High Level Regional Workshop

# "Implementation Guide of Article 11 of the United Nations Convention against Corruption"

Amman, 1 July 2013

**Final Report**

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# Introduction

From 30 June to 1 July 2013 UNODC and UNDP, in cooperation with the Jordanian Anti-Corruption Commission (JACC) and the Arab Anti-Corruption and Integrity Network (ACINET), held in Amman, Jordan a high-Level Regional Workshop on Judicial Integrity. The workshop focused on two main objectives:

- First, to provide an opportunity for participants to discuss and analyze the chapters of the implementation guide and the evaluation framework of the application of Article 11 of the United Nations Convention against Corruption.
- Second, to learn how to use the Guide as a framework to assess the measures taken in the Arab region to promote integrity and to prevent opportunities for corruption among members of the judiciary and the prosecution services. This in turn will provide an opportunity to benefit from the experiences of the participants about the effectiveness of the measures that can be adopted for the purpose of promoting transparency, accountability and integrity in the judicial organizations.

The regional workshop provided participants an opportunity for exchanging information regarding the effective measures that can be taken to enhance the transparency, accountability and integrity of the judicial systems without prejudice to the principles of the independence and integrity of the judiciary.

Participants provided their comments and interventions on the Guide's usefulness in identifying potential gaps in the measures adopted by States in relation to judicial and prosecutorial integrity. In light of these comments, and drawing on some of the good practices identified during the discussions at the workshop, the draft tool will be amended and updated ahead of its finalization and then introduced it in the fourth meeting of the Open-ended Intergovernmental Working Group on Prevention, which will be held in Vienna in August 2013.

To activate discussions participants in the workshop were split into 6 groups for both the morning and afternoon sessions, with each group focusing on a specific issue of Judicial Integrity in the morning and Judicial Independence in the afternoon. Groups fed back their comments and interventions in plenary, followed by a general discussion on each sub-topic.

Below is a summary of the key comments provided by participants in the workshop in relation to the tool.

## a. Summary of the comments and interventions on the draft Implementation Guide

During the discussions on individual sub-topics participants identified a number of areas of the tool which they considered should be introduced or further enhanced. Major comments provided by participants in this regard included the following:

- Measures aimed at ensuring that judges have the ability to organise associations to support the implementation of codes of conduct should be addressed in the Guide;
- Measures that introduce an implementation framework to enforce and raise awareness of the content of codes of conduct, for example through specialised training sessions, should be addressed further in the Guide;
- Measures ensuring that it is the judiciary itself that is responsible for implementation of the code of conduct should be emphasised in the Guide;
- Translation of the document should be checked to ensure accuracy and consistency with the English version. ACINET and JACC indicated that they would be ready to review future drafts of the tool to ensure the accuracy of the translation;
- The Guide should reflect differences in capacities of States to use information technology to increase transparency in the court process;
- The Guide should address in more detail the different rules applicable in States regarding access to court documents and proceedings;
- Participants noted that much of the terminology in the Guide was derived from Anglo-Saxon legal systems and that there was perhaps an over-emphasis on common-law countries. This is something that should be addressed in the Guide going forward;
- Participants noted that the Guide did not presently address the issue of mechanisms for the implementation of judicial decisions. In some states, outside actors are used to implement the decisions of the judiciary (i.e. privately contracted bailiffs etc.) and such processes had undermined the ability of the judiciary to ensure that such implementation is subject to the same principles of integrity as the rest of the judicial proceedings;
- The importance of incorporating a specific section in the Guide on the application of codes of conduct to judges assistants and court staff in addition to the judges themselves;
- Participants considered that a specific section of the guide should emphasise the right of judges to have themselves heard in disciplinary proceedings and to appeal decisions made against them;
- Participants noted that the issue of specialised courts for the hearing of the criminal cases against members of the judiciary should be examined further in the Guide.

## b. Morning Session: Judicial Integrity

### Group 1: Judicial Code of Conduct

*Relevant measures and key issues identified*

At the start, discussions focused on the legal status of judicial codes conduct amongst countries in the region. There was diversity of practice in this regard with some countries having adopted a legally-binding codes of conducts, with associated disciplinary penalties while other countries adopted codes of conducts intended only to be of guidance to judges in carrying out their work, perhaps complimenting other legally-binding regulations (for example in relation to conflicts of interest).

It was agreed by group one that there was no "right answer" to the above issue and that the approach adopted by each State will be dependent on the specificities of their legal system.

Agreement was reached amongst members of the group on the need for States to focus their efforts on the following areas:

- Raising awareness amongst members of the judiciary regarding the existence and content of judicial codes of conduct.
- Developing practical and effective regulations and mechanisms with regard to the prevention of conflicts of interest
- Establishing clear rules with regard to the receipt of gifts by members of the judiciary
- Putting in place systems and relevant legislation to ensure that judge do not breach any duties of confidentiality when carrying out their official functions.

*Challenges*

Key challenges identified by Group 1 with regard to ensuring the integrity of the judiciary included:

- The poor financial situation of many judges and the administrative staff of the judicial organizations, due to low levels of remuneration ; in addition to the devaluation of the budgets allocated to the judicial organizations.
- Political influence from the executive;
- Internal influence from inside the judicial system, for example from more senior members of the judiciary;
- An overly-pronounced role of the executive authority in the work of the judiciary.

*Missing elements of evaluative framework*

Important areas which Group 1 felt were not covered, or not covered in enough detail, by the current draft included the following:

- Measures aimed at ensuring that the judges have the ability to organise associations to support the implementation of codes of conduct
- Measures that introduce an implementation framework to enforce and raise awareness of the content of codes of conduct, for example through specialised training sessions. Participants in this group felt that often codes of conduct were introduced as an answer to the issue of judicial integrity but with little attention paid to how they would be applied in practice.
- Measures ensuring that it is the judiciary itself that is responsible for implementation of the code of conduct. This was the case in Palestine, for example, but not in all countries. Participants in Group 1 felt that having a body composed of members of the judiciary to enforce judicial codes of conduct represented a best practice given their knowledge of judicial work and the fact that their role would not compromise the independence of the judiciary.

## Group 2: Training of Judges and Court Administration

*Relevant measures and key issues identified*

Group 2 focused on key measures and recommendations as regards the training of members of the judiciary and court administration. In this regard, specific recommendations made by the Group included:

- The criteria applicable to those seeking judicial office should must fit with the nature of judicial work.
- Initial training by members of the judiciary should be provided by specialised institutions.
- Training should not be confined only to the beginning of a judicial career but should be supplemented with consistent training throughout their career through seminars and workshops.
- It is important to reconcile between the professional obligations of the judge and the imposition of training requirements.
- Training should, where possible, be consistent with the specialised area of work that judge is concerned with.
- Overall responsibility for judicial training programmes should be assigned to the head of the court in each country, although they should be supported by specialised training officers in this regard.

## Group 3: Access to Justice and Transparency

*Relevant measures and key issues identified*

Group 3 identified, as their key recommendation in enhancing access to justice and transparency in the court process, that working procedures of the court need to be announced and communicated to the public so that court users understand them clearly.

*Challenges*

Challenges identified Group 3 with regard to enhancing access to justice and increasing transparency in the court process included two broad categories:

- Legal challenges – In this regard it was noted by Group 3 that some of the measures that States may wish to take to enhance access to justice and transparency may in fact run contrary to existing legislation in those countries. As an example, the Group noted that there are prohibitions in some countries on the ability of the public or the media to attend the trial. And recommended that such prohibitions and restrictions would have to be lifted as part of legislative changes introduced by States in this area.

- Financial challenges – Here Group 3 made reference to the possible financial challenges of court users meaning that they may not have the resources to bring a case and benefit from legal representation. To address this problem, Group 3 emphasised the importance of effective legal aid programs in order that legal representation can be provided to those that cannot afford it.

Broader comments were made by Group 3 regarding the translation of the document. In relation to some sections it had been necessary for participants to refer back to the English version of the document in order to understand the text.

*Missing elements of evaluative framework*

Group 3 identified the following areas or issues that they felt were not presently addressed, or not addressed in enough detail, in the Implementation Guide:

- Differences in capacities of States in using information technology for litigation purposes by providing access to courts etc.
- Differences between rules regarding the access to court documents and proceedings

## Group 4: Conflicts of Interest and Asset Declarations

*Relevant measures and key issues identified*

With regard to conflicts of interest and asset declarations, Group 4 noted the following key measures that had been adopted by countries represented in their group:

- Adopting clear rules specifying from whom judges should not accept gifts and specifying at what monetary value judges should be required to disclose any gifts received.
- Measures aimed at reducing the politicisation of the judiciary.

*Challenges*

Key challenges identified by Group 4 with regard to judicial integrity more broadly included:

- Lack of security for members of the judiciary and in the country more broadly in some cases.
- Intervention from politicians and members of other branches of government in the judiciary.
- Lack of training amongst members of the judiciary both generally with regard to the exercise of their duties and specifically in relation to the issue of ethics and conflicts of interest.
- Absence of effective mechanisms to validate and monitor asset declarations with a view to increasing their value in promoting integrity and curbing corruption should it arise.

## Group 5: Case Assignment and Management

*Relevant measures and key issues identified*

Group 5 noted that the issue of case assignment and management was a crucial issue of importance related to the judicial integrity. In relation to this topic Group 5 noted the following:

- To assist in the Assignment of cases the majority of States in the region had developed a guide or internal regulations governing the referral and distribution of cases to members of the judiciary.
- The allocation and referral of cases need to be conducted through pre-defined arrangements that are transparent and provided for by the law. Guidance should be developed for court staff and the judiciary outlining the practical procedures for case referral and allocation in more detail, particularly looking at the actual mechanisms that can be used for distribution.
- Procedures should be developed to for the removal of judges from certain cases in certain circumstances, for example where a potential or actual conflict of interest has been identified.

- And such procedures for the reallocation referral of cases need to be strictly defined and should only apply in exceptional circumstances.
- Suggested methods of ensuring that the case allocation system enhances the integrity of the judicial system included the allocation of cases on a purely chronological or alphabetical basis or the use of some form of encrypted distribution meaning that the judge would not know which case he has been allocated until he actually opens the file of the case.

Group 5 also provided some broader comments on Article 11 itself, noting that there may be a terminology problem in the Arabic version of the Convention. There were some concerns that a distinction had not been clearly drawn between the concepts of judicial apparatus and judicial authority. Furthermore, the Group noted the difference between the concepts of independence and autonomy which are also not reflected in the wording of the Convention.

### Group 6: Courtroom Management and Procedures

*Relevant measures and key issues identified*

In relation to courtroom management and procedures Group 6 noted the following key measures identified by members of the group:

- The laws of all Arab countries call for the recording of court proceedings in some way, this assists in achieving court transparency and in ensuring the integrity of the court process.
- The measures for carrying out this recording differs from State to State, with many countries still using hand written notes as the main method of recording the content of proceedings. Concerns were raised however that sometimes this method of recording may not be totally accurate.
- Consequently, the Group made a recommendation for the increased use of audio-visual equipment in the recording of court proceedings.
- Specific measures need to be adopted by States with regard to the time periods that recordings of court proceedings will be maintained and preserved. In many countries there is a certain time frame for preserving the recordings. Here though the Group considered it important to distinguish between maintenance of electronic and written documents. Different rules will apply depending on the format and method of the recording.
- Continuing this point, the Group considered that it was good practice to have specific rules in place regarding preservation of electronic records.
- All court recordings should be stored somewhere away from the court in order to protect them. The Group gave an example in which all records of the court had been destroyed in Tunisia while they were held at the court itself.

- Litigants should have the opportunity to review and suggest amendments to the record taken by court officials (minutes of trials), this would help significantly in enhancing transparency in the court process.

## Plenary Discussions

Following the comments made by individual groups as outlined above, Nihal Jayawickrama provided further comments regarding the international framework on enhancing judicial integrity and how they relate to the issues raised by participants. As regards the legal status of codes of conduct, discussed in detail by Group 1, Mr Jayawickrama noted that when the Bangalore Principles were being drafted there was a difference of opinion as to what the legal status of such codes should be. As noted by Group 1, some jurisdictions considered that codes of conduct should be a legally binding document and others thought they should merely be aspirational standards.

Finally during the drafting process it had been agreed that this was a matter that was specific to the national legal system of each State and should be left to individual countries as to the approach they wished to take. The Bangalore Principles (BPs) are aspirational standards which need to be implemented in domestic legislation but which would not be actionable in and of themselves.

Mr Jayawickrama also emphasised that, reflecting the comments of a number of groups, codes of conduct by themselves are not sufficient. Mechanisms need to be in place to help implement the code, including some kind of advisory service. In addition, States should ensure that another body, a review committee, is in place to which any person can make a complaint regarding alleged unethical conduct on the part of a judge. Both of these mechanisms, the advisory service and the review committee are already discussed in the draft guide but further detail will be added.

As regards the recording of court proceedings, Mr Jayawickrama noted that many different methods of recording existed and the method chosen would often depend on financial situation of each country. This issue will also be clarified further in the implementation guide. Finally, Mr Jayawickrama noted that one of principal sources of BPs had in fact been the writings of Islamic jurists and that in developing the principles it had been demonstrated how relevant the scholastic writings of Islamic law are to contemporary society.

Workshop participants then provided some additional comments in plenary in relation to the issue of judicial integrity and more specifically in relation to the Implementation Guide:

- Participants noted that a lot of the terminology in the Guide derived from anglo-saxon legal systems and that there was perhaps an over-emphasis on common-law systems. This is something that should be addressed going forward.
- Again the issue of the legal status of judicial codes of conduct was raised with one participant noting that most Arab judicial systems do have provisions stating that the judge must respect the ethics and behaviours of the profession but such obligations are usually formulated in very general terms.
- A participant from Yemen noted that a new code of conduct had recently been brought into force by edict of the Judiciary Council. Where a violation of this code occurs, disciplinary procedures will be brought. The participant noted that the judicial code of conduct in Yemen was legally binding on members of the judiciary, in addition to providing more general ethical guidance.
- In relation to public access to court proceedings it was noted that some countries had constitutional provisions guaranteeing such access to both members of the public and the media.
- One of the participants noted that it was important to recognise and change the mind-set of superiority held by some members of the judiciary which sometimes prevented them from carrying out their work honestly and diligently.
- In anticipation of the afternoon session a number of participants emphasised the importance of the independence of the judiciary as a precondition for the achievement of integrity.
- It was noted that the challenges faced by the judiciary are specific to each country and that ideally it would have been useful to have a working paper presented by each country in relation to these challenges.
- It was recognised that given the diversity of practice in different legal systems, it was difficult for the Guide to be drafted in a way that is relevant to individual countries.
- As regards the previous comments relating to existing translation errors in the text, ACINET and the JACC indicated that they would be ready to review future drafts of the tool to ensure the accuracy of the translation.

## c. Afternoon Session: Independence of the Judiciary

### Group 1: Constitutional Guarantees of Independence

*Relevant measures and key issues identified*

Group 1 noted the following key guarantees that should be provided for in the constitutional framework of States:

- The judiciary should be established as an independent authority, separate from the executive and the legislature.
- Judges themselves, as individuals should also have their independence guaranteed, they should not be subject to other authorities, just the law.
- A Judicial Council, or similar body, should be established that oversees the work of members of the judiciary.

Participants noted that it was a controversial issue as to whether special or court procedures should be established to deal with disciplinary or criminal procedures brought against members of the judiciary. Participants also raised the positive value that civil society can play in terms of helping to safeguard, and advocate for, the principle of independence.

*Challenges*

A key challenge identified by Group 1 was ensuring the independence of the Prosecution from the executive authorities. It was noted that this can be a problem in some jurisdictions where the executive may have some form of supervisory role over the work of the prosecution services.

*Missing elements of evaluative framework*

Group 1 noted that the Guide did not presently address the issue of mechanisms for the implementation of judicial decisions. It was noted in this regard that, in some states, outside actors are used to implement the decisions of the judiciary (i.e. privately contracted bailiffs etc.) and that such processes had undermined the ability of the judiciary to oversee the implementation of their own decisions, with a knock-on impact on their ability to ensure that such implementation is subject to the same principles of integrity as the rest of the judicial proceedings. This was an area that participants felt should also be covered in the Guide.

## Group 2: Budget of the Judiciary

Group 2 noted that the budget of the judiciary should be independent from control of other government authorities. Furthermore, specific items of the budget should be based on plans that ensure the integrity of the judiciary and allow them to carry out their functions properly. Items in the budget should be decided by the judges themselves and the legislature should automatically approve without infringing on the position of the judiciary.

Discussions then arose in plenary regarding the role that the legislature should take in considering and approving the financial budget for the judiciary. While the majority considered that the starting point should be that the judiciary decides its own budget, there was recognition that the legislature should play some form of supervisory role in order to have some form of democratic accountability on judicial expenditures.

## Group 3: Appointment and Promotion of Judges

Group 3 noted that States had, or should, implement measures which:

- Emphasise the principle of non-bias.
- Prohibit nominated judges from remaining in positions in political parties.
- Emphasise the need for gender equality in holding the judicial posts.
- Introduce some kind of competition in the process of appointment of judges.
- Involve civil society in the process of overseeing the appointment of members of the judiciary. This has been discussed particularly in Tunisia where the role of civil society organisations has now been confirmed in the constitution.

*Challenges*

While recognising the role that civil society plays in some countries in the Arab region in the nomination and confirmation of judges, it was also recognised by some participants that this was often a difficult measure to implement where CSOs may not have the technical knowledge to take part in the process or in deciding which specific organisations are competent to represent civil society for the purposes of this process.

*Missing elements of evaluative framework*

One participant indicated that it is necessary to introduce some psychological tests for those nominated to be recruited as judges in order to understand their personality, how they present themselves, whether they are logical etc. According to them this should also be included in the Guide.

## Group 4: Tenure and Remuneration of Judges

*Relevant measures and key issues identified*

As their key recommendation, Group 4 noted that an independent judiciary cannot be achieved unless there is an independent committee that determines the remuneration of judges and related expenditures.

*Challenges*

The challenges identified by Group 4 included:

- Lack of vacancies for promotion to higher courts
- Financial challenges for example in the funding of training and the remuneration of judges

## Group 5: Discipline and Removal of Judges

*Relevant measures and key issues identified*

In relation to the issue of discipline and removal of judges Group 5 made the following observations:

- Some participants stated that there should be both a role for the executive and for the judiciary on the Judicial Council, the institution that would be primarily responsible for disciplining members of the judiciary.
- In some countries it was indicated that there were a number of cases in which judges had been dismissed with no reasons given as to why.
- It is essential that there are unified standards for the application of disciplinary mechanisms and that these are applied consistently. This is not always the case.
- It is also essential that judges have the right to review and address the case file where they have disciplinary proceedings brought against them. In some countries in the region this is not the case and legislative changes should be introduced to provide this right.
- Judicial Councils should work to eradicate any inconsistencies in the ways that they treat individual members of the judiciary. In some countries it was noted that where an individual was particularly close to the members of the Judicial Council this could result in him receiving more preferential treatment.

*Missing elements of evaluative framework*

- Judges should also be given the right to have themselves heard in proceedings and to appeal the decision made against them. Participants specifically asked that this be emphasised in the Implementation Guide.

## Group 6: Limited Immunity of Judges

*Relevant measures and key issues identified*

In relation to the issue of immunity of judges Group 6 made the following observations:

- In many countries in the region the Judge is will be held responsible for the criminal actions that he conducts however the proceedings taken against him usually take place after immunity is lifted by the judicial council.
- In some countries in the region there are special courts that are formed for the hearing of criminal cases against members of the judiciary.

- Individual countries discussed their own experiences of corruption in the judiciary with one noting that prosecutions of members of the judiciary has been rare in the past five years but is usually related to corruption, fraud or negligence of duty.
- In one country 30 out of 500 working judges have been accused of corruption, with 15 of them facing some form of disciplinary proceeding as a result.

### Plenary Session

The chair of the session highlighted some of the key points of the group discussions. Specifically:

- The issue regarding specialised courts for the hearing of criminal cases against members of the judiciary should be examined further in the Guide.
- The judiciary itself must have a role in setting the budget for the judiciary but under democratic supervision of the legislature.
- Affirmed that we should remove all discrimination in the judiciary.
- Emphasised that it was necessary for countries to provide a mechanism for a judge to appeal to a different entity from that which imposed the original disciplinary penalty, to a higher level. In Lebanon there is a higher judicial entity that considers decisions of the judicial council.
- The judiciary should be willing to accept and discuss criticisms aimed at them by the public.

## d. Final session: Summary of the Day

The participants finished with presentations from a number of experts and a final plenary discussion. Some of the key points raised included:

- The diverse nature of the participants in the workshop, which did not only include judges, but also other anti-corruption officials and independent experts added great value to the discussions.
- Measures should be taken to prevent the executive from interfering in the judiciary
- As regards the budget of the judiciary – emphasis the need to have a separate budget for the judiciary can meet their basic needs in order to reduce the executive great power over the judiciary. Therefore there should be a separate budget for the judiciary that is sufficient for them to be able to carry out their function effectively.
- In relation to recruiting and promoting judges participants emphasized the need to maintain the guarantees provided to judges when that have been recruited.
- Immunity for judges should be guaranteed under the constitution.
- Integrity is not a matter of action but is a general climate that should be developed among judges.

- More and more states are approving codes of conduct but there is a significant debate over whether they should be legally binding or not.
- Where codes of conduct have been introduced, emphasis should be placed on raising awareness amongst members of the judiciary of the content of codes of conduct through training.
- Judges were previously reluctant to go training are now becoming more open to the idea.
- Participants welcomed the readiness expressed by ACINET and UNDP to support pilot implementation of the Guide once completed and adopted by the States Parties.

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