A Guide to Rapid Assessment and Policy-making for the Control of Corruption in Latin American Justice Systems

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PROLOGUE

This guide is intended as a tool for the rapid assessment of judicial corruption and the development of reform proposals. It begins by introducing concepts associated with corruption in general and proposes a definition that can be used for the study of judicial corruption in particular. This is followed by an introduction to assessment and analytical methods and a proposed model that may be applied across the continent. Finally, several specific experiences illustrate successes and failures that will be helpful when considering reform initiatives.

The guide is divided into three sections, each of which is subdivided into several points. **Section A** includes a discussion of definitions and concepts and a proposed operative definition of judicial corruption. Beyond semantics, this definition is critical when applying a particular methodology to the evaluation of judicial corruption or when developing policies and programs to prevent and combat it.

Section B is centered on research and assessment tools for judicial corruption. After providing some background and a description of relevant experiences in research and assessment, a method for assessing judicial corruption in Latin America is introduced. Public officials can use this method to identify the main corruption problems facing their countries, the institutional conditions that contribute to them, potential reform areas, and measures that might be implemented. The research method described here includes a data collection instrument, a matrix for organizing the data, and guides for consolidating and synthesizing it critically so that it can be used to assess judicial corruption and propose courses of action to control it.

Section C offers policy recommendations for the control of judicial corruption. Each one is illustrated with comparative experiences, some of which might be considered "good practices" while others fell short of achieving their aims. This is not an exhaustive list of practical experiences, but rather an effort to point out some possible paths and lessons learned.

This guide was written by Hernan Charosky, part-time consultant at the Due Process of Law Foundation during 2006. It was edited by DPLF's Executive Director Eduardo Bertoni, Programs Director Katya Salazar, and Judicial Accountability and Transparency Program Coordinator Montserrat Solano Carboni. The original document was written in Spanish and translated by Gretta Siebentritt. DPLF would like to thank the comments and advice received from Alejandro Alvarez, Justice and Security Sector Reform Adviser, SURF for Latin America and the Caribbean, United Nations Development Programme. Finally, DPLF would like to thank UNDP for their support in this project.

Section A Corruption: concepts and applications

WHAT WILL WE ASSESS? OUR APPROACH TO JUDICIAL CORRUPTION

What do we want to obtain from this assessment? We want to know whether judicial corruption is present and if so, in what form. We want to acquire a well-documented image of the state of judicial corruption and control in a given country, whether in the judicial system as a whole or in a particular area, such as a region, jurisdictional level (instance), or jurisdictional venue (forum). This image will have to remain at the hypothetical level, since due to the inherently complicated and elusive nature of data on corruption, indirect approaches and data triangulation methods will be required.

Why do we want to develop this image? Corruption in judicial systems threatens the rule of law insofar as the former is the ultimate guarantor of the latter. Lack of judicial independence is a serious problem for any democracy. Corruption is a concrete expression of this in which universal legal standards are replaced by particularized criteria, which we will discuss in more detail below. It is not enough to simply contemplate the severity of the threat, however. We must obtain evidence with which to ascertain the magnitude and nature of the problem and identify tools to address it. This evidence will enable us to pinpoint problems and design strategies to deal with them.

Why a "rapid" assessment? Because we require a tool capable of eliciting reliable evidence in a short time frame and on a limited budget. As discussed below, there are other ambitious and interesting approaches to judicial corruption, yet they frequently require budgets and time frames that may not be feasible for policy-makers. Our proposal, therefore, involves a combination of research methods that can be used by a small team to produce enough evidence to place the issue on the public agenda and articulate appropriate, realistic proposals. Because this evaluation is rapid, it can be repeated over time; in this way, the baseline values obtained in the first assessment can be compared to those obtained in subsequent data collection processes. These studies in turn can contribute to research projects with more resources and a broader scope.

Investigating corruption is always a challenge. The knowledge available is often partial and only rarely do we achieve a complete vision of the issue. Metaphorically speaking, we are trying to assemble a puzzle, yet have no picture to guide us. To complicate matters, there are pieces missing, and we are not sure whether the pieces we have actually belong to our puzzle. That said, we do have a certain intuition about what that final picture looks like, and we know that other people and information sources are available to help us select and assemble the correct pieces in order to approximate the completed puzzle.

The final image will include two aspects. The first is the level and type of corruption present in the administration of justice system. As with all unrecorded crimes, this image will be largely hypothetical. The other aspect has to do with the consistency and capacity of entities responsible for controlling corruption through investigations, sanctions, and other means. In the latter case, we will be able to obtain a more complete and reliable image, while in the former, we will have to fill in the gaps and round out patterns through the triangulation of sources.

Data triangulation is a core component of this proposed method. It involves comparing and corroborating data from several different sources. As we shall see later on, we will shape our image of the levels and types of corruption after comparing and contrasting the opinions of experts and users of the system, the corruption investigation files of judicial and control organs, and press reports.

It is likely that some of these sources will not be available. It will probably be difficult to access the files of disciplinary or control organs, and some interview candidates may be unwilling to offer their points of view. This should not be a barrier to pursuing the research. While the study may be less complete, these types of difficulties are, in and of themselves, reflections of the reality and they will inform the description of the state of a particular judicial system.

We will take several steps as we begin to gather and assemble the puzzle pieces. We will outline a plan (Figure 1, p. 23) that reflects the overall vision of our research. Based on this plan, we will develop detailed, specific questions applicable to different sources (data collection instrument, see Appendix 1). Once the data has been collected, we will take a step back to acquire a more general vision. We will then organize the information obtained from each source from a somewhat broader perspective (Matrixes 1 and 2, pp. 30 to 36). Finally, we will take one more step to broaden our perspective as we subsume the source-specific questions into more general ones on corruption and controls.

Rapid assessment is a tool that enables us to develop an image of the presence and types of judicial corruption and of the control organs. It will enable us to identify needed reforms. To this end, we will gather data from various sources: interviews with government officials, system users and experts, press reports, files, surveys, and so forth. Our method will be based on comparing and interpreting areas of agreement and discrepancies among these sources.

THE CONCEPT OF CORRUPTION: DIFFERENT VERSIONS AND APPLICATIONS

The research and debate usually involve a discussion of how corruption is understood in an effort to find an effective formula to define it and an approach through which to observe it. Our intention here is not to produce "the" definition, but rather to understand that different interpretations have different applications. We must therefore identify the most useful elements for our assessment and reform policy proposals.

Robert Klitgaard (1994), perhaps the classic theorist and researcher in corruption studies, coined the following famous formula to define corruption: Corruption = Monopoly + Discretion – Accountability. Hence, when a public official (or a particular point in an administrative structure) has sole decision-making authority that is not shared with other entities (monopoly), when decisions are not subject *de jure* or *de facto* to clearly articulated conditions or requirements (+ discretion), and when the process is not visible to other administrative units or to the public (- accountability), the conditions are ideal for acts of corruption to occur.

Klitgaard's proposal raises key questions for research on corruption in a particular public administration agency; for example: are final decisions made there? Are those decisions subject to any type of requirement or conditionality? Which norms set forth the requirements? What other area or process is responsible for overseeing compliance with the requirements or conditions? Is information on the decision-making process accessible to other administrative areas, other branches of government, the press, or the public?

We must still address the concept of corruption from the standpoint of its content, that is, that which actually constitute "corruption." There are many legal definitions associated directly or indirectly with corrupt behaviors. Criminal codes usually include chapters or articles on general misconduct by public officials, such as bribery, and by judicial officials in particular, such as the crime of malfeasance in office. International instruments such as the Inter-American Convention against Corruption,[1] the United Nations Convention against Corruption,[2] and the Convention against Transnational Bribery of the

[1] http://www.oas.org/juridico/spanish/Tratados/b-58.html
[2] http://www.unodc.org/pdf/crime/convention_corruption/signing/Convention-s.pdf

Organization for Economic Cooperation and Development (OECD),[3] define these types of acts with a precision akin to that of criminal codes, occasionally adding new elements to existing conducts or adding other punishable acts. These definitions of corrupt practices are useful for studies such as the one proposed here, because they provide a catalog in which to situate the types of conduct that we come across in our assessment. This catalog can serve as a yardstick for case selection and constitutes a set of legal standards that establishes what constitutes corruption from the standpoint of a country or the international community.

In addition to the body of legal standards that circumscribe the definition of corruption, we will require a conceptual tool that can be used to designate corrupt acts in a general sense. In a way, this should constitute the underpinnings for corruption laws: that which the laws are designed to prevent and punish. This level of specificity is necessary to interpret the laws, define situations that may be ambiguous from the legal standpoint, and evaluate whether the laws are exhaustive. The latter refers to the extent to which they effectively regulate the universe of behaviors that could pose a threat to the transparent functioning of the administration of justice.

One widely recognized definition of corruption is any act involving the misuse of public power for private benefit. Transparency International and the World Bank, for example, use this definition. One of its advantages is that it allows us to imagine all sorts of benefits in addition to monetary ones. It is also flexible in terms of the type of behavior through which the corrupt agent obtained the private benefit. The misconduct, then, may entail an act or an omission; it may relate to the violation of a duty or the failure to fulfill a duty.

Various authors have proposed elements to enrich and broaden this definition conceptually. According to Vito Tanzi (1995), the priority assigned to the principle of impartiality in a given context is a core variable for predicting and understanding corruption. Therefore, when the principle of impartiality is central to the laws and values governing public administration, there is less room for corruption to flourish.

Susan Rose-Ackerman (1999) takes this definition and adds other elements to increase its research potential. Similar to Tanzi, she is interested in how each country draws the line between the public and the private spheres, between a society's common aims and individual objectives (especially with regard to public officials). If these elements are included in the definition of corruption, then the way in which local administrations and societies define them is relevant to the research. The institutional and social processes that determine the norms and practices in a particular society draw the line between the public interest and the private, and therefore, become part of the definition of corruption.

Michael Johnston (2005), for his part, proposes moving from a definition of particular conducts to one of systemic corruption. According to this definition, problems of systemic corruption affect the relationship between wealth and power in a way that debilitates democratic participation and political institutions. This definition is also very useful insofar as the judiciary deals directly with the public and is one of the main venues for public participation in institutions. Specifically, where the rule of law exists, the judiciary offers citizens the opportunity to demand equal treatment before the law. Judicial corruption, then, has a particularly onerous impact on citizen participation and the distribution of power.

As we will see later on, this assessment combines different perspectives in order to strengthen our research potential. We shall therefore attempt to develop an *operative concept* of judicial corruption that will lend clarity to the selection of relevant cases and conducts. At the same time, it is important to take into account *working concepts* of corruption, meaning those actually used by operators and users of the judicial system to define and describe corruption

[3] http://www.oecd.org/dataoecd/41/25/2031472.pdf

The definition and study of corruption is a complicated and often controversial undertaking. There are several definitions in circulation. The main elements found in the different approaches to corruption include: the way public administration is organized, the boundaries drawn between the public and the private, and the nature of relationships between political and economic institutions.

HOW DO WE INVESTIGATE CORRUPTION IN THE JUDICIAL FIELD?

AN OPERATIVE CONCEPT OF CORRUPTION FOR RESEARCH ON THE JUDICIARY

WHAT IS OUR UNDERSTANDING OF CORRUPTION FOR THE PURPOSES OF THIS RESEARCH? AN OPERATIVE DEFINITION?

Corruption is a broad and controversial concept involving diverse definitions and perspectives. From the standpoint of evidence and criminal statistics, it is an unrecorded crime that leaves no tangible traces through which to measure its presence. To the contrary, a corruption scheme only becomes apparent when it breaks down. Therefore, while difficult to define conceptually, it is harder still to confirm in practice. With this in mind, and for the purposes of this guide, we will choose an approach that reduces the problems of definition and documentation to a minimum.

Our operative definition of corruption will not excessively restrict our ability to identify the phenomenon, yet will afford us the precision required by research in the specific context of the adjudicatory function. In principle, we will identify as acts of corruption those in which the conduct of a judicial official or employee violates the principle of impartiality in the judicial proceeding in order to obtain an illegitimate benefit for one of the parties or for him or herself.[4] We shall see throughout the research process that many situations are ambiguous with regard to this definition. The important thing is to avoid imposing dogmatic limitations and to use it to the extent that it is helpful, making exceptions or including other types of conduct as necessary, accompanied by cogent arguments as to the need for the inclusion.

This approach has at least two advantages. The first is that it enables us to look at a wide range of phenomena using an instrument that is precise enough to make distinctions and to justify our research decisions. Second, and no less important, is that corruption is defined in a wide variety of ways on the ground. The experts are not the only ones with varying opinions on what corruption really is. The definition can vary among individuals, professional fields, countries, and cultures. A less restrictive definition, therefore, allows us to be open to the ways in which justice system operators and users understand corruption. This input is very important for our assessment as it enables us to adapt to the culture, customs, limits, and tolerance of the phenomenon in each case. As an example, let us look at the practice in which judges receive one party when the other is not present. In some countries this would be viewed as reprehensible or potentially corrupt behavior,

[4] This definition may raise questions as to its application in different areas of the judicial system. While it may be intuitively obvious how it applies to the role of judges and their assistants, it is less clear with regard to prosecutors and public defenders offices, for instance. Impartiality in these cases is not the same as the "equidistance" that a judge must maintain. While the focus of this guide is the adjudicatory function, in other words, judges and the officials who work with them, some adjustments will be required to apply it to the other functions mentioned. Probably the conceptual adjustment will involve interpreting impartiality not as equidistance from the parties (which is impossible for prosecutors and defenders) but rather adherence to the mission and the interests entrusted to them.

while in other countries it might be a common practice that is not questioned. In still others, it might represent a traditionally acceptable type of behavior that has begun to be questioned as corruption cases have emerged.

The Inter-American Convention against Corruption (Article 6) and the United Nations Convention against Corruption (Articles 15 – 20, 23-25) are useful as points of reference, although they should not be regarded as finite catalogs. These articles describe acts of corruption by a public official from any area of public administration, including the judiciary. Most of these acts are also found in domestic criminal codes. They will serve as a reference for behaviors that we can definitely consider acts of corruption, while not excluding others to which our criteria might also apply.

Our operative definition applies specifically to the adjudicatory function. We are not seeking a dogmatic or rigid definition but rather a tool that can be adapted to different situations.

In principle, we will identify acts of corruption as those in which the behavior of a judicial official or employee violates the principle of impartiality in the judicial proceeding in order to obtain an illegitimate benefit for one of the parties and/or for him or herself.

¿WHERE IS JUDICIAL CORRUPTION FOUND? THE OBSERVATIONAL PERSPECTIVE

The other issue to address is the observational perspective. We can document judicial corruption from at least two vantage points; our research can focus on: 1) perceptions and 2) the functioning of control mechanisms and their weak points.[5]

First, we encounter perceptions about the degree of corruption in a particular judicial system. These perceptions may be backed by documented sources or they may be subjective. Documented sources will refer to those contained in a record that is subject to some sort of scrutiny and even debate. This is not to say that such records are "true" or neutral, but rather that exposing perceptions to a procedure or to public debate differentiates them from individual private opinions.

Documented sources include judicial and disciplinary files in which acts of corruption are investigated and sometimes punished. This category also includes journalistic investigations, since journalists adhere to their own research protocols and their conclusions are subject to public debate. In this category we can also include research by academics and experts in the field who publish papers that are discussed among social scientists, jurists, or policy-makers for the judiciary. The reports issued by the Committee of Experts of the Follow-up Mechanism for Implementation of the Inter-American Convention against Corruption are another example of expert publications that are subject to public debate.[6]

Sources that we will consider "subjective" include individual experiences and opinions. In the case at hand, we are interested in public opinion as expressed in surveys, especially the opinions of judicial system operators and users. Opinion polls present these perceptions as averages, whether among the general population or specific groups (lawyers, businesspeople, residents of a particular city, etc.) Researchers also study perceptions firsthand through interviews. The subjective nature of these sources does not mean that they are of lesser value, but rather that they must be placed in context and held up for comparison in order to discern their meaning. Areas and levels of consistency or divergence among different opinions and experiences can be very revealing and should be examined and interpreted in the course of the research.

[5] In the broadest sense, perceptions include concrete experiences with corruption. For the purposes herein, our understanding of perceptions includes whether corruption is present and the way in which specific cases are processed, in the opinion of a particular individual based on his or her own experience, knowledge of the experiences of others, or understanding from what we refer to below as documentational sources.
[6] http://www.oas.org/juridico/spanish/mesicic_docs_sp.htm

This study is not intended as a comprehensive assessment of justice systems nor does it rely on assumptions as to the reasons for corruption, where it exists. The sources will certainly allude to the most frequent causes of corruption in general, and judicial corruption in particular, (for example, procedures for appointing officials, salaries, the influence of other branches of government, procedural efficiency, access to information) and the researcher will have to interpret these elements. They will not, however, be treated as independent variables that account for the presence and types of corruption in the context of a hypothesis to be proved. Instead, the research will collect data that ultimately will lead to hypotheses in which such variables emerge as possible causal or conditioning factors. They are not a point of departure, but rather an endpoint.

This guide is proposed as a tool for exploring the particular reality of each country. Therefore, when evaluating the phenomenon of corruption and the factors associated with its presence, we are interested in determining which variables are the most relevant. This will be the outcome of the research and not a prior assumption. If the mechanism to select judges, their salaries, access to information, or the quality of procedural norms, to give only a few examples, turn out to be variables of greater or lesser relevance, that is something that we need to discover, not assume. Only after we have developed hypotheses as to which of these aspects carry the most weight can we delve more deeply into each one and observe the degree to which changes in these variables lead to changes in the levels and types of judicial corruption.

When evaluating the functioning of control organs, in contrast, it is easier to pose certain variables at the outset and observe how they behave. The phenomenon of corruption is intrinsically elusive and covert; research projects must therefore define a field of study that is bound to be somewhat arbitrary. Control organs and agencies are concrete entities with predefined norms whose performance is manifest in the public sphere. For this reason it is possible to make a prior determination of some of the variables that influence their performance.

Research on control mechanisms examines the degree to which prevailing conditions make it impossible to prevent, detect or punish corrupt acts. This approach is similar to an *audit* that measures institutional capacity and resources as a form of oversight of judicial processes. It encompasses the existence and functions of specialized control organs, the legal powers vested in them, and their material and human resources, among other aspects.

As shown below, this proposal combines and creates an interaction between perceptions derived from documented and subjective sources and the "control environment" comprising the mechanisms and procedures in place to detect incongruities and irregularities. The combination should allow us to formulate more lucid and generalizable hypotheses. The more actual cases are compared with opinions—and both are examined within their institutional context—the greater the opportunity to understand and weigh existing forms of corruption, the conditions in which they occur, and the means to control them.

> We will observe the phenomenon of corruption from a combination of two vantage points. The first entails an examination of case records and perceptions of corruption: the experiences and perceptions gleaned from interviews, press reports, and files. In this case, the idea is to determine whether judicial corruption is present and, if so, in what forms. The second looks at control organs and agencies. Here the idea is to ascertain the degree to which the responsible institutions are equipped to prevent, detect, and punish acts of corruption.

SECTION B Experiences in research, assessments, and empirical analysis of judicial corruption

CONCEPTUAL AND EMPIRICAL APPROACHES TO THE ISSUE OF JUDICIAL CORRUPTION

The first research step is to review the work of other researchers. The bibliographic references on judicial corruption provided here will be helpful for understanding this guide and beginning the assessment.

Although research on corruption is in the early stages, and the study of judicial corruption even more so, some relevant background information is available. The Justice Studies Center of the Americas (CEJA) created by the Organization of American States reports on the state of judiciaries by country. It uses categories that facilitate the comparative study of the types of structures, controls, and conditions in the administration of justice system and the judicial career.[7]

In the international sphere, since the 1990s, the United Nations Office on Drugs and Crime (UNODC) has been developing considerable expertise in assessments and policy design to control corruption and strengthen judicial integrity.[8] It has conducted country case studies in Peru, Nigeria, Indonesia, Serbia, Argentina, Guatemala, Venezuela, and Ecuador, among others, using diverse methodologies such as qualitative and quantitative studies, comparative studies of countries or subnational units, and case studies. Recently, it has conducted assessments of judicial integrity and capacity in Nigeria[9] and in Indonesia.[10] In each of these cases, subnational units (states or provinces) were selected for comprehensive surveys of judges, lawyers, judicial employees, business people, and private citizens. The conceptual approach in these studies is interesting in the sense that in addition to corruption per se, they look at issues such as independence, efficiency, and access to justice, measuring and correlating individual experiences and perceptions in each of these areas. As in the research described below, these studies reveal a strong correlation between the length of proceedings, inefficiency in management, and opportunities for corruption. These highly ambitious and comprehensive projects manage a large number of indicators and samples consisting of several thousand interviewees.

Also under the auspices of the UNODC, Eduardo Buscaglia has conducted a series of studies on judicial corruption, including a quantitative examination of corrupt acts relative to the performance of variables on judicial functioning. This comparative study of three countries (Argentina, Ecuador, and Venezuela) was based on samples made up of commercial courts, judges, litigators, and business representatives.[11] In each country, the selected courts were participating in administration of justice reform programs to enhance transparency, facilitate the reporting of irregularities, and promote technological and organizational modernization. The objective was to determine the impact of these reforms on perceptions of corruption. The researcher measured the degree to which improved work distribution, the incorporation of technology, and mechanisms to facilitate reports of irregularities, among other changes, had influenced perceptions of corruption among those interviewed. The findings confirmed a correlation between effective progress in these areas and a decrease in perceptions of corruption.

In a paper prepared for a discussion at Transparency International, World Bank expert Lynn Hammergren offered an in-depth analysis of the challenges and requirements associated with developing an assessment instrument and establishing reform priorities.[12] After warning of the risks of tools that are imposed as a panacea for judicial independence or transparency, she introduced several aspects that could be considered central to any evaluation or reform proposal. She argued that the internal consistency of judicial processes, transparency vis-à-vis society, and independence with respect to external factors were critical to any examination of corruption and of the functioning of the judiciary in general and its coherence with the rule of law. The points included in her proposed checklist are extremely pertinent to a reflection on the potential causes of corruption in a particular country and the consistency of its institutional and social controls.

[7] http://www.cejamericas.org/reporte/muestra_portada.php?idioma=espanol
[8] http://www.unodc.org/unodc/corruption_judiciary.html
[9] Available at http://www.unodc.org/pdf/corruption/publications_nigeria_assessment.pdf .
[10] Available at http://www.unodc.org/pdf/corruption/publications_indonesia_e_assessment.pdf
[11] Available at http://www.unodc.org/pdf/crime/gpacpublications/cicp12.pdf
[12] Available at http://www1.worldbank.org/publicsector/legal/HammergrenJudicialPerf.doc

In Peru, the Andean Commission of Jurists (2002) conducted a qualitative study on judicial corruption in that country.[13] Its aim was to detect the patterns and types of corruption in the Peruvian judicial system with a view toward proposing reforms to the authorities and disseminating the issue among the general public. The study included the following areas: a review of the literature; a review of a sample of files from disciplinary organs; in-depth interviews with judges, academics, litigators, court employees, business people, and social leaders; and focus groups to validate the results. The findings include the following hypotheses about conditions conducive to corruption in the Peruvian judicial system: the influence of major corporate law firms on the appointment of judicial employees and on the decisions made by provisional judges, police discretion in carrying out procedures in criminal cases, and the limited institutional capacity of disciplinary organs.

Boris Begovic, of the Center for Liberal-Democratic Studies of Serbia, conducted a quantitative study of corruption in the commercial sphere in that country (2004).[14] He surveyed business people and judicial officials at different levels, conducting nearly 500 interviews in all. The questions were geared toward detecting perceptions of corruption; pinpointing cases hierarchically, temporally, and geographically; determining the main forms of corruption; and exploring possible solutions. In a later work, this author expanded upon a theoretical model for examining decisions to bribe based on microeconomic criteria (2005).[15]

The main findings of the first of these studies had to do with the central role that judges play in corruption cases. They showed that within the judges' sphere of action, it is difficult to distinguish between inefficiency and corruption in the management of the judicial process. Unpredictability in the administration of justice—in areas such as managing the duration of proceedings, legal interpretations, and evaluation of evidence—can obscure decisions that contravene the principle of impartiality. Hence, substantive and procedural errors in the application of the law, and the arbitrary evaluation of facts and evidence create a situation in which it is not always easy to distinguish decisions that may have improperly benefited one of the parties. In the respondents' view, however, pervasive inefficiency in managing the length of proceedings and in judicial expertise masks a high rate of corruption. The study also showed that frequently it is the judges themselves who request bribes, either in person or through third parties outside the judicial system, although rarely through their own subordinates.

Central American civil society has been proactive in promoting investigations of judicial corruption. For example, the Myrna Mack Foundation and Citizen Action [Acción Ciudadana] in Guatemala have conducted research involving interviews and the analysis of laws and regulations.[16] Both organizations acquired a clear vision of the gravity and evolution of corrupt practices and formulated reform proposals. Citizen Action also developed a complete pedagogical module to train judicial system operators and users in the detection and discussion of corruption issues.

Finally, it is important to highlight that Transparency International's Global Corruption Report 2007 focus on corruption in judicial systems. The report includes theoretical essays and information on the situation in various countries.[17]

Judicial corruption has been studied from various angles and different variables have been observed: procedural efficiency, the existence of channels to report anomalies, the economic motives of the actors. A review of the existing literature prior to conducting the assessment will improve our grasp of the various facets of the problem and enrich our own work with the fruits of past experiences.

[13] Available at http://www.cajpe.org.pe/Publicaciones02.htm
[14] Available at http://www.clds.org.yu/pdf-e/Corruption_in_judiciary.pdf
[15] Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=734103#PaperDownload
[16] See Acción Ciudadana, "El régimen disciplinario en las instituciones del sector justicia", Acción Ciudadana, Guatemala, 2005, and De Michele, R., Poli, M. y Lepe L.F.,"La corrupción en la administración de justicia", Fundación Myrna Mack, Guatemala, 1999.
[17] See "Global Corruption Report 2007. Corruption in Judicial Systems", Transparency Internacional, Cambidge University Press, 2007.

PROPOSAL FOR A RAPID ASSESSMENT OF JUDICIAL CORRUPTION AND WEAKNESSES IN CONTROL MEASURES, AND THE DESIGN OF REFORM POLICIES

WHAT DO WE WISH TO OBTAIN? WHAT CAN BE GAINED?

As a prerequisite to an assessment of corruption in any area of government, and in the judiciary in particular, we must clearly define what we want to learn and understand the obstacles to obtaining that information imposed by circumstances. This means that we must determine the scope of our study, in other words, those aspects or elements of judicial activity that will be the focus of our research and hypotheses.

In the case at hand, the term "judiciary" comprises countless units and we must define those for which we want to elicit information. Our definition may include the judiciary as a whole, a particular jurisdictional venue (civil, commercial, criminal, labor, administrative, etc.) or level (first instance courts, investigative courts, courts of appeals, and Supreme Courts). We must also specify the time frame: during what period will we observe judicial activity? Historical factors and practical constraints will determine the time period covered by the research. The important thing is to establish a clear definition and adhere to it.

Since the purpose of this assessment is to produce a rapid, useful description for proposing reform policies to reduce judicial corruption, we will concentrate on identifying aspects of the reality relevant to that purpose. At the same time, there has been no tradition of systematic research on judicial corruption in our countries. Existing studies are heterogeneous in their objectives and methodologies. The assessment must therefore point us in the direction of the main symptoms of corruption, the conditions conducive to them, and the most effective means of reining them in. Our study, then, will include the following approaches or methods:

- Case study: our assessment is typically a case study, defined as a research strategy to gather, process, and interpret data. Its objective is to circumscribe a phenomenon (geographically, temporally, or thematically, for example), and respond to research questions such as why, under what conditions, and in what forms it occurs. Here, we will examine and evaluate the presence and types of corruption and controls in a country's judicial system at a given point in time. Our approach may take several geographical regions or jurisdictional venues and consolidate them as different facets of a single unit (individual case study). Alternatively, it might examine each of these aspects independently and then compare them (multiple case analyses). Insofar as our intention is to produce knowledge leading to policy proposals, our interest lies in obtaining information about our case.

- Exploratory: our study will be an approximation of the issue. We are looking for material with which to develop hypotheses, rather than test previously formulated hypotheses. We will try to mark the trail so that other studies can deepen, generalize, and systematize the conclusions that we draw hypothetically. The study will also try to identify critical areas for policy proposals. Because it is exploratory in nature, our findings will be partial and not necessarily representative of the judiciary as a whole, and our conclusions will be hypotheses, nothing more. The aim of the research is to establish well founded hypotheses that will serve as fertile ground for future research and the design of reforms.

- Descriptive: The assessment's practical purpose requires us to seek out significant evidence pertaining to the presence of corruption and the functioning of existing control mechanisms. This evidence will be interpreted

with a view toward potential courses of action. However, we are not seeking an explanation for the phenomenon of corruption (at least not in terms of its profound underlying causes) so much as a description of its forms and most immediate conditions for existence.

- Qualitative: Our descriptions and interpretations will be qualitative rather than quantitative in nature. This means that we will not reach conclusions as to "how much" corruption is present in a judicial system, the "degree" of probability that a particular characteristic of that system might be conducive to it, or "how" effective the control mechanisms are. We will describe instead the types of corruption registered and the institutional conditions with which they are associated. The information gathered through interviews, the review of press reports and case files, and so forth cannot be generalized statistically. Even when we make use of the reliable quantitative data available, they must be interpreted within these parameters. The qualitative value of the data collected consists of pointing out connections between different phenomena that must be interpreted by the researcher. In our methodology, these connections are tested through data triangulation using different types of interviews and other sources such as press reports and case files. This will enable us to detect and interpret consistencies and discrepancies among sources.

> Rapid assessment offers tools with which to approach the phenomenon of judicial corruption. It is a case study (not a generalization), it is descriptive (we will describe the evidence), and qualitative (we will explore forms of corruption).

DEFINING THE SCOPE OF THE RESEARCH AND UNIT OF ANALYSIS

As stated earlier, an important step is to define the scope of the research and unit of analysis. With regard to scope we want to obtain information on the phenomenon of corruption in the judiciary. We have already discussed definitions for the term "corruption," but we still must define "judiciary," which can be done from a normative or functional standpoint.

A functional definition will define the scope or subject of our study in function of the organs that are institutionally involved in the adjudicatory function. It is important to establish clear parameters; for example, the scope might encompass the Public Ministry or the Public Defenders Office, regardless of whether they are formally part of the judiciary, since both organs are potential scenarios for judicial corruption. Indeed, some researchers include litigators as part of the judicial system. In contrast, a normative definition will confine our research mainly to the judiciary and its organs as defined by the country's constitution and laws. In some cases, the Public Ministry and the Public Defenders Office are part of the judiciary, while in others they are not.[18]

The decision as to which definition to use is based on the needs and on the time and resources available. The functional definition might be chosen if there is a need for a more general assessment and if the time and resources are available for a broader undertaking. There may be political or institutional reasons that recommend this approach where feasible, for example, in cases where focusing on a single sector (in this case, judges) might raise suspicions concerning a possible bias in the research. In contrast, there may be reasons for adopting a normative definition to circumscribe the issues and confine the scope of the research. For example, it may be necessary to produce an assessment that sends clear and rapid signals to the other relevant organs. Issues of conceptual clarity, reform agenda priorities, resources, and time also may point to the advisability of choosing the normative-institutional approach.

Once the scope has been delineated, the unit of analysis must be defined: in other words, what will our study describe. It will be the subject for the predicates that will be sustained through the research. Are we talking about the justice system in the country as a whole, or

[18] See note 4 on the definition of corruption and impartiality in judicial roles that are not of a strictly adjudicatory nature.

a particular jurisdictional venue, or region? Will we compare acts of corruption and controls among different regions, or courts, or jurisdictions?

For example, we may want to include data from different geographical regions, court jurisdictions, or levels in a single general assessment on the justice system in the country. These areas, then, will represent for us different aspects of a single unit. That is not to say that the conclusions will be immediately generalizable to the judiciary as a whole. It is important to recall the exploratory nature of the study, which means that the evidence that we gather will not be representative of the judiciary in its entirety. If we perform our data collection job well, the evidence will be significant and we will be able to defend it, but we still cannot say that it is representative of the judiciary as a whole. Therefore, we must always make the disclaimer that our conclusions are not generalizable but are instead hypotheses that may be useful for drafting reforms in specific areas or perhaps as a point of departure for other studies pursuing a higher degree of generalizability, or both.

Where the sources of information permit, it is possible to undertake more circumscribed analyses or even comparative studies. It is possible, for example, to conduct an individual case study in which the data collection is confined to a smaller unit than the entire judiciary, such as the regional judicial system, or a particular jurisdictional venue or court circuit. In this case, we will follow the same format for an individual case study, based on a smaller unit.

It is also possible to conduct a comparative study of more than one unit. For instance, we might compare reports of corruption sent to different civil appeals courts in different regions, thereby producing a multiple case study in which the units will be the courts of appeals that are being compared.

Regardless of the decision made as to the scope of the study and our unit of analysis, it is important to adhere to it throughout the course of the research and in the conclusions. This is important in order to optimize efforts and focus our attention, and consistency in the unit of analysis is essential for producing coherent conclusions.

Up to now we have discussed the judiciary as the subject of a first level of observation. But our subject is unique in that it features an inherent second level, which is self-observation. The judiciary observes its own cases of corruption, whether through disciplinary and internal control organs or through the punitive function of criminal courts. In other words, it becomes its own subject. This also means keeping in mind a second level of distinction. Our findings will include forms of corruption in the judiciary that do not necessarily recur when the system actually carries out its duty to suppress misconduct by its members. Or it may be that misconduct does recur, and in either case it is important to keep in mind the difference. The conclusions about a judicial system that, despite the existence of acts of corruption in some areas, performs internal control functions with some degree of regularity, will be very different from those drawn when the acts of corruption involve the very organs responsible for punishing misconduct by its members.

> This guide focuses mainly on the study of corruption and mechanisms to control it within the sphere of activity of judges and their employees. The study may be confined to certain "areas" of that sphere (geographical, jurisdictional, hierarchical, courts), or it may combine information drawn from each of the different areas. In any case, our conclusions will be hypothetical in nature rather than representative. Further scientific generalization will require larger studies that use the hypotheses emanating from our assessment as a point of departure.

THE ASSESSMENT PROCESS

Data collection

Data collection will require a plan of activities and an instrument for its implementation. The instrument will include the questions we will ask in order to elicit the desired information (Appendix 1). The data collection system discussed in this section is interconnected with the data collection instrument and refers back to it. Data processing will require additional instruments designed to organize the data collected.

The data collection and processing system outlined below consists of four rows and four columns. Each row corresponds to a work module, or series of tasks that culminates in an output. The columns indicate different aspects of that particular module: objective, focus, source, partial output.

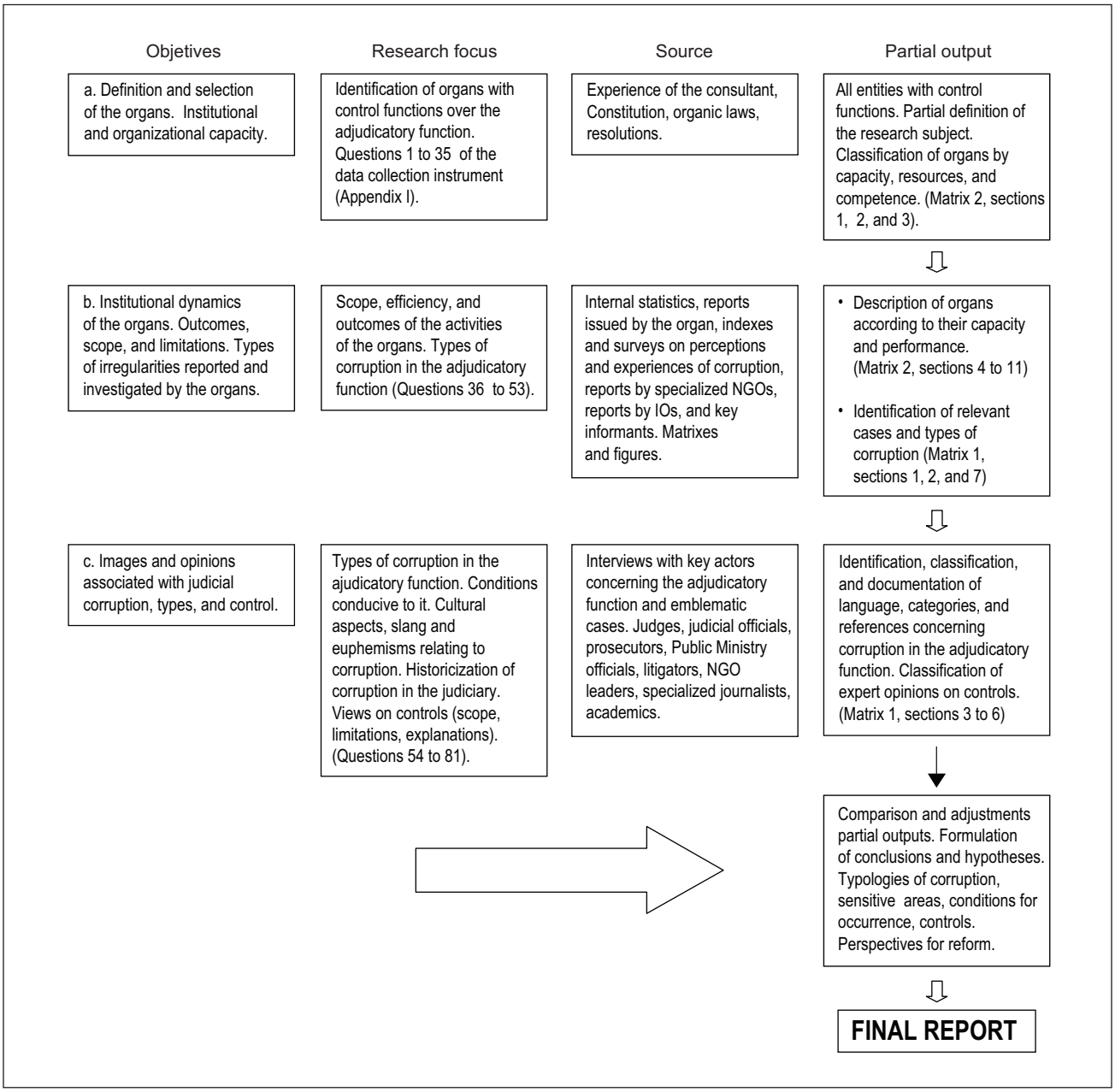
The tasks in each module are organized around an objective. The focus is the center of attention, in other words, the substance of the objective or the concrete information we wish to obtain. Each focus, therefore, corresponds to the pertinent set of questions in the data collection instrument. The questions enable us to hone in very precisely on the focus of the information from each source.

The sources are the data collection points. The sources we will use and integrate include laws, press reports, interviews, files, statistics, reports, and academic papers. Data collection from these sources produces a partial output, which in turn serves as an input for the following data collection section (see the fourth column in Figure 1). Each partial output is linked to a chart (Matrix 1 and 2, pp. 30 to 36), which is a set of questions designed to educe a more general or complete vision than those listed in the data collection instrument. In other words, while the questions in the data collection instrument are designed to elicit information, the matrixes pose more general conceptual questions that help to organize the information obtained. The final output, as we will see, is the result of the interaction among the partial outputs.

This last observation is relevant because the hypotheses that we develop regarding the state of corruption in a judicial system will be based on direct first-hand information concerning acts of corruption (e.g., narratives, data, types and descriptions of corruption) and on information about those acts derived, directly or indirectly, from the activities of the organs responsible for investigating corruption (information on corruption cases—direct, and information on the conditions for control efforts—indirect).

The fact that control organs are accorded more space in the figure below does not mean that they are more important. Because the phenomenon of corruption is diffuse and hard to access, the questions in that section tend to be general and harder to break down into specifics. In contrast, because control organs are tangible entities, more extensive lines of questioning can be developed for data collection and classification purposes. For this reason the latter often take up more space in the figures and questionnaires.

FIGURE 1: ASSESSMENT WORK PLAN



The research process is designed for progressive and cumulative data collection on control mechanisms, documented corruption cases, and the experiences and opinions of judicial system operators and users. Hence, data collected during one stage become tools that can be applied during the next one, in the sense that they equip the researcher to critically examine the new material acquired. Put another way, the sequence begins from the perspective of the "control environment," which informs the next stage of analyzing perceptions. When it comes time to draw conclusions, this order makes it possible to contextualize the data, demarcate the scope of the perceptions, and develop hypotheses concerning the extent to which they can be generalized.

Module A: Selection of the organs to be studied. The competence, powers, means, and resources of the control organs under evaluation.

The purpose of Module A is to identify the organs with disciplinary control capacity or other functions related to improper conduct by judges and judicial employees. It is necessary to establish a criterion for deciding whether or not an organ pertains to this category of judicial controls. The criterion we have chosen to determine whether a public entity internal or external to the judiciary may be classified as a control organ is that it must perform at least one of the following functions:

- Receive reports of improper conduct by judges or judicial employees.
- Investigate improper conduct by judges or judicial employees.
- Promote disciplinary or criminal sanctions for improper conduct by judges or judicial employees.
- Impose disciplinary or criminal sanctions for improper conduct by judges or judicial employees.
- Perform other control functions relating to the conduct of judges and judicial employees.

The most immediate source of information for selecting the entities involved in any of these functions is the expertise and knowledge of the research team. A discussion among the work team as to which organs are empowered to perform such functions is a useful tool with which to begin and it should result in a list of organs. This list should be compared to the basic laws governing the organization of the justice system, such as the national constitution, organic laws, and the judiciary's internal regulations to ascertain which organs should indeed be included and which ones may be missing. The partial output will be the group of organs that fit the description of functions, as well as a preliminary inference as to which particular functions correspond to each one.

In order to preserve the clarity of the objectives it is important to be consistent with the selection criterion and to "filter" out entities that, while they may interface with the judiciary in some way, do not engage in control functions with respect to the conduct of its members. The category "other control functions" is not intended to open the door to any organ that is somehow associated with the judiciary, but rather to encompass the full spectrum of organs having preventive functions. An example of this type of organ would be one that receives financial disclosures, given their preventive role in detecting potential illicit enrichment based on the wealth of judicial officials.

In this section we take the first step toward an individual description of each control organ, its areas of competence, legal powers, and material and human resources. A control organ's competence and legal powers refer to the areas under its purview, the members of the judiciary that fall within its sphere of control, and the tools assigned to it by law to fulfill its objectives. The means referred to here include the ability to investigate, obtain documents from other public organs and private institutions, request testimony, and impose sanctions, among others. Also included in this area are the norms governing an organ's institutional autonomy, that is, whether it is accountable to other entities, whether its decisions may be revoked and if so, by which organs. Parliamentary debates and

descriptions of the rationales behind the laws are relevant aspects of the text that we must interpret in order to understand these issues.

Other resources that enable an organization to effectively fulfill its objectives include the budget, staff size, the staff's professional qualifications, background, and salaries, and the technical means at their disposal (from computers to technological research tools such as financial databases). Other critical aspects of this module are autonomy in budget administration decisions and hiring methods.

The information outlined above is available from several sources. We should begin with an in-depth examination of the norms governing the establishment and organization of the selected control organs. This is followed by a review of the decisions that have been made about the organ's structure, which include the organigram, budget, and qualifications for different posts. This type of information is found in resolutions and administrative decisions, or can be gleaned from informal sources, and from the direct knowledge of individuals connected to the organs themselves. It is therefore necessary to conduct informal, unstructured interviews that provide access to information about an organ's functioning and the means available to it.

As mentioned earlier, the administration of justice system is unique in that it acts as a control organ over its own activities. A complaint of corruption involving misconduct by a judge might be detected at the level of a court of appeals and an investigation ordered. It is also likely that the criminal justice system will act on the case. Hence, the justice system itself performs control functions that situate it within the universe of control organs. While it would be excessive to pursue all of these considerations or undertake all of the data collections applicable to specialized control organs, it is advisable to select questions and information that will make it possible to depict the judiciary's role in the control of corruption crimes perpetrated by judges.

Based on our discussion up to this point, the information gathered in this stage will enable us to describe and classify the organs selected in the preceding stage, based on their:

- Mission and objectives
- Jurisdiction and competence
- Autonomy and powers to fulfill their objectives
- Autonomy and resources to fulfill their objectives

Module B: The dynamics of control, implementation of control tasks. Types of corruption detected by control agencies, compared to those reported in the press or perceived by stakeholders.

In this stage, we are interested in observing the control organs in action. Our focus is twofold:

- The functioning and performance of the organs: how they operate in practice, their work process, and the goals achieved.
- The type of corruption they find, the nature of the acts they work on: rank of officials investigated for acts of corruption, jurisdictions, geographical location, the types of corruption or crimes investigated, and the corruption schemes uncovered

This stage is the most complicated in terms of the range of sources and the need to supplement them. Files containing complaints, investigations, and/or sanctions imposed for judicial corruption are one of the main sources. An initial complication associated with this source, however, is the accessibility of information. Access to the files is often difficult, if not impossible. In some circumstances, access may be only partial, for example, if only the final resolution is available.

In such cases, two things should be kept in mind. The first is the possibility of establishing institutional relationships with the organ to facilitate access. One

strategy is to arrive at an agreement with the organ that personal information from the files will not be disclosed. This can be ensured by requesting that the organ release photocopies of the files with all names and personal information redacted. The second issue is that the degree of access to files (and resolutions) is, in and of itself, an indication of the way the organ operates and should be included in the description.

Once a certain degree of access to the files has been secured, the next question facing the researcher is how the cases will be selected. How many cases should be reviewed? The first reaction is often to try to boost the study's validity by creating a sample that statistically "represents" the set of files in their entirety. However, for reasons of access to information and classification methods, it is probable that our sample will not be representative. This is not a serious problem since this is an exploratory, qualitative study, so long as the decisions we make are supported by reasonable arguments. That is to say that while the number and type of cases selected may not be statistically representative, they have not been chosen arbitrarily either. The criteria that should inform the selection process include prior knowledge, data provided by members of the control organs, comparisons with cases reported in the press, public ramifications, and their similarity or affinity with other cases identified.

Where there is access to the files, our focus is on the work process and the resources deployed. For example: How long does it take to process the file? What is the time lapse between the commission of the act and the complaint? Who brings the complaint? What types of acts are reported? Where in the institutional hierarchy are the implicated officials situated? What investigative methods are employed? Is the organ able to obtain the information it requests? How does it resolve the case?

The control organ is also a repository for another key source of information: performance statistics. Disciplinary organs, courts, and other agencies with control functions often keep statistics, whether formally or informally, on the annual intake of cases, the number of cases resolved, the sanctions applied, the types of acts investigated, and so forth. This is a pertinent source of information that gives us an idea of how the organ is functioning and can be compared to other organs in-country or to analogous agencies in other countries. Other information relevant to a description of the organ is whether or not statistics exist, how comprehensive they are, and the type of information they reflect. The data they yield will tell us a lot about an agency's transparency and the accessibility of its information.

Press reports on cases of judicial corruption are another important source. Investigative reports cover acts of corruption and the response of control organs. As with case files, the point is not to regard these investigations as absolute truths per se, but rather as versions of the facts that contribute to a description of the types of corruption present, the role of the control organs, and diverse perceptions of these issues. Indeed we will doubtlessly encounter conflicting versions of the same cases. Our objective is not to take a journalistic investigation as the last word in the matter, but rather as a contribution to a broader view. It is important to compare different press versions, or to compare press reports with information obtained from files or interviews (see below), when evaluating the information and developing an image of the work of the control organs, types of corruption, and the divergent points of view on these matters.

In order to obtain a manageable sample of press reports, it is useful to establish a time frame for the study that does not exceed the time limits for on-line access to digital newspaper archives. In this way, we can refine and facilitate our search using the instruments built into the databases (searches by key word, by date, etc.).

The last research step in this module is to conduct interviews, an activity that effectively closes this phase and provides a segue into the next. Therefore, we will introduce the interview process in the next module.

This module facilitates:

- A description of the organs based on their capacity and performance.
- The identification of relevant cases and types of corruption

Module C: Perceptions and images of judicial corruption and control measures

In this phase, the information obtained from our examination of the norms and the performance of control organs, case file reviews, and press research is contrasted with the viewpoints of stakeholders. For the purposes of our research, stakeholders are understood as operators and users of the judicial system who are in a position to contribute significant information to the evaluation of corruption and control efforts.

Based on our objective, we will decide whether we want to broaden or limit the judicial jurisdictions and geographical areas to be targeted for interviews. If our objective is to explore the judiciary and the field in general, we will try to interview operators and users from different jurisdictions and areas. However, if we want to concentrate on one or more jurisdictions, or a particular part of the country, the case files and press reports selected (in Module B) and the focus of the interviews should be consistent with this "cross-section."

As stated earlier, the samples for this exploratory and qualitative assessment should be significant rather than "representative." Our goal is to select a set of actors whose opinions, by virtue of their positions or experience, are relevant and reflect a wide range of perspectives. In this type of study, there is no pre-determined number of interviews or sample design to ensure the validity of our conclusions. The important thing is to make every effort to reflect the range of experiences and opinions, which then will be evaluated together with the other sources: norms, performance statistics, case files, press reports of cases, etc. as we begin to draw conclusions. The interpretation and correlation of these elements take our exploration another step closer toward understanding judicial corruption –another step, but by no means the last one.

The following is a rough outline of the different categories of interviewees that should be included in the sample:

- Judges
- Judicial employees
- Control organ officials
- Litigators (from large and small firms)
- Business people
- Attorneys working with human rights groups and nongovernmental organizations.
- Political leaders involved in policy-making for the judiciary (from the executive and legislative branches)
- Journalists specializing in judicial matters
- Academics
- Leaders of legal associations or lawyers groups
- Prosecutors
- Public defenders

If we estimate approximately three interviews in each category, our sample will include a minimum of 36 interviews. Depending on the type of study being undertaken, the universe, and the units of analysis, however, this number can be expanded or reduced, and categories of interviewees can be added or eliminated.

Our aim during the interviews is to elicit the following types of information:

- Different perspectives on the functioning of control organs.
- Views on the most relevant corruption cases detected in files and press reports. Agreement or disagreement with these sources.
- Views on the historical evolution of the judiciary and judicial corruption, from the standpoint of the interviewee's experience and perceptions.

The interview questions, therefore, are designed to obtain this sort of information. The interviewee's personal experiences with the judicial system—or the experiences of third parties that he or she is aware of—can be elicited by asking the interviewee to narrate chronologically his or her association with the judiciary, divide it into stages, describe each stage, and provide examples to support the assertions made. When referring to acts of corruption, it will always be easier to obtain examples concerning the experiences of third parties, rather than the interviewee's own experiences. These anecdotes are valuable, although they must be interpreted in the context of the entire statement and other elements of analysis. In this area we will also perceive how each interviewee defines his or her understanding and operative concept of corruption.

It is not a good idea to pressure the interviewee to offer details that might identify the subjects in the cases being related, as this might cause a reluctance to continue sharing his or her knowledge of cases. It is important to keep in mind that our interest lies not in investigating individual cases but rather in identifying common patterns, constants, and recurrences that reveal the types of corruption present, the conditions conducive to its existence, and the functioning of the organs responsible for preventing and suppressing it.

The conversation will also give us an idea of how the interviewee understands corruption, and the types of acts he or she includes or excludes from this definition. Each country or social group shares certain sets of values that can cause variations in how corruption is defined; this information is very important to the research. It is intrinsically valuable to learn what those values are and whether they are shared by the person being interviewed. We have often observed that the interviewee expands on his or her ideas during the course of the conversation: it is important, then, not to impose our own notion of what constitutes corruption, but rather to inquire as to the interviewee's point of view.

How should the interviews be recorded? Again, there is no single correct answer to this question. It will depend on the research objectives, the political and cultural atmosphere in the country, and the interviewees themselves. Taped interviews are particularly useful for analyzing the content for cultural traits: the way in which something is described, the words chosen, the tone of voice, and the nuances present in references to corruption. Nonetheless, interviewees may feel inhibited when they are being recorded and therefore it should never be imposed, only suggested as an alternative that the interviewee may choose.

Another issue that should be decided in advance is whether the identity of the interviewees will be considered confidential. In our opinion, it is useful to begin with the premise that identities will remain confidential and to ensure the interviewee from the outset that his or her name will not be disclosed or associated with his or her contribution to the research.This guarantees privacy and fosters trust. It is important throughout the research process, and particularly when drafting the report, to avoid including any information that might expose the identity of a particular source.

Findings corresponding to this module:

- Identification, classification, and documentation of language, categories, and references associated with corruption in the adjudicatory function.
- Classification of expert opinions on control efforts. (Matrix 1, sections 3 to 6)

Data processing. Data organization and consolidation matrixes. Toward the development of hypotheses and recommendations.

Once data collection has been completed, we must take a step back and try to develop a more general sense of what we have obtained. This will help us to ascertain whether any information may still be lacking and set us on the path toward interpreting the data. During this

stage we must compare the data collected from different sources to extract partial hypotheses and conclusions that explain the findings. The findings are data that point directly to judicial corruption and control issues, as well as discrepancies in the data obtained from different sources on a particular subject. For example different interviewees might have very different opinions as to the gravity of the problem or their views might contradict information gleaned from press sources. It is also important, therefore, to develop hypotheses that could account for these differences.

Two charts, or matrixes, are presented below. The first corresponds to information on the state of judicial corruption in the country (Matrix 1) and the second to the control organs and their response to misconduct by judges and judicial agents (Matrix 2). These charts pose more general questions than those found in the data collection instrument (Appendix I) and they are intended to facilitate the process of grouping and comparing the data.

The charts are organized in the same way. The rows represent research areas, or the aspects of corruption and control activities for which we are seeking data. The columns indicate the sources of the data. Each box contains source-specific questions related to each aspect of the phenomenon under study.

The questions found in the last column of both charts (source comparison and data interpretation) are designed to facilitate data consolidation and comparison. Data consolidation is the most important task in this stage because it helps organize the data for the final report. Therefore, we will discuss in more depth how to proceed with respect to each variable and how to use this process in the design of reform policies. The responses to the questions in this column, combined with the aspects discussed in the following section (Using the matrix and data consolidation) will serve as a format for preparing the final report. The sources identified in the columns of each chart are the most important for our purposes, although this does not mean that any additional sources will be excluded. For example, Matrix 2 has no column for "Perception surveys and indexes, specialized studies (NGOs and international organizations)" which is included in Matrix 1. This is not to say that such surveys or specialized studies on control organs would be excluded. Simply put, we can assume that very little of that sort of material will be available and therefore we have not assigned a specific column for it. We are aware, however, that there are certain key sources in this category, albeit very few. One example is the reports of the Committee of Experts of the Follow-up Mechanism for the Inter-American Convention against Corruption. These reports contain references to control mechanisms in general and sometimes to a judicial organ in particular.[19]

Each section constitutes a data set that has been synthesized based on our research questions and will inform the partial conclusions and hypotheses. Taken together, this offers the researcher a general panorama of the state of judicial corruption and control measures, and indicates potential areas for reform proposals. The ways in which corruption occurs and the capacity of the responsible organs to control it provide us with an overall image of corruption and potential ways to control it. Appendix II includes guides to organizing these conclusions and hypotheses in the final report.

[19] http://www.oas.org/juridico/spanish/mesicic_com_expertos.htm

MATRIXES FOR DATA ORGANIZATION

MATRIX 1- **STATE OF JUDICIAL CORRUPTION**	**Interviews**	**Perception surveys and indexes, specialized studies (NGOS, international organizations)**	**Press**	**Information from control organs (files and statistics)**	**Source comparison and data interpretation**
1. Relevance of corruption	What do the interviewees understand by corruption? How significant do they think this phenomenon is? Areas of agreement and disagreement among interviewees. Are the interviewees in agreement about how pervasive corruption is in the judicial system? How serious do they consider the phenomenon? How much consensus is there among the interviewees? Do those sharing the same opinion have any particular characteristics in common (for example, litigators report higher levels of corruption)? What reasons do they give to account for the incidence of corruption in the judiciary?	How does the country rank in international corruption indexes (TI), business indexes (WB business environment, World Economic Forum), or in others specific to the judiciary (CEJA)? How does the judiciary rate in domestic or comparative surveys (Latinobarómetro for example) on trust and perception? Are these ratings comparable or divergent?[20]	How frequently do reports on corruption appear in the media? What percentage of these news reports have to do with judicial corruption? How much relevance is accorded these stories in terms of location and space in the media? Are there variations in how the facts are presented or characterized depending on the type of media outlet? What type of evidence is given to support the news report?	What is the number of judicial corruption cases received annually?	Do the data collected from the sources support a hypothesis as to the incidence of corruption in the judiciary? Are there reliable, consistent indicators present? What areas of agreement and disagreement are observed among the sources concerning the incidence of corruption?
2. Types of corruption schemes. **General conditions for corrupt practices.**	What types of corruption schemes are mentioned? Which are viewed as the most common? What conditions (laws, work organization, procedures for appointing officials, etc.) are conducive to corrupt practices, in general and by type of scheme?	Do surveys include indicators on the most common types of corruption schemes in the judiciary? What types of corruption schemes are mentioned? Which of these are the most common?	What types of corruption schemes are mentioned?	What types of corruption schemes are statistically most prevalent? What types of corruption schemes are described in the investigations documented in the case files examined? What conditions are conducive to such schemes?	What types of corruption schemes are mentioned by the sources? What conditions are conducive to them? What areas of agreement and disagreement are reflected in the sources with regard to the types of corruption schemes?

[20] Available at http://www.cejamericas.org/doc/documentos/IndiceAccesibilidad2006versionfinal.pdf (CEJA) http://www.transparency.org/policy_research/surveys_indices/global/cpi (TI), http://www.observatorioelectoral.org/documentos/data/info-latinba-2005.pdf (Latinobarometro), www.worldbank.org/wbi/governance/data (ambiente de negocios y governancia según Banco Mundial).

MATRIX 1- **STATE OF JUDICIAL CORRUPTION**	**Interviews**	**Perception surveys and indexes, specialized studies (NGOS, international organizations)**	**Press**	**Information from control organs (files and statistics)**	**Source comparison and data interpretation**
3. Relevance and type by institutional level	What levels of the judiciary (magistrate, appeals court judge, first instance judge, secretary, administrative employee) are cited by the interviewees with regard to specific cases of corruption? What types of cases are cited at each level? Which levels are regarded as the most corrupt? Are there certain conditions conducive to corruption specific to each level? What are they?	Are there any surveys that specifically look at corruption in the judiciary? Do they include indicators on this aspect? If so, which institutional levels feature the highest levels of corruption?	At what levels did the cases collected occur?	How are the cases distributed according to the institutional level involved?	At what levels is judicial corruption most frequently detected? What type of corruption is predominant at each level? What areas of agreement or disagreement are found among the different sources in terms of the incidence and type of corruption and its causes at different institutional levels?
4. Relevance and type by jurisdictional venue	Which jurisdictions were cited in descriptions of specific cases? What types of cases for each jurisdiction? Which jurisdiction was regarded as the most corrupt? Are certain conditions conducive to corruption specific to each jurisdiction? What are they?	Are there any surveys that specifically look at corruption in the judiciary? Do they include indicators on this aspect? If so, which institutional levels (or jurisdictions) feature the highest levels of corruption?	In which jurisdictions did the cases collected occur?	How are the cases distributed among jurisdictions?	In which jurisdictions is judicial corruption detected most frequently? What types of corruption is predominant in each jurisdiction? What areas of agreement or disagreement are found among the different sources in terms of the incidence and type of corruption and its causes in each jurisdiction?
5. Relevance and type by geographical area	Which geographical areas are cited in descriptions of specific cases? What types of cases occur in each area? Which area is regarded as the most corrupt? Why?	Are there any surveys specifically on corruption in the judiciary? Do they include specific indicators on this aspect? If so, what geographical areas feature the highest levels of corruption?	In what areas did the cases collected occur?	How are the cases distributed among geographical areas?	In what areas is judicial corruption detected most frequently? What type of corruption is predominant in each area? What areas of agreement or disagreement are found among the different sources in terms of the incidence, types, and causes of corruption?

MATRIX 1- **STATE OF JUDICIAL CORRUPTION**	**Interviews**	**Perception surveys and indexes, specialized studies (NGOS, international organizations)**	**Press**	**Information from control organs (files and statistics)**	**Source comparison and data interpretation**
6. Relevance and type by historical period.	How is the evolution of corruption in the judiciary described? During which periods was it more pervasive? During which periods did it decline? During which periods did it become more diversified? What has been the evolution of different types of corruption? What explanations do the interviewees offer?	Are there surveys specifically on corruption in the judiciary? Do they include specific indicators on this aspect? If so, what periods feature the highest levels of corruption?	Do the acts of corruption cited coincide with any relevant political event?	Is it possible to discern any type of evolution in the intake and types of cases based on particular historical periods? Is there any sort of annual progression in case intake and resolution?	What type of corruption is predominant currently? What areas of agreement and disagreement are found among the sources with regard to the evolution of corruption in the judiciary?
7. Acts with the greatest repercussions	Is there agreement as to which acts [involving judicial corruption] are considered the most significant by the interviewees? Why are they considered important?		Which acts have had the greatest impact in the media? Which received the most coverage? Which were covered for the longest period? Which were accorded the most space and prominence in the media?		What areas of agreement or disagreement are found among the sources with regard to which acts of corruption are regarded as the most important?

MATRIX 2- **CONTROL ORGANS**	**Laws**	**Interviews**	**Internal files**	**Internal statistics and reports**	**Press**	**Source comparison and data interpretation**
1. Competence	What is the organ's sphere of competence (geographical, institutional, hierarchical, etc.)? What types of acts of corruption are subject to its control? What types of norms define those acts and establish sanctions (international, criminal, administrative, professional ethics)?	How is the organ's budget assigned? Who defines it? Who approves it?	To what degree are the limits to the organ's competence, as established in the norms, observed?		Do media reports on judicial corruption reflect an understanding of the limits of the organ's sphere of competence? Do they have an appropriate or distorted notion of its sphere of competence?	What is the organ's sphere of competence? To what degree do external entities understand its potential range of activities and its limitations?
2. Mission and functions	What are the organ's functions (complaint intake, case investigation, sanctions, control of financial histories or disclosures, etc.)?	Do the interviewees understand the limits of the organ's mission and functions? Do they have an appropriate or distorted view of the mission and functions?	What functions does the organ perform in the files reviewed?	What functions does the organ actually perform? Which are performed most frequently?	Do media reports on judicial corruption reflect an understanding of the limits of the organ's mission and functions? Do they have an appropriate or distorted view of the mission and functions?	What functions does the organ perform and what functions could it perform? Is there awareness and clarity among the sources about this?
3. History	Did other organs with similar functions exist previously? What types of norms created them?	What were the underlying reasons for the establishment of this organ? Were there other competing ideas? What areas of agreement or disagreement are found among the interviewees on this subject?			What were the underlying reasons for the establishment of this organ? Were there other competing ideas? ? What areas of agreement or disagreement are found among the different media sources?	In what context was the organ established?

MATRIX 2- CONTROL ORGANS	**Laws**	**Interviews**	**Internal files**	**Internal statistics and reports**	**Press**	**Source comparison and data interpretation**
4.a. Institutional autonomy	What type of norm created the organ? In what area of government is the control organ located? How are its officials designated? Does the highest authority report to an external authority? Can its decisions be appealed? If so, before what organ?	How do the interviewees regard the level of autonomy accorded the organ by law? In case of disagreements, do they correspond to any particular group of interviewees?	Are cases/files opened at the organ's initiative? Do the files reflect the involvement of any other authority?	Number of cases opened by the organ at its own initiative. Number of cases whose course or outcome was altered by an external authority.		Does the organ have the potential to carry out control functions autonomously? If there are external authorities empowered to alter its decisions, what authorizes them to do so? What type of influence do they have?
4.b. Financial autonomy	How is the organ's budget assigned? Who defines it? Who approves it?	How do the interviewees view the resources available to the organ?		Evolution of the organ's budget.		Does any external authority place conditionality on the organ's resources? Could this have an influence on the organ's decisions?
4.c. Political autonomy		Are the organ's actions regarded as independent of political or any other type of interests?	Do the cases reflect the influence of a political authority or any external interest?		Are the organ's actions regarded as independent of political or any other type of interests?	Is it possible to demonstrate or to develop any hypotheses concerning actual outside influences in the organ's decisions?
5. Access to information	What sort of access do the interested parties have to information concerning a case? What sort of access do citizens have to information about an organ's general activities or specific cases?	Do citizens, NGOS, or other interested parties make use of freedom of information mechanisms to monitor the functioning of the control organ?	Are there requests for information in the files? How are they resolved?	What type of information is generated about the organ's activities? How is it published? Does it respond to requests for information about cases?	Does the press use institutional channels of access to information to obtain data for its articles?	Does the potential exist for citizen control/monitoring of the organ's activities?

MATRIX 2- **CONTROL ORGANS**	**Laws**	**Interviews**	**Internal files**	**Internal statistics and reports**	**Press**	**Source comparison and data interpretation**
6. Investigating capacity	What investigatory powers are vested in the organ by the norms that created it? Do they conflict or overlap with other norms or organs?	How are the organ's investigatory powers perceived? Are they considered appropriate to the reality? Do the interviewees (i.e. operators) report overlap or conflicts with other norms or organs in terms of how they are resolved?	Do the files reflect that the organ is exercising all of the powers at its disposal? Does the organ receive responses when it requests information or testimony from public or private entities? Are the responses forthcoming in a timely manner?		Are the organ's capabilities clearly reflected?	To what extent is the organ's investigatory capacity adequate and effective for fulfilling its objectives?
7. Capacity to impose sanctions	Does the organ have the authority to impose sanctions? What types of sanctions can it apply (criminal, administrative, disciplinary)?	What is the evaluation of the sanctions imposed?	What type of sanctions were applied?	How many and what type of sanctions were applied?	What is the evaluation of the sanctions applied?	Are acts of corruption punished? ¿Which ones? In what way? What signals area being sent to society?
8. Material resources		Does the organ have adequate physical space? Does it have enough computers and the other equipment necessary to perform its functions? Is information organized in a database? Does it have access to a database of financial disclosures?		Does the organ have adequate physical space? Does it have enough computers and the other equipment necessary to perform its functions? Is information organized in a database? Does it have access to a database of financial disclosures?		Does the organ have available the material means to perform its functions?
9. Human resources	Organigram	Does the organ have professional staff with investigatory skills? Are the positions attractive to trained professionals?		Does it have professional staff with investigatory skills?		Does the organ have the necessary human resources to perform its functions? Are the organ's human resources organized appropriately to carry out its functions?

MATRIX 2- CONTROL ORGANS	**Laws**	**Interviews**	**Internal files**	**Internal statistics and reports**	**Press**	**Source comparison and data interpretation**
10. Work procedures and flow	What stages does the organ follow in carrying out the procedures under its purview? What is the stipulated time period for each stage? What types of decisions does the organ make? What requirements must it adhere to in making a decision? Are there channels to appeal that decision?	Are the procedures perceived as adequate? How much familiarity is there with the organ's specific rules and procedures?	Is file duration homogeneous or heterogeneous? What is the range of the time period between the act, the opening of the investigation, the first steps taken, and the conclusion of the case? What sorts of outcomes are reflected in the cases reviewed?	What is the average duration of cases handled by the organ?	Are the procedures perceived as adequate? How much familiarity is there with the organ's specific rules and procedures?	To what extent do the organ's procedures and workflow contribute to efficiency or inefficiency in the discharge of its control functions?
11. Performance	Is the organ required to meet any minimum goals or outcomes?	Is there consensus or disagreement with regard to the organ's performance. Why?	Is it possible to evaluate whether the organ fulfilled its functions or not?	How many cases are resolved annually? What types of cases are resolved? Is all of the information available that the organ is able to disclose and that would be of interest to the public? Is it possible to distinguish differing degrees of complexity of the cases resolved? Do the statistics reflect that the organ is proactive or is it impossible to determine this based on the information available?	Is there consensus or disagreement with regard to the organ's performance. Why?	What do we know about the degree to which, and the way in which, the organ carries out its control function?

Using the data processing matrixes

a. Data processing matrix on the state of corruption in the judiciary

1. Relevance of corruption in the judiciary
Is corruption a systematic practice in the judiciary?

This variable looks at the presence and pervasiveness of corruption in the judiciary. The sources consulted should yield data on how the phenomenon is perceived (by judicial system operators, in the case of interviews or by society or specific social sectors in the case of perception surveys or indexes). The press and control organs will provide information about the cases reported.

Our interpretation of this information should point us toward hypotheses as to whether judicial corruption is practiced systematically and how pervasive it is, at least according to the sources consulted. The information provided by the sources may be consistent on this point or may be contradictory. In the latter instance, it will be important to interpret what might account for these differences

For example, suppose we find, on one side, that interviewees from the executive branch and certain press outlets have conveyed an image of widespread corruption in the judiciary. In contrast, litigators, along with other media outlets, have indicated to us that corruption is not a very relevant phenomenon. In this situation, we would have to develop hypotheses concerning the reasons for this discrepancy. It is possible, for instance, that the executive branch is seeking to rein in judicial independence by leveling corruption accusations, which in turn are amplified in the press. Conversely, it could be that the executive branch is an agent of change engaged in trying to transform a corrupt judiciary, while some litigators are "siding" with the judges in order to maintain a comfortable status quo. And between these two extremes, there may be hundreds of intermediate explanations and nuances that the researcher will have to interpret. These interpretations inform our hypotheses about the incidence of corruption.

Depending on the gravity and pervasiveness of the phenomenon, we will also obtain an initial set of data for the design of public policy concerning reforms and the control of corruption. This information will help us to determine the significance of the phenomenon, the priority it should be accorded on the public agenda, and whether substantial political or economic efforts are required.

2. Types of corruption schemes: general conditions in which they occur.
What types of acts of corruption are committed? What conditions are conducive to them?

The information we obtain for this variable should allow us to suggest certain patterns in the acts of corruption cited by the different sources and to develop some hypotheses as to which occur more frequently, the conditions conducive to them, and their repercussions.

A comparison of the data collected from different sources may reflect significant differences that will have to be interpreted; this interpretation will inform the hypotheses developed in this regard. For example, we might find that a wide range of corruption schemes were cited and that they vary according to the role of particular interviewees.

Lawyers from nongovernmental organizations and corporate lawyers, for example, might have very different experiences of corruption depending on the types of clients they serve and the type of legal proceedings in which they are involved. It is more likely that large sums of money are requested of corporations at the highest echelons of the justice system, while more vulnerable sectors tend to experience corruption among the auxiliary personnel or law enforcement agents with whom they come into contact when they are "singled out" by the penal system.

A "catalog" of acts of corruption, their consequences and causes will contribute to our reflections about relevant policy-making issues. Some sources might point to certain types of corruption cases in which political

influences play a key role. Should this be the case, we would have to examine the degree to which the selection process for judges might help account for such schemes.

In another possible scenario, there may be frequent references to requests for informal payments for measures inherent to the legal proceeding at different levels of the hierarchy. In this case it will be necessary to examine how such requests correlate to salary scales, or to procedural efficiency and work organization.

Another possibility is that blatant signs of corruption will be detected, such as the excessive enrichment of judicial officials, and that public perceptions or a review of the case files points to weaknesses in the control of assets and income histories.

We may be able to establish priorities and strategies for intervention. These will vary according to our hypotheses about which corrupt practices should be targeted first, or in a more concerted manner, based on their frequency, the gravity of their repercussions, and the potential to change the conditions in which they occur.

3. Relevance and type by institutional level

At what levels do different types of corruption occur?

The data for this variable is more specific than that collected for the first two. It examines the levels and functions associated with different types of corrupt practices

A comparison of the information obtained will reveal areas of agreement as well as discrepancies among the sources. Where the information is mostly consistent, the consensus it represents will produce a more robust hypotheses. The discrepancies encountered will require specific interpretations. For example we might find that while control organs document corruption cases mostly at the level of administrative employees, the media and a significant portion of those interviewed indicate that the most important, and even the most prevalent, cases occur at the higher echelons of the justice system. In such a situation one would have to wonder about the reliability of the latter positions, as well as the control organ's case selection process. This type of discrepancy may also be indicative of the extent to which weaknesses in the control organs are contributing to corruption at the highest levels, as well as the importance of the media's role in ensuring transparency.

Preliminary conclusions based on the information obtained for this variable can aid in creating an institutional map of corruption. This will be useful for considering specific intervention strategies based on reform priorities. The political costs and the tools will vary according to the institutional level targeted. For example, if the focus is on judges, critical interventions might include establishing complaint channels for subordinates (those who report directly to the judge) and whistle blower protection. If, in contrast, the target is administrative employees, it may be more relevant to create secure complaint channels for users of the judicial system.

4. Relevance and type of corruption by jurisdictional venue

In which jurisdictions do different types of corruption occur?

In this case, we are also looking for more specific information on the incidence and type of corruption. The aim here is to determine whether certain levels of corruption or types of corruption schemes are specific to different jurisdictions. For example, we might find that a particular type of corruption occurs in one jurisdiction and not in another.

Let us say, for instance, that corruption cases involving pre-trial detention are mentioned frequently. It would be important to discern, then, which aspects of the criminal procedures laws are conducive to officials requesting bribes when making detention decisions. Alternatively, the sources might indicate that judges ask for bribes uniformly across jurisdictions. This phenomenon could be linked to a particular way of operating

that is common to all jurisdictions. For instance, a lack of transparency associated with the meetings between judges and the parties could emerge as a general characteristic that is conducive to this type of corruption.

In designing reform policy, the focus should be on conditions conducive to corruption in a particular jurisdiction or on underlying causes that cut across jurisdictions, depending on the findings in this section.

5. **Relevance of corruption and type of corruption schemes by geographical area**
   Are there differences in the level and type of corruption based on geographical area?

Here again, we are looking at information on the incidence and type of corruption, but this time our aim is to find out whether different levels and types of corruption correlate with different geographical jurisdictions. We might find uniformity in the types of corruption and also conclude that the institutional conditions that give rise to corrupt practices are similar across geographical locations. On the other hand, certain features intrinsic to a particular region might correlate with specific types of corruption that are more prevalent in that region than in any other. In border areas, for example, we might find that certain acts of judicial corruption are linked to illicit activities involving contraband or illegal immigration.

Here again, regional similarities and differences will indicate the priorities and characteristics of interventions to control corruption.

6. **Relevance and type of corruption by historical period**
   Are there connections between differences in the levels and types of corruption and the country's political and economic evolution?

A country's historical evolution might feature certain benchmarks in the development of judicial corruption. For example, during a process of structural adjustment in a country, the government might require a favor from judges to legitimize economic policy decisions (such as privatizations) whose legality is disputed. By the same token, the emergence of some form of organized crime (e.g., drug trafficking, trademark fraud of clothing products) may be linked to the emergence of specific types of corruption.

Conversely, corruption scandals might shape and inform different perceptions. When interpreting the opinions obtained from individuals and the press, it is important to keep in mind the extent to which they might be influenced by such events.

In any case, the possibility of correlating historical events in a country with developments in the area of corruption allows us to examine factors external to the judicial system per se. This is important because it broadens our understanding of the issue and contributes to the design of reform policies by offering relevant data on the external constraints that will have to be addressed.

7. **Acts of corruption with the greatest repercussions**
   What types of acts have had the greatest repercussions? Do they share any characteristics?

Information on corrupt practices with the greatest repercussions can inform our hypotheses concerning priorities for the public agenda. What types of acts are accorded the most attention in the different sources consulted? It may be that the control organs, for "corporatist" and hierarchical reasons, report cases of corruption by low-ranking employees, while the media—based on the potential media impact or institutional relevance—mostly report cases of "high corruption."

Which acts have triggered the strongest reaction (positive or negative) among judicial system operators and users? Are they the same ones that have resonated most strongly in the media? Do these corrupt acts share any particular characteristics? Are they linked to politics, big business, or organized crime? Do they involve high-level or low-level officials? These data will help us to understand social perceptions concerning the most serious issues and priority areas.

b. Data processing matrix on control organs

1. **Competence**
   What is the control organ's sphere of action?

In this section, we will examine the areas of the judicial structure and the types of acts that fall under the purview of the control organ. The acts subject to an organ's control are found in internal standards of integrity, disciplinary rules, criminal laws, and other legal frameworks. The norm that created the organ will indicate the specific areas subject to its control: it might exercise control over all the judges in the country or only over a certain hierarchical level, geographic location, or category of acts. The organ might also have preventive functions, such as control of the assets and income history of judicial officials. The information collected about the organ will, in the first instance, define its sphere of activity. This information will be relevant for evaluating the organ's performance as well as for developing policy proposals. For example, we might find that restrictions placed on the actions of a particular organ by virtue of its sphere of competence essentially cancel out or reduce its control capacity.

2. **Mission and functions**
   What is the main objective of the control organ?
   What functions does it perform to achieve this objective?

Our main objective here is to describe the type of control exercised by the organ. It might receive complaints, investigate them in order to bring them before an ethics tribunal, impose administrative sanctions, or file complaints in a court of law. Control functions may also include more indirect tasks such as the collection and control of sworn financial disclosures. An entity that performs one or more of these functions qualifies as a control organ. In this section we will classify the information based on specific control functions. A vision of the entire spectrum of functions carried out by the different organs will give us an idea of the scope of control in a particular judiciary. We will also be able to identify control functions that are not being performed but might be required in light of the types of corruption detected.

While the norms indicate to us the functions that the organ should perform, internal files and statistics tell us which ones are actually being carried out. Press reports and interviews offer indications of the degree to which the public is familiar with the organ's functions as well as its image.

3. **History**
   In what context was the control organ established?

The sources consulted will provide us with data on the context in which the organ was created. A description of the context often involves several variables or indicators. For example, is there a tradition of controls in the judiciary? Has the organ been in existence for a long time? If it is new and was it preceded by similar organs? Is its creation linked to any particular political event? These and other questions will frame the context in which the organ was created. This information is relevant to understanding the organ's characteristics, performance, and limitations, as well as the possibilities for reform.

4. **Autonomy (institutional, financial, political)**
   What is the organ's margin of self-determination to perform its functions?

The purpose of this section is to determine the extent to which the organ makes its own decisions about how it will perform its functions and the extent to which it is subject to decisions made by other authorities. Institutional autonomy refers explicitly to the institutional structure, meaning the legal or regulatory provisions that have a bearing on how decisions are made: whether the organ must report to other authorities, whether its decisions may be revoked by other entities, the procedures for appointing and removing its authorities, and so forth. For example, if a prosecutorial tribunal under a Council of Magistrates is responsible for control, and if this tribunal consists of judges who carry out control functions on a temporary basis and then return to their judgeships, there will be few incentives for autonomy

and many for corporatist protection within the judiciary.

An organ's financial autonomy refers to the degree and way in which its revenues and expenditures are subject to decisions by external entities. Political autonomy relates to the organ's ability to discharge its control functions in an independent manner, free of incentives or coercion by external actors, above and beyond the conditions described in the other areas (institutional and financial). For example, if appointments of control officials are informally determined based on political party affiliation, we can infer that there will be few incentives for the official in charge of the organ to investigate judges affiliated with the same party.

Information on these aspects of an organ's autonomy will allow us to determine, to a certain extent, the scope and limitations of its actions. We can also infer some potential ways in which the organ might be strengthened to improve the autonomy of its control functions.

5. **Access to information**
   Is it possible to gain access to general information about the organs activities? Is it possible to gain access to specific information regarding cases?

The access to information variable indicates the potential for the public to be informed about the organ's functioning. It is important to understand the degree to which the organ is authorized to disclose general (the organ's performance) and specific information, the type of information involved, how often it does so, and the difficulties citizens encounter in their efforts to obtain it (whether they have access to documentation, attend hearings, etc.).

The data on this variable will indicate to us the potential for citizens to monitor the organ's functioning, whether directly, or through the media or civil society organizations, and the extent to which they actually exercise such oversight. At the policy-making level, this data will enable us to visualize ways to foster citizen oversight.

6. **Investigatory capacity**
   What type of information is the control organ able to access directly, or is authorized to obtain from others?

If the control organ carries out investigatory functions, it is important to ascertain its capacity to do so. This means listing the investigatory powers vested in it by law and comparing this list with its actual activities. In this case it is particularly useful to contrast the norms regulating its activities with the information obtained about those activities (files, interviews, press reports).

This information is key to understanding the organ's scope of action and its limitations. As with the issue of autonomy, the behavior of this variable will provide us with relevant information on the organ's weaknesses and the main functions that should be strengthened.

7. **Material resources**
   What elements are available to the organ to carry out its functions?

Technological resources, those relating to information (databases for its own use and access to other databases) and physical facilities are some of the categories that can be examined in this variable. Without presuming to conduct an exhaustive assessment, it is helpful to have a general sense of these indicators. The interviews, information provided by the organ, and site visits to the offices all can elicit data concerning adequate physical space, computers to staff ratios, computerized administrative and data collection systems, and so forth.

The development of a coherent hypothesis on the availability of resources and their impact on the organ's work will be relevant for planning reforms. This process should also take into account the limitations discovered in the examination of the organ's financial autonomy.

8. **Human Resources**
   What is the organ's professional make-up? How are its human resources organized?

Information on the division of labor and career develop-

ment will provide indications as to what we can expect in terms of available technical capacity. Some important aspects in this category are the backgrounds of those with control responsibilities, their job descriptions, and reporting channels, whether their salaries are competitive relative to other areas of the administration or to the private sector. Does the organ have trained professionals on staff? Do attorneys and judicial employees view the organ as a desirable place to work? Is there any prestige associated with working there? Is it financially viable to work there? Are there opportunities for professional mobility? Does the organ offer job stability?

This type of information will allow us to develop hypotheses correlating the institution's structure and the professional make-up of its staff to its performance. It will also contribute to an assessment of the degree to which strengthening staff selection and organization might improve control capacity.

9. Operating procedure and workflow

To what degree does the organ's operating procedure and workflow contribute to efficiency or inefficiency in the performance of its control functions?

The information gathered in this section will enable us to produce a synoptic description of the organ's operating procedures and workflow. This description will specify where the workflow originates: for example, whether an investigation is opened at the organ's initiative or triggered by the intake of a complaint. If the organ has investigatory functions, it will describe how an investigation is carried out: for example, through a preliminary inquiry by the control organ, a preliminary administrative proceeding with the accused present, or a referral to a more specialized organ. If the procedure culminates in the imposition of a sanction, the description will include the conditions for arriving at the decision and indicate who is responsible for making it. In other words, it will outline the evidentiary requirements, who makes decisions concerning the evidence presented, and whether this is done by an internal division of the organ or an external entity.

The norms offer a static description of how the procedure is supposed to be carried out and how the organ should coordinate the work. An examination of the organ's statistical files will yield information on the degree to which the organ's performance adheres to those norms. It will also tell us whether the degree to which the norms are applied contributes to or impedes the more effective exercise of control functions.

10. Performance

What do we know about the degree to which, and the way in which, the organ carries out its control functions?

Measuring the performance of the organ is a complicated undertaking and again, our intention is to develop well-founded hypotheses rather than firm conclusions. While we are not in a position to quantify levels of implementation of control functions, much less in an incontrovertible manner, the data collected should enable us to develop well-founded hypotheses. A review of the organ's files and statistics will enable us to establish certain parameters. We should take a critical, rather than literal approach to the statistics, as they can be extremely useful when evaluated in this way. As we read them, we should pose questions such as those offered in the chart.

The opinions of subjective sources (interviews, press) will contribute to this critical review by offering an outside perspective on the organ's functioning. For example, while the control organ might appear to have a relatively small case load, some interviewees might perceive that the cases it handles are highly complex and have serious institutional implications. Conversely, the statistics might reflect a high level of activity, but when the figures are contrasted with expert opinions and a review of a sample of files, it may become clear that the cases processed are of little relevance, while the more serious cases are not taken up by the organ.

Our aim here is not to conduct a performance evaluation in terms of assigning a grade or score to the organ's activities, but rather to correlate and interpret the avai-

lable information in such a way as to characterize its performance. It is not a matter of saying whether the organ is "good," "bad," "weak," or "strong," but rather an effort to depict it based on the available information. Taking one of the examples given earlier, in response to the questions found in the matrix, the report might assert that "while the organ's statistics show an increase in the number of resolved cases, all of the litigators and most of the judges interviewed affirmed that the most serious corruption cases have not been investigated. This would indicate to us that while the means exist to resolve a growing number of cases, they are not applied to the most egregious ones. According to most of those interviewed and to columnists in two different newspapers, this is due to the fact that the head of the control organ has no job stability and is dependent on the Supreme Court. He therefore fears he will be fired if he moves forward with investigations into corruption cases involving magistrates."

In contrast, and expanding on another example given previously, the report for this section might state, "while the number of cases resolved is low and the perception in the media is that the organ's process moves very slowly, the interviewees most familiar with the organ's activities and resolved cases reported that it concentrates its scarce resources on cases involving high-level officials; the resolutions issued have been highly successful and have culminated in the imposition of sanctions in over half of the cases." In synthesis, the information collected for this section would have to be organized into a situational chart in order to contrast information from different sources and interpret performance levels.

SECTION C Good practices, initiatives, and experiences in combating corruption and promoting judicial transparency

The practices described below are useful for implementing assessment, prevention, and control mechanisms to increase transparence or reduce corruption in the judiciary. Each one is illustrated using examples from different countries. While many of these initiatives have emerged out of debate and discussion between civil society and the State, in some countries, the weakness of this relationship has impeded any significant progress in this regard.

1) Working through the media

The judiciary performs a governmental role. In a democratic society, therefore, it must be as transparent and as accountable for its actions as any other branch of government. At the same time, the judiciary is, by nature, unique; it is not a "representative" organ (in the sense that other branches of government are) and because of this, it requires a specific form of communication with the public.

According to the judicial cultural wisdom, judges "speak only through their rulings," and this is a barrier to open communication. Transparency is unthinkable in the absence of communication about specific judicial actions (individual rulings, jurisprudence, and so forth) and about financial administration (procurement and contracting, human resources, etc.). It is therefore necessary to consider adequate communication channels for the judiciary. Some countries have used the mass media—radio, television, and written press—and the Internet to enhance transparency.

In order to use the mass media effectively, specialized roles must be instituted in the judiciary and in the journalism field. One basic tool is the establishment of press and communications offices within the judicial system staffed by individuals who have been specially trained to communicate technical information. Training courses should be available to equip journalists with the skills they need to interpret and process the information they obtain. Judges frequently complain about the lack of technical expertise among journalists and banal or sensationalistic news coverage. It is hard to change this, however, if no specific tools are available to do so.

Training in investigative journalism is consistent with this goal. Equipping journalists with the proper tools to follow up on corruption cases through solid, well-substantiated reporting enhances public oversight quantitatively and qualitatively. Red Probidad [Probity Network] has conducted such training in El Salvador, and the Trust for the Americas Foundation of the Organization of American States has offered training in case investigation to journalists and civil society organizations in Central America and the Caribbean.[21] In Guatemala, the Chamber of Journalism has participated in the Judiciary's Committee to Combat Corruption since 2003 and is responsible for training workshops.[22] Some useful indicators to evaluate such policies include the frequency of news articles, their follow up, and an evaluation of how the content is handled technically.

Internet use is spreading rapidly in Latin American judiciaries. It is an excellent venue for the publication of norms, rulings, jurisprudence, and access to files, and for administrative transparency. The website of the Costa Rican judiciary has been used extensively to transmit information in all of these areas, and is worth visiting: http://www.poder-judicial.go.cr/. The Costa Rican justice system ranks first in Latin America in the Justice Studies Center of the Americas' index and ranking on accessibility of judicial information.[23]

The number of users is one initial indicator for assessing the extent to which these types of initiatives are functioning properly, but it is also important to look for ways to evaluate the impact of its use. For example, if information that the system's operators and users would ordinarily request in person or by telephone is available on the judiciary's webpage, it would be useful to measure any decrease in this demand.

[21] http://probidad.net, http://www.trustfortheamericas.org/
[22] http://www.cejamericas.org/reporte/muestra_pais.php?idioma=espanol&pais=GUATEMAL&tipreport=REPORTE2&seccion=INST_070
[23] http://www.cejamericas.org/doc/proyectos/IndiceAccesibilidad2006versionfinal.pdf

Judges do not speak through their rulings alone. Making good use of the press and the Internet, and training journalists on judicial subject matter are two examples of ways to improve communication between the judiciary and civil society.

2) Establishing channels for dialogue with judicial policy-makers.

In addition to the mass media, the judiciary requires channels for dialogue with social and political stakeholders interested in improving and participating in policy-making processes for that sector. Roundtables with the participation of civil society organizations, the executive and legislative branches, and the judiciary itself can be a useful tool for generating proposals and building consensus. A frank, public discussion can facilitate priority-setting and the development of a reform agenda with enough political and social support to carry it forward.

Sometimes civil society takes the lead in these matters, building coalitions of organizations that seek out opportunities for discussion with the judiciary or other branches of government. In other cases, it might be the judiciary or another governmental entity that proposes to engage civil society in policy-making discussions.

Amidst Argentina's political and economic crisis in late 2001 and early 2002, a group of civil society organizations began to brainstorm about how to improve the Supreme Court of Justice and judge selection procedures. Together they produced a series of papers that also gave the coalition its name "a court for democracy."[24] The coalition continued to function after the crisis had abated and several of its proposals to enhance the judicial transparency were received positively by the Supreme Court of Justice, the legislature, and the executive branch. The proposals which have been implemented or are in the process of being implemented include:

- The executive branch seeks out citizen's opinions concerning candidates for positions in the Supreme Court of Justice and opportunities are available to present objections.
- Information on how a case is processed and voted on by the Court is available to the public.
- Information on budget execution, including competitive bidding processes, is available to the public.
- The court publishes and updates a list of case files which, because of their institutional transcendence, should benefit from the input of third parties external to the process (*amicus curiae*).

The creation of coalitions of civil society organizations and the establishment of channels for dialogue between these groups and the judiciary can facilitate the development of a reform agenda.

3) Information dissemination, research, and the generation of knowledge

Another way to build consensus is through empirical research that generates reliable information on the state of the judiciary. Such studies make it possible to assess strengths and weaknesses and propose reforms. If the study is designed and carried out in the framework of a consensus among stakeholders from civil society and the government, it will create common ground for the discussion of reforms. It is particularly useful when professional groups such as bar associations, magistrates associations, and trade associations of judicial employees participate in these processes. In Costa Rica, for example, the Supreme Court decided to conduct an empirical study on the state of the justice system and assigned a multidisciplinary team of attorneys, political scientists, and sociologists to carry it out. Team members interviewed litigators, academics, public officials, journalists, labor leaders, business people, and members of civil society. Based on these interviews, the team produced an assessment of needed reforms, which were then undertaken in an atmosphere of consensus.

[24] Available at http://www.cels.org.ar/Site_cels/documentos/Corte1.pdf; http://www.farn.org.ar/docs/p34/index.html y http://www.adc.org.ar/home.php?iDOCUMENTO=448&iTIPODOCUMENTO=1&iCAMPOACCION=32

Initiatives to bring together civil society and the government do not always produce the desired outcomes, however. It is vital that all of the stakeholders in the dialogue process have incentives and an inclination to reach agreements. If this is not the case, we can find ourselves in situations where government sectors perceive civil society as excessively critical or civil society perceives governmental sectors as closed and anxious to protect their own. In November 2004, the Documentation Center of Honduras published a report titled, "Democratic Controls over Justice Operators" ["Los Controles Democráticos en los Operadores de Justicia"]. The report presented the findings of a study that encompassed the Judiciary, the Public Ministry, and the Health Secretariat and exposed the main weaknesses in judicial oversight. Although the findings were published and forwarded to the authorities, it was impossible to foster a dialogue between civil society and the government that would make it possible to convert them into public policy.

It is necessary to allow enough time for debate and consensus to develop before measuring whether policies resulting from "concertation" or dialogue processes are functioning properly. After six months, for example, it should be possible to proceed with an accounting of the agreements reached among stakeholders and the degree to which they have been implemented.

> Research and the generation of knowledge can contribute to the development of reforms based on evidence. When the research findings are validated by different stakeholders, there is a greater likelihood that the reforms will be implemented.

4) Civil society observatories

Civil society can make a valuable contribution to judicial transparency through systematic observation of the performance of the courts and their members. It is important to select carefully the areas of judicial functioning to be monitored in order to obtain sufficient information, and a relatively constant flow of it, for comparisons to be made over time. One subject might be the way in which the members of a high court vote on key legal cases (for example, human rights issues, major corruption cases or those involving economic policy, major corporate lawsuits, etc.). Alternatively, we might choose to examine the backgrounds of candidates for high level judicial postings or sitting judges. It is also useful to monitor how the judiciary handles specific corruption cases. Here it is important to examine the technical grounds for the opinions issued and the impartiality of case selection.

The Citizens' Alliance for Justice [Alianza Ciudadana pro Justicia] of Panama created a section on its website where the general public could obtain information on corruption cases and anti-corruption efforts. The purpose of the website is to promote accountability among public officials, including judicial officials, and to involve citizens in the fight against corruption. The website monitors specific corruption cases by providing information on the proceedings in the file and monitors press coverage; it also offers an interactive discussion forum which includes citizens' opinions on the subject. (http://www.alianzaprojusticia.org.pa/alianzaw/alianzasite/links.php?secc=62&key=)

Another interesting experience comes from Peru. Justicia Viva is a joint project of the Legal Defense Institute (IDL) and the law school of the Pontifical Catholic University of Peru to evaluate the situation of administration of justice in Peru. It maintains a website with updated information as well as research, analyses, and proposals on issues related to the justice system (http://www.justiciaviva.org.pe). The project includes at least two salient initiatives related to enhancing judicial transparency. First, Justicia Viva publishes the *curricula vitae* of Supreme Court magistrates to inform the public of the professional backgrounds of the highest judges in the land. Second it monitors how the judicial branch handles corruption cases, prepares technical

and institutional critiques, and disseminates its conclusions. This has contributed to a well-documented body of knowledge on how the judiciary handles corruption and how it contributes (or not) to a more transparent democracy.

In Argentina, the Asociación por los Derechos Civiles [Association for Civil Rights] has been working on several initiatives to monitor and conduct oversight of the Supreme Court of Justice, including documenting how judges vote in key cases (http://www.adccorte.org.ar).

Some of the more useful indicators for evaluating the implementation of such initiatives include the frequency with which the new information is added, the way the information is explained to a non-specialized public, and its impact (for example, whether it is cited in the press).

Civil society observatories help maintain a constant flow of information and contribute to a perception within the judiciary that social control mechanisms are in place to exercise oversight. Both of these factors help insert the adjudicatory function more solidly into the democratic context.

5) Publication of judgments

Public awareness of judicial decisions is an essential tool for transparency and should be approached systematically and under the purview of the judicial system itself. This is the case in Costa Rica for example. The use of Internet technology to ensure public access to information is one alternative to respond to this challenge that commenced five years ago. Since then, officials and citizens have shared a collection of data that has enhanced understanding of how the adjudicatory function is exercised. All judgments are accessible on the Internet (http://200.91.68.20/scij/index_pj.asp) and those of the Constitutional Court are classified by subject matter (http://www.poder-judicial.go.cr/salaconstitucional/).

When the judiciary does not take responsibility for these tasks, civil society can try to mitigate the situation, even if only partially. In Peru, the Andean Commission of Jurists, through its Social Audit of the Justice System, established a channel of communication between judges and society. Based on agreements between the organization and participating judges, the judgments and professional backgrounds of those judges are published on the Audit website. (http://www.auditoriajudicial.org.pe/master.html).

The publication of judgments is a prerequisite for judicial transparency.

6) Civil society participation in strategic entities

Formal citizen participation in judicial policy-making can help accelerate processes to enhance transparency. This participation must be sustained over time and the decisions made in this framework must be transparent in the eyes of the public so as to avoid dampening expectations concerning what this type of engagement can accomplish. Participation can be achieved by involving sectors of civil society, represented by particular interest groups (professional, academic, trade union, gender-based or ethnic associations, etc), in procedures such as the appointment of judges or control organ officials, or the application of disciplinary sanctions, among others.

In Honduras, for example, the 2000 constitutional reform and the reform of the Organic Law of the Judiciary and the Law of the Council of the Judicature and the Judicial Career established civil society representation on a nominating board that draws up a slate of 45 candidates from which the National Congress selects Supreme Court magistrates. The bar association [Colegio de Abogados], representatives of business associations and trade unions, law schools, and others participate in the nomination process.

In 2003, the National Congress of the Republic of Peru passed Law 28149 which incorporates into the disciplinary organ of the justice system (Órgano de Control de la Magistratura –OCMA) representatives of magistrates associations, bar associations, and universities. In this way, the disciplinary process was opened up to decisions by expert actors external to the judiciary.

When evaluating the effectiveness of such participation, it is useful to measure the extent to which nongovernmental representatives are able to act autonomously and exert some type of influence over the decision-making process or at least over the way in which decisions are publicized. Such data can be obtained through a review of the press coverage and interviews with members of the representative entities and the organizations themselves.

Engaging citizens in decision-making processes contributes to the democratic nature and transparency of the judiciary. Citizen participation must be accompanied by guarantees of autonomy and access to information, and their voices must be genuinely heard. If this is not the case, the process might have the opposite effect from what was sought.

7) Codes and standards for the ethical conduct of the judge and disciplinary systems

The development of standards of conduct for judges and a transparent, independent disciplinary system to ensure compliance with at least some of the basic standards is critical for restoring trust in discredited judicial systems. Today many judiciaries have ethics codes and standards for judges, as well as some disciplinary mechanisms. Nonetheless, many countries have yet to adopt such instruments and when they have, the standards and disciplinary systems are often regarded as weak, politicized, and lacking transparency, or too focused on the private life of judges rather than on the discharge of their public duties. Some codes are the result of consensus among diverse sectors of a society, while others transcend borders. The latter include the codes of ethics developed at the international or Hispanic-American levels.

- The United Nations Bangalore Principles of Judicial Conduct (http://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf#search='Bangalore%20Principles')
- The Ibero-American Judicial Summit Iberoamericana: http://www.cumbrejudicial.org/
- The European Charter on the Statute for Judges http://www.coe.int/T/E/Legal_Affairs/Legal_Co-operation/Operation_of_justice/Conferences/CHARTE%20ENG%20A5.pdf#search='%E2%80%A2%20The%20European%20Charter%20on%20the%20Statute%20for%20Judges'
- The guidelines of the International Bar Association
- Model Code for Judicial Conduct of the American Bar Association (http://www.abanet.org/cpr/mcjc/home.html) – This includes detailed comments and examples under each article; recently changes have been proposed in a large, comprehensive report prepared by the committee responsible for revising the code; as yet, they have not been approved. See http://www.abanet.org/judicialethics/finaldraftreport.html.

Codes of ethics developed by judicial officials at the international level are important for self-regulation and for fostering a "esprit de corps" in the positive sense of integrity, as opposed to corporatist self-protection. These codes must be clear and target the public activities of judges.

APPENDIX I
DATA COLLECTION INSTRUMENT

a) Definition of a control agency

Focus: Identify the agencies having control functions with regard to the conduct of judicial officials and the Public Ministry.

Locus: The consultant's experience, the constitution, organic laws, resolutions.

1) Agencies that receive complaints concerning irregular conduct by officials and employees of the judiciary and the Public Ministry.
2) Agencies that investigate cases of irregular conduct by officials and employees of the judiciary and the Public Ministry.
3) Agencies that promote sanctions (administrative or judicial) for irregular conduct by officials and employees of the judiciary and the Public Ministry.
4) Agencies that decide on sanctions (administrative or judicial) for irregular conduct by officials and employees of the judiciary and the Public Ministry.
5) Agencies that carry out a combination of two of more of the functions described in points 1 to 4.

b) b) Institutional and organizational description. Capacity, powers, authority, resources.

Focus: Original context in which the agency was established. General characteristics and functions. Consolidation, stability, autonomy, autarchy of financial and human resources, investigatory capacities, preventive functions, sanctions.

Locus: norms, press, specialized literature, interviews.

b.1) Establishment of the agency.

6) Basic data concerning its establishment: the authority that created it (congress, constituent assembly, supreme court, council of magistrates, attorney general, etc.) Legal instrument establishing it (constitutional reform, law, internal resolution, etc.)
7) Characteristics and political-institutional context for its establishment. Motives given for the establishment and design of the agency. Alternatives and criticism offered by other sectors.
8) Mission of the agency: objective, competence, jurisdiction. Does it control infractions of constitutional norms, specific (administrative) legislation, criminal law, other norms? Specify the types of infractions: conducts and sanctions.
9) Does it have preventive, investigatory and punitive functions?

b. 2) Legal framework and structure of the agency

10) Is it governed by rules of procedure or by-laws?
11) Who issued them? The agency itself or an external entity?
12) Areas covered by the rules of procedure: appointment and removal of officials, powers, competence and jurisdiction, complaint intake requirements, investigatory procedures, investigatory powers, requirements for filing charges, proceeding, sanctions, appeals.

b.3) Authorities of the agency

13) Hierarchy of authorities. Procedure for the selection and appointment of authorities.
14) The powers conferred on the authorities.
15) Mandate. Tenure. Procedures for removal.

b.4) Procedures

16) Requirements and channels for lodging complaints. (Eligibility to lodge a complaint. Formal aspects of the complaint. Representation).
17) Protections for complainants and witnesses.
18) Investigatory powers (coercive measures, access to documentation, calling witnesses, expert opinions and technical studies).
19) Time frames for the investigation.
20) Requirements to bring charges. Time periods.
21) Defense. Investigatory powers, obtaining documentation, calling witnesses.
22) Proceeding. Hearings, remedies, objections. Affidavits, submission of evidence. Decision. Time

periods. Requirements and basis for the decision.
23) Opportunities for appeal.
24) If it is not a judicial proceeding, the requirements for taking the case to the courts. Relationship and communication between non-judicial and judicial entities.

b.5) Transparency, access to information, citizen participation

25) Can private citizens or organizations participate in the process? Conditions, scope and limits of this participation.
26) Are the resolutions adopted by the agency available to citizens?
27) Does it produce periodic reports of its activities? What is the content of those reports? Publication (written, website, etc.).

b.6) Preventive functions

28) Specify preventive functions: intake of financial disclosures, control of financial disclosures, audits, inspections.
29) Citizen access to information on prevention activities.

b.7) Organizational capacity

30) Annual budget as a percentage of the total budget of the judiciary or the Public Ministry (as the case may be) and as a percentage of the national budget.
31) Process to determine the annual budget. How and by whom are decisions made.
32) External controls of budgetary execution. Accountability.
33) Human resources structure. Number of employees. Percentage of employees with professional training and responsibilities vs. employees with administrative functions.
34) Comparison of the salaries earned by the authorities to those of other officials of the same level or with similar requirements.
35) Comparison of the salaries of professional staff with public or private sector employees with similar responsibilities, education and training, or backgrounds.

c) Institutional dynamics of the agency

Focus: scope, efficiency and outcomes of the agency's activities. Types of corruption in the adjudicatory function.

Locus: internal statistics, specialized literature.

c.1) The agency's performance statistics

36) Number of cases opened since its establishment.
37) Number of cases opened annually.
38) Number of cases resolved since its establishment. Categorized by type of resolution.
39) Number of cases resolved annually. Categorized by type of resolution.

c.2) Analysis of case files

Sample: to be determined based on their accessibility, the number of organs to examine, the size of the universe of files.

40) Date of complaint.
41) Complainant.
42) Description of the act reported.
43) Type of infraction described.
44) List and description of the investigatory measures (request for documentation, experts, technical reports, affidavits, etc.)Dates on which they were ordered and completed.
45) Responses to requests made in the course of the investigation. Delay time between the request and the response.
46) Duration of the investigation.
47) Presentation of the charges.
48) Investigatory measures and evidence offered by the defense.
49) Disagreements and objections related to the investigatory measures.
50) Oral and public proceedings in the case. Testimony,

presentations, arguments. Brief description.
51) Resolution by the deciding organ.
52) Appeals and requests for review. Outcomes
53) Total file processing time.

d) Presence and types of corruption according to the media, experts and judicial system operators and users

d.1) Review and analysis of cases published in the press

Sample: newspapers with national circulation, news magazines.
(Applies to cases, even though they are covered by different press sources)

54) Description of irregular behavior of judicial official according to different media sources. Main descriptors in the report: who carried out the irregular act, what did it consist of, who participated in it, what conditions were conducive to the incident (legislative shortcomings, the official's moral integrity, the moral integrity of private individuals, institutional problems), who reported it, what conditions led to the incident becoming known. Comparison of different press sources.
55) Description of the actions carried out by the control organ, according to different press reports. Main descriptors found in the report: who performed a control function (receive the complaint, launch an investigation, bring charges, issue a resolution, etc.). Who opposed or criticized the measure or outcome. Comparison of press reports.
56) Context and connotations of coverage by different media outlets: characterizations of political responsibilities, causes, possible ramifications of the case.
57) Continuity and case follow-up. Frequency of reporting. Space and location assigned the articles. Comparison with corruption coverage in other spheres.
58) Editorials on corruption in the adjudicatory function. Characterizations of corruption and estimations regarding the control organs.

d.2) Views of the judiciary, corruption, and controls

d.2.1) In-depth interviews

The objective of this section is to grasp the interviewees' cosmovision of the history and current state of the judiciary and his or her knowledge and opinion about judicial corruption. The interviewee must feel free to express his or her opinions and supply any additional information. The fields are not questions that necessarily should be posed literally, but instead should be used as guides to keep in mind during the conversation.

The questions posed in this document should be viewed as baseline questions to be adjusted according to the type of interviewee, his or her functions and background.

Sample: qualified informants of the judiciary (judges and qualified staff), qualified informants of the Public Ministry (prosecutors and qualified staff), public defenders, members of control organs with competence in matters of case adjudication, litigating attorneys, NGO leaders, academics, legislators. Minimum (approximate) of 30 interviews.

d.2.1.a) Background and general opinions

59) When did your involvement with the judiciary begin?
60) What were your reasons for pursuing this field?
61) At that time, what was your opinion about the honesty of judges and the transparency of judicial processes?
62) In your opinion, was corruption in the judiciary a more serious problem then or is it more serious currently?
63) Can you describe different stages in the evolution of the judiciary in our country since you began your career to the present? (Tips: constitutional reforms, peace accords, changes in procedural norms, changes in judge selection processes).
64) What have been the main problems facing judges in each stage?
65) What have been the main problems faced by citizens

who turned to the justice system in each stage?

66) Do you believe that a person with political or economic power has a better chance of obtaining a favorable outcome from the justice system?
67) Are you aware of cases in which having economic or political power has benefited a party to a judicial process? (Tips: deals made with regard to a judicial decision: money, political support for a judicial career, other gifts, contracting of certain juridical studies associated with the judge, academic favors).
68) If the answer is yes, can you give some examples?
69) Do you think this phenomenon is widespread?
70) Do you think that it is concentrated in any particular sector/jurisdictional venue/region/function? Which ones?
71) How do you think judges are regarded by public opinion? To what do you attribute this?
72) Do you think that existing control mechanisms are effective for the prevention and investigation of corruption in judiciary?

d.2.1.b) Case overview

(This part of the interview requires a selection of cases involving irregular conduct on the part of judicial officials that have resonated in the public domain).

73) Do you recall Case X? (if the response is yes, go on to question 74 [sic]. If the response is no, offer a copy of the press report and continue if the interviewee recalls the case. If not, go on to the next case)
74) Do you believe that an act of corruption actually occurred in this case? (If the answer is yes, go on to question 76, if it is no, go to question 75).
75) Why do you think that the press (and/or the control agency) understood that a corrupt act had occurred?
76) In you opinion, who is/are responsible for this corrupt act?
77) Do you think the case was handled appropriately at the institutional level?
78) Do you think this type of act is common in our country? (If the response is yes, go on to question 80, if it is no, go to question 79).
79) Why do you think this act happened this time but is not likely to recur?
80) What conditions are conducive to a recurrence of these types of cases?
81) What would you propose to prevent recurrences?

APPENDIX II
REPORT PREPARATION GUIDE

1. Introduction

Brief overview of the work carried out, the sources used, the scope and limitations on access to information, and the scope and limitations of the study.

2. Corruption in the judiciary of the country

2.1. Perception of corruption. Incidence: perceptions and statistics. (Chart 1, section 1).

2.2. Types of corruption. Location and characteristics. Types of corruption, where it is situated by jurisdictional venue or level, geographic area, and underlying conditions according to different sources (Chart 1, sections 2, 3, 4, and 5).

2.3. Historical evolution and impact of corruption (Chart 1, sections 6 and 7)

2.4. Researcher's evaluation of the information used in this section and what it means about the state of affairs in the country.

3. The tools, mechanisms, measures to address corruption in the justice system.

3.1. Circumstances that gave rise to the organ: Establishment of the control organ. Institutional hierarchy and reporting structure. Mission and functions. Powers to perform its function. Procedures and organization of the workflow (Chart 2, sections 1, 2, 3).

3.2. Operations. Characteristics of its budget, human resources, technology and other resources. Formal or informal influence of authorities and sources of political power. Performance of the organ: quantitative, qualitative, statistical data, and perceptions. Case statistics and analysis. Public access to the organ. Its relationship and communication with other control organs and with the government (Chart 2, sections 4 - 10).

3.3. Researcher's evaluation of each organ in terms of the strengths and weaknesses of its institutional and organizational make-up, human and material resources. Degree of autonomy and the clarity of its functions, procedures, and powers. Scope of its powers to fulfill its objectives.

4. Summary and hypotheses for more in-depth research, critical areas for potential reforms.

4.1. ¿What is your opinion about the state of the justice system in the country in terms of independence, transparency, and corruption?
4.2. ¿What is the role of the press in combating judicial corruption?
4.3. ¿What is the role of civil society in combating judicial corruption?
4.4. ¿What are the main types of judicial corruption in the country?
4.5. ¿What are the main factors underlying the presence of acts of corruption?
4.6. ¿To what extent to control organs succeed in mitigating the problem? What are the main reasons for its successes/failures?
4.7. ¿How relevant are other organs and institutions to the panorama of corruption and judicial controls (organs involved in judge selection processes and the judicial career, public defenders offices, control organs of the Public Ministry—or that exercise control over the PM—, other government departments).
4.8. ¿Proposals to mitigate conditions that are conducive to acts of corruption.
4.9. ¿Proposals to improve the performance of control organs. Proposals to reduce judicial corruption. Objectives and hypotheses for implementation

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