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Justice Sector
Topic Guide

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What are justice sector corruption and integrity assessments?

We define justice sector corruption and integrity assessments broadly as those tools which aim to identify governance weaknesses and/or assess the extent of corruption in the justice sector as a whole (encompassing *institutions* such as the judiciary and courts, the legal profession, police and penal institutions, as well as *processes* such as the rule-of-law, access to justice, and reform efforts)[1].

Because there is considerable room for interpretation with regards to what actually constitutes the 'justice sector', the scope of assessments varies widely and may include: the legal and institutional framework, management of the justice system (planning, financial and administrative issues), trust in – and access to – justice sector institutions, independence, effectiveness and conduct of judges and lawyers, transparency and accountability of criminal justice (including policing, sentencing and prisons), and respect for the rule of law.

Purpose and context of the assessments

With some exceptions, assessment tools in the justice sector are rarely designed specifically for the purpose of diagnosing corruption. Rather they generally aim to assess *performance* or *effectiveness* of the system, or to evaluate the implementation of justice sector reforms. Nevertheless, many of these tools do have a strong governance focus and include some analysis of levels of transparency, integrity and/or accountability within the system (see table 1 below).

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[1] The focus of this topic guide is on the sector-wide assessment tools although reference is made to sub-sectoral tools, such as those focussing on courts and the police.

Table 1: Purpose of governance and corruption assessments in the justice sector

EXAMPLES OF TOOLS	CONTEXT	PURPOSE						
		Judiciary				Justice sector		
	Judicial reform efforts	To assess judicial integrity (independence, accountability, transparency, accessibility)	To assess incentive systems within the judiciary	To assess resources and capacity of the judiciary	To assess anti-corruption measures within the judiciary	To assess trust/ confidence in the justice system	To assess perceptions of corruption in justice sector	To assess integrity/ corruption in the legal profession, law enforcement and/or penal systems)
Judicial Reform Index	X	X	X	X				
Rule of Law Index		X		X			X	
Judicial Transparency Checklist	X	X	X	X	X			
Diagnostic Checklist for Assessing Safeguards against Judicial Corruption		X	X	X	X			
Measuring Progress toward Safety and Justice	X	X	X	X		X	X	X
Measurable Performance Indicators for the Judiciary	X	X		X		X		
Legal and Judicial Sector Assessment Manual		X	X					X
Criminal Justice Sector Assessment Rating Tool		X	X		X			X
Criminal Justice Assessment Toolkit	X	X	X	X		X	X	X
A Model State of the Judiciary Report	X	X	X		X			
AfriMAP – Justice Sector Questionnaire	X	X		X				X
Developing Indicators to Measure the Rule of Law		X				X	X	X
A Guide to Rapid Assessment and Policymaking for the Control of Corruption in Latin American Justice Systems		X	X	X	X	X	X	
Justice Sector Integrity Assessments - Nigeria & Indonesia	X	X		X	X	X	X	

Assessment approaches

Generally speaking, most justice sector assessments involve some level of legal-institutional analysis, often combined with more qualitative methods such as key informant interviews, focus groups and surveys/questionnaires. There is a notable prevalence of checklists and indicators for the sector. Some of these provide a ready made list of indicators[2], whilst others provide a basket of suggested indicators and/or guidance on how to develop one's own indicators according to the needs and context of the analysis[3]. Others still include a scoring/ranking system to compare across countries or to measure progress/change over time[4].

Amongst the different approaches, a key distinction can be made between those which assess *de jure* and those which assess *de facto* measures of judicial corruption.

- De jure measures generally focus on the rules and regulations that govern the justice sector, including internal oversight mechanisms and codes of conduct. They aim to assess how the sector is *supposed to* operate and are often used as a baseline for assessing judicial reforms. The most prominent method within this approach is the use of standard-based indicators and checklists which are rooted in international (or regional) normative frameworks including principles and standards of judicial integrity. These can be very useful for rating the normative value of a particular justice institution or process. However, standard-based indicators tend to be rather prescriptive and hence not readily adaptable to specific contexts. Moreover, whilst they are a useful guide for *what kind* of information is needed, few of the tools identified here provide guidance on *how* to collect, process or interpret the data.

- De facto measures, on the other hand, are designed to provide a deeper understanding of how the justice sector operates *in practice*. Common methods include the use of perception and experiential surveys and more targeted key informant interviews. Surveys include those designed specifically for the justice sector[5] and, more commonly, justice modules in more general household surveys (see Public Opinion Survey cluster). Surveys are useful to assess general awareness of, trust in, and attitudes towards justice institutions and provide a good insight into the demand side of justice services (i.e. the needs and concerns of the population). However they are they are less useful for identifying *why* corruption occurs or for understanding the linkages between causes and consequences. For this, other techniques such as direct observation, interviews, focus groups, and case studies are needed, although the kind of data produced tends to be more anecdotal.

Data sources

Given the breadth of justice sector corruption assessments, sources include both primary and secondary data ranging from legal and procedural documents, court statistics and case files, to existing and commissioned surveys, focus groups and interviews with key informants from the judiciary and legal profession.

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[2] e.g. IFES - Judicial Transparency Checklist, TI - Diagnostic Checklist for Assessing Safeguards against Judicial Corruption, US Department of State - Criminal Justice Sector Assessment Rating Tool
[3] e.g. VERA - Measuring Progress toward Safety and Justice: A Global Guide to the Design of Performance Indicators across the Justice Sector
[4] e.g. World Bank - Diagnosing Judicial Performance: Toward a Tool to Help Guide Judicial Reform Programs, American Bar Association - Judicial Reform Index, World Justice Project - Rule of Law Index
[5] e.g. Asia Foundation - Survey Report on Citizen's Perceptions of the Indonesian Justice Sector

Key issues and challenges

A key difficulty with any justice sector assessment is that there is no single 'standard' justice system and hence no universal assessment framework which will work in all contexts. Furthermore, as discussed earlier, there is considerable room for interpretation with regards to what actually constitutes the 'justice sector'. This broad definition may present a significant challenge in diagnosing corruption, especially in the case of surveys if respondents are unclear whether they should be evaluating the courts, the police, prosecutors and/or other members of the justice system. Therefore, a key consideration is to be explicit from the outset about the scope of the analysis and, where possible, to narrow the focus to specific processes, geographic areas or institutional levels[6].

A further consideration - as with any corruption assessment - relates to the time and resources available to undertake the assessment. The World Bank's Justice Sector Assessment Handbook offers some useful guidance in this regard, outlining the pros and cons of a "Super-deluxe, bells and whistles" assessment (6–12 months collecting data with a budget of $200,000 +) versus a "Bare-bones" assessment (2–4 weeks collecting data with a budget of $30,000–$50,000)[7]. The former can offer very rich research, a broader scope, and the potential to go very deep, although there is the danger that information may rapidly become out of date and that stakeholders may lose interest, missing out on critical advocacy opportunities. The latter option, meanwhile, can be useful as a preliminary assessment to identify existing sources of data and where efforts should be concentrated, although the analysis may be superficial and yield limited actionable information.

Depending on the country context, a further consideration is the potential difficulty in accessing official data for the assessment either because of the need for special authorisation, the existence of special legislation such as an Official Secrets Act, or the reluctance to disclose the necessary information for fear of reprisals.

A related challenge may present itself with regards to perception and experiential data. What is perceived as corruption may in fact be a result of inefficiency in the justice system, or attributable to a more generalised disillusionment with the public sector as a whole. Likewise, respondents may not accurately report on their experiences of corruption because they are unwilling to admit to paying a bribe (in the case of users) or to report corrupt practices of colleagues (in the case of providers). This is particularly true in the case of police corruption, where the use of surveys or interviews with those directly involved may not be appropriate.

Finally, it is important to consider the inherent conflict between judicial independence and anti-corruption mechanisms, particularly when assessing the design of the legal and institutional framework. Attempts to improve accountability among justice sector workers may threaten their independence, and thus be resisted. Therefore, it is vital that assessment tools take this trade-off into account to ensure that they are perceived as both feasible and legitimate by actors within the justice sector.

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[6] e.g. DPFL - A Guide to Rapid Assessment and Policymaking for the Control of Corruption in Latin American Justice Systems, UNDP - Measurement methodologies for legal empowerment of the poor
[7] WB - Justice Sector Assessment Handbook: Carrying out a Justice Sector Diagnostic

Examples of promising practices

- <u>Monitoring reform progress</u>**:** As previously mentioned, many of the tools identified here conduct assessments in the context of judicial reform efforts. In most cases this will involve conducting baseline assessments and repeating assessments to monitor progress over time. One interesting example is the American Bar Association's Judicial Reform Index (JRI). As the purpose of the JRI is to assess the implementation of judicial reforms rather than to assess the entire judicial system or develop an internationally comparable index, assessments are repeated periodically and indicators rated according to one of three relative values: positive, neutral, or negative to indicate general trends in reform progress[8].

- <u>Incentive analysis</u>: An increasing number of tools include incentive analysis which aims to identify those factors which drive performance and minimise the potential for corruption (usually within the judiciary), including salaries, performance reviews, promotions etc. Incentive analysis can be useful in helping to understand why systems with similar rules and procedures operate differently in practice[9].

- <u>Flexibility</u>**:** A number of tools offer a range of assessment options depending on the time and resources available and provide guidance on the pros and cons of each option to facilitate decision-making[10]. The VERA and Altus Global Alliance Indicators to Measure the Rule of Law, for example, attempt to strike a balance between a set of methods which have common elements - through a detailed definition for each indicator and minimum standards for sources of data - allowing for some comparison of data between sites, and ensuring enough flexibility for adaptation to local context and available resources[11].

- <u>Multiple methods</u>: One particularly interesting example is DPFL's Guide to Rapid Assessment and Policymaking for the Control of Corruption in Latin American Justice Systems, which combines an assessment of the state of corruption in judiciary (through key informant perceptions on corruption, the extent of political influence, and the efficiency of the judiciary) with an assessment of internal oversight mechanisms to prevent, detect, and sanction corrupt behaviour (by examining the capacity, resources and legal powers of specialised control organs)[12]. Another example is UNODC's assessments of judicial integrity and capacity in Nigeria and Indonesia, which assess levels of corruption, judicial independence, efficiency, and access to justice, correlating individual experiences and perceptions to increase validity through a large number of indicators and large sample[13].

All tools referenced in this guide are accessible via the gateway tool database:
http://gateway.transparency.org/tools

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[8] ABA – Judicial Reform Index

[9] e.g. World Bank - Justice Sector Assessment Handbook, IFES - Judicial Transparency checklist

[10] e.g. World Bank - Justice Assessment Handbook, TISCO - Measuring the Costs and Quality of Access to Justice

[11] VERA & Altus - Developing Indicators to Measure the Rule of Law: A Global Approach

[12] DPFL - Guide to Rapid Assessment and Policymaking for the Control of Corruption in Latin American Justice Systems

[13] UNODC - Assessment of the Integrity and Capacity of the Justice System in Three Nigerian States, UNODC - Assessment of Justice Sector Integrity and Capacity in Two Indonesian Provinces

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