

## **Questionnaire 2016 of the 1st Study Commission**

### **Best Practice within the Judicial System for Ensuring Transparency and Integrity and Preventing Corruption**

A best practice is a method or technique that has consistently shown results superior to those achieved with other means, and that is used as a benchmark. In addition, a "best" practice can evolve to become better as improvements are discovered. The IAJ 1<sup>st</sup> Study Commission is trying to identify best practices within its member associations for ensuring transparency and integrity within the judicial system and to prevent corruption within the judicial system.

“It is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done.”<sup>1</sup> Transparency is a basic requirement so that justice can be seen to be done. Not only must the court proceedings be transparent to the public, but also the procedure of selecting judges and the administration of the judiciary.

Trust in the judiciary is a condition precedent in order that the judiciary can fulfill its important and distinguished role in a constitutional democracy governed by the rule of law. Prerequisite for trust in the judiciary is the integrity of judges. The IAJ 1<sup>st</sup> Study Commission acknowledges the efforts of national judges' associations in combating corruption and promoting the dignity and integrity of the profession. The main purpose of these efforts is to raise awareness of the reasons and consequences of judicial corruption and to enhance the highest standards of judicial conduct among judges.

Judicial corruption is defined<sup>2</sup> by to mean: "all forms of inappropriate influence that may damage the impartiality of justice and may involve any actor within the justice system, including (but not limited to) judges, lawyers, administrative Court support staff, parties and public servants"

Bribery is defined as encompassing the:

- a- Promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;
- b- The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for himself or herself or another person or

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<sup>1</sup> [Lord Chief Justice Hewart](#) in R v Sussex Justices, Ex parte McCarthy ([1924] 1 KB 256.

<sup>2</sup> IBA Judicial Integrity Initiative – Survey

entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

In preparation of the questionnaire 2016 the presidency of the 1<sup>st</sup> Study Commission decided to

- a- identify possible aspects of the topic;
- b- examine already existing opinions, statements etc. on these aspects; and
- c- formulate questions regarding the different aspects (taking into account already existing opinions, statements, etc)
- d- Considering above-mentioned sources, discover how judicial corruption could be eliminated.

**a) Possible Aspects:**

1. What measures can be taken to safeguard transparency of court proceedings, selection of judges and administration of justice?
2. How political interference and bribery have appeared to be the most prevalent modes of corruption?
3. What is the role of the judicial appointment process on judicial corruption?
4. Where in the judicial process corruption is most likely to occur and in which types of cases, together with examples gathered from certain events?
5. What is the role of government in ensuring the existence of a truly clean and independent judiciary free of corruption?
6. How should judiciary or civil society react where the government or majority of politicians are manifestly corrupt?
7. What is the differences between those societies where the judiciary is trusted versus those where it is not?
8. What is the role of lawyers and intermediaries in corrupt transactions?
9. How to teach the importance of legal education to prevent jurists from engaging in corrupt practices
10. What kind of measures can be taken by international society, (judicial associations, institutions and government) when the majority of the state institutions have engaged in corrupt behaviour by abusing state resources and powers.

## b) Existing Documents (Reports, Articles, Bulletins)

- 1- International report Transparency International's Global Corruption Report 2007<sup>3</sup>
- 2- Judicial corruption fuels impunity, corrodes rule of law, says new Transparency<sup>4</sup>
- 3- Combating Corruption in Judicial Systems Advocacy Toolkit<sup>5</sup>
- 4- Independence And Impartiality Of Judges, Prosecutors And Lawyers<sup>6</sup>
- 5- Judicial Ethics: Exploring Misconduct and Accountability For Judges<sup>7</sup>.
- 6- Corruption And Anti-Corruption In The Justice System<sup>8</sup>
- 7- Innovative Anti-Corruption Reforms In The Judiciary<sup>9</sup>
- 8- United Nations Activities Against Corruption In The Judiciary, Prosecution And Law Enforcement Authorities<sup>10</sup>
- 9- IBA REPORTS: Minimum Standards of Judicial Independence, 1982; IBA Standards for the Independence of the Legal Profession, 1990; IBA statement of General Principles for Ethics of Lawyers; IBA Resolution on Non-Discrimination in Legal Practice; IBA paper Judicial Corruption Identification, Prevention and Cure of 14 April 2000<sup>11</sup>.
- 10- Opinion no. 3 (2002) of the Consultative Council of European Judges (CCJE) for the attention of the Committee of Ministers of the Council of Europe on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behavior and impartiality<sup>12</sup>
- 11- Opinion no.10 of the Consultative Council of European Judges (CCJE) <sup>13</sup>
- 12- Consultative Council of European Judges (CCJE) Magna Carta of Judges (2010)<sup>14</sup>
- 13- IAJ 1st SC Conclusion 2004: Rules for the ethical conduct of judges, their application and observance<sup>15</sup>
- 14- Prevention of Corruption in the Public Sector in Eastern Europe and Central Asia , OECD Anti-Corruption Network for Eastern Europe and Central Asia<sup>16</sup>.

## Relevant Legal Universal Instruments

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3 [https://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/TIglobalcorruptionreport07\\_complete\\_final\\_EN.pdf](https://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/TIglobalcorruptionreport07_complete_final_EN.pdf)

4 [http://www.transparency.org/news/pressrelease/20070523\\_judicial\\_corruption\\_fuels\\_impunity\\_corrodes\\_rule\\_of\\_law\\_says\\_report](http://www.transparency.org/news/pressrelease/20070523_judicial_corruption_fuels_impunity_corrodes_rule_of_law_says_report)

5 [http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/Judiciary\\_Advocacy\\_ToolKit.pdf](http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/Judiciary_Advocacy_ToolKit.pdf)

6 <http://www.ohchr.org/Documents/Publications/training9chapter4en.pdf>

7 <http://cjei.org/publications/mackay.html>

8 [http://www.kas.de/wf/doc/kas\\_22459-1522-1-30.pdf?110411094607](http://www.kas.de/wf/doc/kas_22459-1522-1-30.pdf?110411094607)

9 [http://www.transparency.org/files/content/corruptionqas/Innovative\\_anti-corruption\\_reforms\\_in\\_the\\_judiciary\\_2014.pdf](http://www.transparency.org/files/content/corruptionqas/Innovative_anti-corruption_reforms_in_the_judiciary_2014.pdf)

10 [http://www.unafei.or.jp/english/pdf/RS\\_No80/No80\\_28VE\\_Park.pdf](http://www.unafei.or.jp/english/pdf/RS_No80/No80_28VE_Park.pdf)

11 <http://www.ibanet.org/>

12 [https://wcd.coe.int/wcd/ViewDoc.jsp?Ref=CCJE\(2002\)OP3](https://wcd.coe.int/wcd/ViewDoc.jsp?Ref=CCJE(2002)OP3).

13 [https://wcd.coe.int/wcd/ViewDoc.jsp?Ref=CCJE\(2007\)OP10](https://wcd.coe.int/wcd/ViewDoc.jsp?Ref=CCJE(2007)OP10)

14 <https://wcd.coe.int/wcd/ViewDoc.jsp?id=1707925>

15 [http://www.iaj-uim.org/site/modules/mastop\\_publish/?tac=44](http://www.iaj-uim.org/site/modules/mastop_publish/?tac=44).

16 <http://www.oecd.org/corruption/acn/ACN-Prevention-Corruption-Report.pdf> ;  
<http://www.oecd.org/corruption/acn/>

- “The International Covenant on Civil and Political Rights”, 1966
- “Basic Principles on the Independence of the Judiciary”, 1985
- “Guidelines on the Role of Prosecutors”, 1990
- “Basic Principles on the Role of Lawyers”, 1990
- “United Nations Convention against Corruption”, 2003<sup>17</sup>
- “Mechanism for the Review of Implementation of the United Nations Convention against Corruption”<sup>18</sup>
- “Open-ended Workshop on International Cooperation Between Public International Organizations and States Parties” Vienna, 2009<sup>19</sup>
- “Strengthening Judicial Integrity Against Corruption ; Global Programme Against Corruption Conferences”; “United Nations Global Programme against Corruption, Centre for International Crime Prevention, Office for Drug Control and Crime Prevention”, Vienna, 2000<sup>20</sup>.
- “[Anti-Corruption Network Istanbul Action Plan](#)”<sup>21</sup>
- “[ACN Work Programme for 2013-2015](#)”<sup>22</sup>.

### **Regional Instruments**

- The African Charter on Human and Peoples’ Rights, 1981
- The American Convention on Human Rights, 1969
- The European Convention on Human Rights, 1950
- Council of Europe Recommendation No. R (94) 12 of the Committee of Ministers to Member States on the independence, efficiency and role of judges.

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17 <http://www.unodc.org/unodc/en/treaties/CAC/index.html>

18 <http://www.unodc.org/unodc/en/treaties/CAC/IRG.html>

19 <http://www.unodc.org/unodc/en/treaties/CAC/bribery-of-officials-of-public-international-organizations.html>

20 [https://www.unodc.org/documents/nigeria//publications/Otherpublications/Strengthening\\_Judicial\\_Integrity\\_Against\\_Corruption\\_2001.pdf](https://www.unodc.org/documents/nigeria//publications/Otherpublications/Strengthening_Judicial_Integrity_Against_Corruption_2001.pdf)

21 <http://www.oecd.org/corruption/acn/istanbulactionplan/>

22 [http://www.oecd.org/corruption/acn/ACNWorkProgramme2013-2015\\_EN.pdf](http://www.oecd.org/corruption/acn/ACNWorkProgramme2013-2015_EN.pdf)

## QUESTIONS

Could you please provide answers to these questions by **20 June 2016** for discussion by the First Study Commission at the next annual meeting of the IAJ:

1. What would you identify as best practice to safeguard transparency of
  - a) court proceedings
  - b) selection of judges
  - c) administration of the judiciary?Do you have experiences with such practices? Which?
2. What would you identify as best practice to support and promote integrity of judges? Do you have experiences with such practices? Which?
3. What would you identify as best practice to prevent corruption within the judiciary? Do you have experiences with such practices? Which?
4. What are the major threats, in your experience, to transparency and integrity and a non-corrupt judiciary? How are those threats best combatted?

Please send your answers – not later than **20 June 2016** – to the board of the First Study Commission: [first\\_sc@iaj-uim.org](mailto:first_sc@iaj-uim.org)