneration has been expressed on different occasions. Salaries of judges and prosecutors must be commensurate with their position, experience, professional development and responsibilities, throughout the entirety of their tenure. Fair pensions are also important, as fear of the future can lead to judges and prosecutors modifying their conduct in order to gain reassurance for the future.

56. An adequate salary together with proper working conditions would contribute to recognition of the status and attractiveness of the professions of judge and prosecutor. It is important to note, however, that higher-than-average salaries do not constitute the only factor that would reduce corruption. The benefits constituted by adequate working conditions and status would help insulate a judge or prosecutor from outside pressure and influence and aid such professionals in the proper performance of their duties.

57. Prosecutors operate at the entry of the criminal justice system and corruption or misbehaviour on their part would adversely affect the rest of the justice system and proceedings. In the Guidelines on the Role of Prosecutors, it is expressly stipulated that prosecutors should enjoy reasonable conditions of service, including tenure, when appropriate, remuneration and pension, commensurate with the crucial role they play in the administration of justice (see A/HRC/20/19, para. 66).

58. The organization of courts and prosecution services, including workload, adequate staffing and remuneration, also contributes to the attractiveness of these professions and can have some effect on the corruptibility of members.

#### **Institutional management and resources**

59. When court procedures and judicial proceedings, whether in the criminal or other justice systems, are bureaucratic, complicated, unclear and inefficient, the door is open to all types of corruption. Such acts would have a great impact on the delivery of justice, deterring or even negating the ability of victims to access the justice system. Operational efficiency and transparency are essential in order to prevent corrupt behaviours by court personnel and other actors in the judicial system, including lawyers, prosecutors and judges.

60. Good governance within the judiciary is of critical importance. Courts at all levels, prosecutorial services and judicial and prosecutorial councils should be furnished with adequate budgets to meet their needs; they should also have the power to manage such resources autonomously, independent of any external interference. The Special Rapporteur is concerned that many Member States do not give priority to the judiciary in terms of the percentage of the gross domestic product allocated to such institutions, especially to the lower jurisdictions.

61. A lack of internal capacity to carry out such tasks, including both material and human resources, would have a negative effect on the delivery of justice and might provide opportunities for internal and external actors to seek to channel the system to their advantage. Strengthening the human and material resources of judiciaries and prosecution services would be a significant factor in delivering fair and timely justice.

62. The Special Rapporteur has observed that widespread case delays fuel corruption and create the perception of corruption. Such delays may be accountable for a wide range of deficits related to courts' infrastructure, management and

resources, which can hamper the smooth functioning of the judiciary. These include lack of staff, lack of or inadequate infrastructure, lengthiness or opacity of proceedings, disorganized filing systems or lack of electronic filing, lack of mechanisms to control delays and lack of documentation centres and libraries.

63. The use of information technology in filing cases and ensuring an adequate number of well-trained and well-paid staff would improve efficiency and minimize the opportunities for bribes to be paid.

64. The judiciary could also consider installing a system of court administrators whereby judges and prosecutors would be freed from the bureaucracy of administrative functions, which would enable them to focus more closely on their respective judicial functions. The concept of court administrators allows for the continuity of institutional management and greater administrative competence and independence, since such positions would be filled by qualified professionals. Such administrators could also play an important role in promoting dialogue<sup>12</sup> among judges, courts and prosecutors, lawyers, other branches of the State and society. As a consequence, their work could contribute to a more specialized court management system.

65. The Special Rapporteur has observed that a non-transparent and subjective case-assignment system is vulnerable to manipulation and corruption. The same applies to prosecutors. In some countries, the court president has sole discretion on assignment (including the possibility of retaining a case), which provides avenues for corruption and greater opportunities for external interference.<sup>13</sup> In order to avoid such a situation, there should be a clear, objective and preferably random electronic system, which is continuously reassessed (see A/HRC/11/41, para. 47, and A/HRC/20/19, para. 80). Information on the system of case assignments should be clearly available to the public in order to counter suspicions of malpractice and corruption in the assignment of cases and provide greater transparency.

#### **Adequate professional education and training**

66. The importance of educating and training the actors of the justice system is a recurrent theme addressed by the Special Rapporteur throughout her reports. In particular, she has endeavoured to underline the need for continuing legal education and training to enable judges, prosecutors and lawyers to apply international human rights standards, norms and principles in the consideration of domestic cases.

67. Inadequate education and training, including lack of training on corruption, anti-corruption measures, the nature of judicial independence, autonomy, responsibility and judicial integrity, can all contribute to the corruptibility of the judiciary. In the Convention against Corruption, it is recognized that the education of court personnel is a core factor for the effective implementation of anti-corruption policies (see General Assembly resolution 58/4, articles 7 (1) (b) and 7 (1) (d)). All actors in the justice system, especially judges, prosecutors and lawyers, must be properly educated and trained with regard to their respective code

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<sup>12</sup> Marie B. Hagsgård, "Internal and external dialogue: a method for quality court management", *International Journal for Court Administration*, vol. 1, No. 2. Accessed on 6 August 2012 from [www.iaca.ws/files/LWB-Marie\\_Hagsgard.pdf](http://www.iaca.ws/files/LWB-Marie_Hagsgard.pdf).

<sup>13</sup> USAID Office of Democracy and Governance, *Guidance for Promoting Judicial Independence and Impartiality* (Washington, D.C., 2002), p. 63.

of ethics and standards of conduct, national and international legislation on corruption, international standards relating to the proper discharge of their functions, and international human rights law, including that relating to fair trial.

68. Under the Convention against Corruption, States are obligated, to the extent possible, to initiate, develop and improve specific training programmes for preventing and combating corruption, which should deal, inter alia, with: (a) effective measures to prevent, detect, investigate, punish and control corruption; (b) the building of capacity in the development and planning of strategic anti-corruption policy; (c) the evaluation and strengthening of institutions; and (d) methods used in protecting victims and witnesses who cooperate (ibid., article 60). Programmes developed in cooperation with the legal profession, which can also help prevent any impingement on independence, are also likely to increase the effectiveness of the training.

69. The environment and the attitude of an institution towards corrupt behaviour may contribute to sustaining or deterring occurrences of corruption. Training can significantly change attitudes that would be lenient or even favourable to corrupt conduct and pave the way for strengthening integrity.

#### **Integrity and accountability**

70. Integrity and accountability are essential elements of judicial independence. There should be mechanisms that enable the judiciary to foster integrity and enhance accountability at both the institutional and individual levels.

71. Corruption in the judiciary is a serious matter that undermines the integrity of a State's entire judicial system. Corruption should be given careful consideration, be confronted bravely and never be tolerated or accepted. Whenever suspicion or evidence of acts of corruption arise, there should be effective mechanisms of accountability to deal fairly with it. Public confidence in the judicial system depends on the clear perception of the existence of such mechanisms, which would also encourage complaints and reports on malpractice.

72. There have been reports that the occurrence of corruption has been used as a means to threaten the independence of the judiciary. Judges and prosecutors have been dismissed without the requirements of due process and fair trial first being fulfilled.

73. Lawyers have also been victims of campaigns to discredit and defame them on the basis of groundless accusations of corruption. In addition, in States where the executive governs access to the bar, lawyers are often arbitrarily disbarred and unfounded corruption allegations are used to justify banning them from practising law.

#### *Integrity*

74. The Bangalore Principles, which were drafted and adopted by judges of different States and legal traditions, are aimed at providing a guide concerning universal judicial ethics. The Principles include values that should be at the core of standards of ethical conduct for the judiciary: independence; impartiality; integrity; propriety; equality; competence; and diligence. Integrity is formulated as a value

that is “essential to the proper discharge of the judicial office”.<sup>14</sup> In this context, it should be noted that it is of equal importance that the conduct of the judiciary reaffirm the people’s faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done. Therefore a judge must accept certain personal restrictions freely and willingly, including for example the restriction that he or she shall neither ask for nor accept any gift or favour in relation to anything done or omitted in connection with the performance of his or her judicial duty.<sup>15</sup>

75. The Convention against Corruption refers to the duty of States parties to take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary. Such measures may include rules with respect to the conduct of members of the judiciary (see General Assembly resolution 58/4, article 11). Accordingly, these measures must be in accordance with, and without prejudice to, the independent functioning of the judiciary.

76. One such measure is the adoption of a code of conduct that provides judges, prosecutors and lawyers with guidance on the performance of their professional duties and sets out clear guidelines as to which behaviour is considered acceptable or unacceptable. At the same time, the code would furnish a clear indication of the guidelines on which possible disciplinary proceedings could be based. For the effective promotion of judicial integrity, codes of conduct must be disseminated within the judicial system and to users and the general public.

77. Provisions regarding codes of conduct for public officials are found in article 8 (2) of the Convention against Corruption, which encourages States parties to apply codes or standards of conduct for the correct, honourable and proper performance of public functions.

78. Such codes of conduct provide the public with an understanding of some minimum standards concerning what can be expected and therefore enable them to collaborate in the oversight of judicial performance and the upholding of the integrity of the justice system. Public awareness would therefore enhance confidence in the judiciary.

79. The Special Rapporteur believes that transparency in a public administration is not an option, but a statutory and obligatory requirement that is fundamental to a democracy. Transparency remains a challenge for the judiciary, which is considered to be the most closed and least accessible of the branches of State. Transparency is a fundamental principal for the promotion of integrity and should be present throughout the judicial system by improving: the quality of administration of justice; accessibility for rich and poor alike; clarity of administrative procedures and of decision-making processes; publication of the use of financial resources; and disclosing the assets and income of judges, prosecutors and court staff.

80. Another measure that helps to increase the integrity of the judiciary is the establishment of parameters for judicial discretion in the interpretation of the law in order to create a level of certainty concerning judicial decisions. Such parameters could be used as guidelines that would help identify possible acts of corrupt behaviour in unusual court decisions.

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<sup>14</sup> Value 3 of the Bangalore Principles.

<sup>15</sup> *Ibid.*, values 3.2, 4.2 and 4.14.

81. A provision of principle 26 of the Basic Principles on the Role of Lawyers is that codes of professional conduct for lawyers should be established by the legal profession or by legislation in accordance with national laws and recognized international standards and norms. In the specific case of the legal profession, guidelines with regard to the cost of private legal services could also be considered. Unscrupulous lawyers may extort additional fees from their clients or make them pay for services that should be free or included as part of their fees, or they may even appropriate money belonging to their clients. Uneducated persons are especially vulnerable to such practices. Conversely, those who do not have the means to pay for the high fees of lawyers may be tempted to try to bribe their way through the justice system as a less expensive way to settle their case.

82. The Special Rapporteur believes that, in order to encourage adherence to such codes, it is of the utmost importance that codes be developed with the full participation of the actors whose conduct they will regulate (judges, prosecutors and lawyers).

#### *Accountability*

83. The principle of accountability is intrinsically linked to the rule of law. It may be observed that where the rule of law is effectively respected there is a greater degree of accountability within public administration and vice versa.

84. In article 8 (6) of the Convention against Corruption, States parties are encouraged to take disciplinary or other measures against public officials who violate the codes or standards of conduct. More specifically, in article 11 (1) of the Convention, without prejudice to judicial independence, States parties are encouraged to take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary; such measures include rules on the conduct of members of the judiciary. Measures to the same effect are encouraged under article 11 (2) and applied within the prosecution service of the States parties, where that service does not form part of the judiciary.

85. Combating corruption within the judicial system is important in order to strengthen judicial credibility and independence. Thus, the establishment of internal and external mechanisms of accountability for judges, prosecutors and the court staff is imperative.

86. Any such mechanisms should be developed with the full participation and consent of the actors concerned. They should guarantee that the investigation and prosecution of any actor in the judicial system safeguards the person's right to a fair hearing. Furthermore, it is necessary to ensure that the investigative process does not undermine the credibility of judges, prosecutors or lawyers before a charge against the defendant has been definitively proved. In that light, investigations preferably should take place confidentially. Complaint mechanisms for the enforcement of codes of conduct must therefore be constructed carefully and provide all necessary safeguards against political, economic or malicious allegations or investigations.

87. The Special Rapporteur emphasizes the fact that the goal of increasing judicial credibility and trust could be achieved only if the complaint mechanisms work effectively and provide for real, objective investigation and punishment of acts of corruption.

88. With regard to specific complaints of misconduct or corruption of judges, an independent body should be established within the judiciary to hear the complaints. While it is preferable that such a body be composed entirely of judges, retired or sitting, it would be consistent with the principle of judicial independence if there could also be some representation of the legal profession or legal academics. Such representation should be in the minority, and no political representation should be permitted.

89. Paragraph 21 of the Guidelines on the Role of Prosecutors provides that:

Complaints against prosecutors which allege that they acted in a manner clearly out of the range of professional standards shall be processed expeditiously and fairly under appropriate procedures. Prosecutors shall have the right to a fair hearing. The decision shall be subject to independent review.

Similarly, even in such cases when the judges and lawyers involved in corruption activities are held to account, international standards for due process and fair trial must be strictly observed.

90. It is important that accusations of corruption be promptly and adequately investigated and addressed through pre-established mechanisms dealing with the enforcement of rules and standards of conduct for judicial actors. However, where corruption is deeply rooted at all levels of public institutions, the reporting of corruption often may not lead to investigation or other adequate responses, which consequently diminishes incentives to report corrupt behaviour. These are important elements that need to be addressed by incorporating measures to combat judicial corruption into wider policies to combat corruption in other institutions of the State and the private sector. The establishment of measures and systems to facilitate reporting by public officials of acts of corruption to appropriate authorities, as encouraged under article 8 (4) of the Convention against Corruption, would contribute to increased instances of such reporting. Importantly, such systems must be accompanied by measures of protection for “whistleblowers”.

91. In the case of widespread or other serious accusations of corruption, judges, prosecutors and lawyers alike should face criminal liability. Accordingly, States should criminalize and penalize corruption (see General Assembly resolution 58/4, article 15), and any existing criminal immunity of corrupt judges and prosecutors should be lifted; they should not be “above the law”, as total immunity would only nourish distrust among the public with regard to judges and prosecutors in the justice system.

#### **IV. Combating corruption through the judicial system**

92. Combating corruption is a daunting and complex task. Furthermore, the existence of corruption is very difficult to establish for the purpose of criminal prosecution. The Special Rapporteur is convinced that measures for fighting corruption will have a real impact only if corruption is considered as a serious crime and State institutions act accordingly.

93. Apart from the necessity of having a credible judiciary, some institutional elements in addition to criminal procedure measures could play a prominent role in effectively combating corruption by means of the justice system.

**Institutional elements**

94. First, anti-corruption bodies should be established to implement and strengthen transparency within the public sector, including in the judiciary.

95. Such bodies should work as administrative units and have the duty to purge public administration of any kind of corruption. They should therefore report and denounce acts of corruption and cooperate with criminal proceedings, when requested. For that purpose, such anti-corruption bodies should be technical and not political.

96. Securing and strengthening the institutional independence of judges, prosecutors and lawyers is central for protecting these actors from external or internal pressures and interference and enabling them to discharge their professional duties with integrity, propriety and impartiality. Judges, prosecutors and lawyers should be confident that they can properly carry out their lawful functions without any kind of fear, harassment or intimidation in their professional lives.

97. In many previous reports, the current and former Special Rapporteurs on the independence of judges and lawyers recommended the clear demarcation of the functions and competencies of the different branches of power. Judges, lawyers and prosecutors should not only be independent of the other branches, but should also be sufficiently independent of each other.

98. The Basic Principles on the Independence of the Judiciary require that the security of judges be adequately guaranteed by law. Nevertheless, the Special Rapporteur frequently hears reports of inadequate efforts by State authorities to respond to security threats against judges and to provide them with protection.

99. For this reason, the Special Rapporteur would like to underline the importance of the development and implementation of security measures for judicial actors as part of a national plan of security.

100. Prosecutors are also often directly exposed to security risks. It cannot be expected that prosecutors who fear for their own security or of that of their families will be fully independent and impartial in the performance of their duties. The Guidelines on the Role of Prosecutors contain important safeguards for the specific security of prosecutors.<sup>16</sup> It is the responsibility of States to ensure implementation of those safeguards. The International Association of Prosecutors in 1999 developed minimum standards regarding the security and protection of prosecutors and members of their families (see A/HRC/20/19, paras. 76 and 77).

101. In the principle 17 of the Basic Principles on the Role of Lawyers, reference is also made to a positive obligation of State authorities to take effective measures to ensure the security of members of the legal profession. By virtue of the varied nature of their functions in the justice system, members of the legal profession must benefit from a specific safeguard: "Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions" (principle 18). It has been noted that this principle is one of those most routinely breached. "This occurs particularly where lawyers defend clients in politically sensitive cases or cases related to large-scale corruption, organized crime, terrorism and drug trafficking" (A/64/181, para. 64).

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<sup>16</sup> See guidelines 4 and 5.

**Criminal procedure measures**

102. An important element in the investigation, prosecution and punishment of corruption is the cooperation and competence of the investigatory services. Judges, prosecutors and the police need to cooperate with each other appropriately and transparently. The role played by prosecution services is sometimes overlooked in such matters. Yet, in the criminal justice system judges are not able to place sanctions on corruption if the prosecutors do not present cases that are sufficiently well evidenced. In this context, the Special Rapporteur would like to refer to her last report to the Human Rights Council, in which she underlined the importance of strengthening prosecution services (A/HRC/20/19).

103. When judges, prosecutors or lawyers are not corruptible, in the absence of adequate safeguards they could still be pressured or coerced into becoming involved in corruption. This is especially true in cases involving corruption by “organized criminal groups, senior officials or other powerful and well-resourced interests”.<sup>17</sup> For this reason, it is manifest that judges, lawyers and prosecutors must be offered a certain level of security and protection in combating against corruption in order to be able to perform their duties without jeopardizing their mental and physical integrity or that of their relatives.

104. Another element for improving the investigation of corruption is the creation of specialized units or courts. Such specialization could be achieved through capacity-building programmes for the police, prosecutors and judges. The provision of modern information technology resources and adequate working conditions would enable them to accelerate investigations and obtain the evidence necessary to prove corruption and obtain convictions, as well as facilitating cooperation among national and international institutions.

105. Another element that undermines the principle of equality of all before the courts and is a common cause for the delay of criminal procedures is the application of “special guarantees” for certain public agents. States where such guarantees still exist should consider abolishing them. It is not unusual in large-scale corruption cases involving public agents to have lengthy discussions about which court should preside and investigate public agents that have the right to such guarantees. Since a change of function can lead to repeated discussions, this is often used as a means for delaying due process.

106. The principle of equality before the law should prevail based on the fact that anyone who commits a crime should be investigated, prosecuted and punished regardless of any differences, and specifically for public officials who hold decision-making powers in relation to the use of public resources.

107. Special guarantees foster the perception of impunity for such public officials, which in turn encourages further corruption and ultimately leads to a more generalized sense of institutionalized impunity that dangerously undermines the credibility of the judicial system.

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<sup>17</sup> Tool No. 6 of the United Nations Office on Drugs and Crime, *Anti-Corruption Tool Kit* (Centre for International Crime Prevention — 15, vol. 1, November 2002), p. 33.

## V. Conclusions

108. Corruption undermines the rule of law, democracy, social and economic development and the protection of human rights. Member States may wish to consider classifying large-scale corruption as a serious crime and be actively engaged in concrete actions for preventing and combating corruption. The judicial system plays a very important role in this context. It is of paramount importance that a clear message be sent: corrupt behaviour is not acceptable and will lead to appropriate disciplinary measures or, where appropriate, criminal proceedings against those who have engaged in it.

109. Judicial corruption erodes the principles of independence, impartiality and integrity of the judiciary; infringes on the right to a fair trial; creates obstacles to the effective and efficient administration of justice; and undermines the credibility of the entire justice system.

110. Measures to prevent and combat corruption need to be tailored to the specific situation of each State; such measures should involve cross-institutional efforts and include the participation of all sectors of society. Measures to combat corruption would be effective only if they are tailored to the specific social, cultural, economic, political and legal environment and enforce international legal standards. It is nevertheless possible to make general recommendations on specific measures to combat judicial corruption and strengthen the role of the judiciary in fighting corruption since the manifestations of corruption have many commonalities. Such measures should be part of a broader anti-corruption strategy that applies to all sectors, public and private.

111. It is essential that a diagnostic analysis be conducted within a country to identify, through user surveys of government services, the main institutional areas where systemic corruption arises; these should be carried out for each institution of government. Detailed action plans should be developed in consultation with all stakeholders concerned, including civil society. Such plans should include the problems detected, the solutions proposed, implementation measures and expected results. The implementation of action plans should be independently monitored and overseen.

112. To ensure implementation of lasting anti-corruption reforms, short-term benefits should be channelled through permanent institutional mechanisms capable of sustaining reform. There is a need to implement and strengthen internal and external independent control mechanisms in order to maintain permanent scrutiny and vigilance of the independence of the judiciary in order to be effective in combating corruption within the justice system and within the State and in order to protect and promote human rights.

## **VI. Recommendations**

113. The following recommendations should be considered in conjunction with, and bearing in mind, previous recommendations of the Special Rapporteur with regard to the independence of the judiciary, prosecutors and the legal profession (A/HRC/11/41, A/HRC/20/19, and A/64/181):

### **General recommendations**

(a) States and other stakeholders should place the independence of judges, prosecutors and lawyers at the centre of their policies aimed at preventing and combating corruption and strengthening the rule of law and human rights;

(b) States should acknowledge that, because of its attributes, the judicial system is in an ideal position to initiate and reinforce the fight against corruption, as well as achieve results, and therefore deserves particular attention in States' anti-corruption policies;

(c) All State authorities should monitor the performance of public functions, including those implementing anti-corruption measures;

(d) States should formulate their anti-corruption reforms bearing in mind the context of their specific legal, social, cultural, economic and political environments.

### **Recommendations to address corruption in the judiciary**

(e) States should strengthen safeguards for the independence of the judicial system and safeguards against judicial corruption in order to ensure the accountability of judges and prosecutors;

(f) Judges, prosecutors and lawyers should discharge their functions with integrity and impartiality and preserve the dignity of their profession;

(g) States, judges, prosecutors, lawyers and other public and private actors should recognize that the requirement of independence and impartiality of the judicial and legal professions does not exist for the benefit of the members of the profession themselves, but rather for the users of the justice system, as part of their inalienable right to a fair trial;

(h) States should support professional organizations of lawyers, such as bar associations, without exercising any pressure or influence on them. Such organizations and associations should play the main role in regulating admission to the legal profession;

(i) Special attention should be paid, and concrete measures taken, to ensure efficient protection of judges, prosecutors, lawyers, witnesses, victims, whistleblowers and other stakeholders involved in processing and judging cases of corruption, especially large-scale corruption or corruption cases related to organized and white-collar crime. Development and implementation of a national plan of security for judges, prosecutors and lawyers should be considered;

(j) The processes for appointing and selecting judges and prosecutors should be guided by objective criteria, based on merit, and clear and transparent procedures, and take place through a public competitive selection process, free from political or economic influences or other external interference;

(k) States should establish a judicial oversight body, the majority of members of which should be judges, independent from the executive and legislative branches to oversee the appointment, selection, promotion and transfer of judges;

(l) The appointment and selection of prosecutors should be based on objective criteria and be done through a public competitive selection process;

(m) The terms and conditions of service of both the judiciary and prosecution services, including job security, adequate remuneration, promotion, working conditions and status, should be safeguarded by law;

(n) Good governance and the rule of law within the judiciary should be promoted. Courts at all levels, prosecutorial services and judicial and prosecutorial councils should be furnished with adequate budgets to discharge their functions and be empowered to manage their own budgets autonomously and independently of any external interference;

(o) States should consider creating court administrators in order to make the administrative functions of courts more professional, enabling judges to focus more on their judicial functions;

(p) A clear and objective electronic system for case allocation, administered by judges and assessed regularly, should be established on the basis of automatic random distribution or an objective system based on specialization;

(q) Judges, prosecutors and lawyers should receive good-quality, appropriate and continual training on international human rights norms and standards, particularly in combating corruption in the public and private sectors;

(r) Codes of conduct and guidelines should be established for judges, prosecutors and lawyers and their enforcement should be independently monitored and accounted for;

(s) Judges, prosecutors and lawyers should be accountable in the discharge of their functions. All disciplinary and other proceedings should be transparent, to the extent possible, and carried out in full conformity with international standards related to the right to a fair and impartial trial and due process;

(t) Confidential complaint mechanisms should be put into place, with the participation of the actors in the justice system, and include protection for whistleblowers, as well as due process guarantees for those accused;

(u) Allegations of corruption and failure to improve accountability should never be used by the legislative or executive branches as a pretext and premise for endangering the independence of the judiciary;

(v) As the systematic use of long pretrial detention may open the door to corruption, pretrial detention should be used only when no reasonable alternative can address risks of flight or danger to the society.

**Recommendations to combat corruption by the justice system**

(w) States should consider creating and implementing specialized units or courts to enhance the investigation, processing and judging of corruption cases by providing them with well-trained professionals, modern information technology resources and adequate working conditions that could enable them to obtain the necessary evidence in corruption cases;

(x) States where such a system still exists should consider abolishing the prerogative of “special guarantees” for some officials;

(y) The international community should strengthen its assistance to States in combating corruption, which would help strengthen the rule of law and democracy and reinforce the role of judges, prosecutors and lawyers in the promotion and protection of human rights.

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