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PRINCIPLES AND MECHANISMS FOR GOOD PUBLIC GOVERNANCE: THEORY AND CASES FOR USE IN DESIGNING A NEW LEBANESE STATE

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PREFACE AND ACKNOWLEDGEMENTS

This Policy Research Report is published by the Elias Moukheiber Institute for Lebanon (EMIL) as the first in a series of studies intended to inform public debate in Lebanon about good government as well as sustainable and responsible socio-economic development.

EMIL was founded in 2018 to contribute to the debate on advancing policymaking in Lebanon. On 20th March 2019, in the midst of an intense period of national debate surrounding the then recently published McKinsey Lebanon Report, EMIL and the Institute for Political Science at USJ co-hosted a conference titled: *Lebanon in search of credible socioeconomic policies*. During five hours, 18 recognized, independent Lebanese economists, finance specialists, academics, urban planners, previous ministers, representatives from international institutions and economic commentators, debated the issues and ideas covered in that report in full public view under Chatham House rules. A common concern among the conference speakers was that implementing the McKinsey Lebanon Report's recommendations in conjunction with the CEDRE funding plan would be detrimental to the country (not least for Lebanese younger than 35), unless major problems of economic fundamentals and effective public sector governance, transparency and accountability were equally resolved. With the more recent widespread and ongoing protests revealing the width of the chasm between institutions and society, it is doubtless that actionable reforms are urgently needed.

This Report is intended as a contribution to the current debate. Focusing on good government, it contains two parts. The first sets out and discusses principles that carry profound implications for addressing public sector governance, transparency, and accountability, while the second part sheds light on those implications through case examples from numerous countries. These fully documented examples also provide case precedents for measures and initiatives that strengthen the functioning of institutions for the benefit of all actors in the society concerned. The cases selected are recognisably applicable to Lebanon and therefore particularly relevant to the current debate.

Tim Caron, JD, worked with us throughout the report, and his thought, diligence, and research skills are reflected on every page. The work was carried out under the supervision of Catherine Moukheibir, MA, MBA, founding member of EMIL and dedicated to the implementation and oversight of good governance in the public sector and private enterprise as a guarantee of due process and a motor of growth. Michael Barzelay, MPPM, PhD, Professor of Public Management at the London School of Economics, served as the academic reviewer. Samir Moukheiber, student at the Law Faculty of the St Joseph University and Adele M. Barzelay, Esq., BA (Jurisprudence), MA, read, commented on, and corrected multiple versions of the draft. Several others provided invaluable feedback during the whole process.

PRINCIPLES AND MECHANISMS FOR GOOD PUBLIC GOVERNANCE: THEORY AND CASES FOR USE IN DESIGNING A NEW LEBANESE STATE

I. Introduction

The revolution in Lebanon offers a chance to design and transition to a new Lebanese state. In this moment of historical opportunity, it would be helpful to take account of both existing strengths and deficits of the present Lebanese state. Further, it would be sensible to access and use information about the designs of other states, particularly as they could provide reference points for designing any number of aspects of a new Lebanese state.

This working paper was commissioned with two specific purposes in mind. First, to illustrate a way to theorize good public governance – a way that reflects a mode of theorizing that is typical of the professional discipline of public and administrative law. The specifics of this mode of theorizing good public governance involve the naming and characterization of a limited number of constitutive principles, as well as discussion of how these principles can be embodied in a state's institutional arrangements and practices. As we will see, the chosen principles are accountability, transparency, and publicity. The second purpose is to provide a selective survey of country-cases, which focuses on institutional arrangements within states and initiatives that have been pursued to change them. This survey's content will allow for identifying specific institutional arrangements and initiatives that might serve as reference points for designing a new Lebanese state.

PART I: PRINCIPLES AND MECHANISMS FOR GOOD PUBLIC GOVERNANCE

I. Concept and References

a. Important Terms

Rule of Law: the exercise of state power using, and guided by, published written standards that embody widely-supported social values, and enjoy broad public support.[1]

Legitimacy: the status with which an organization is imbued and perceived, enabling it to operate with the general consent of the relevant actors involved in its functioning (parties, public, government, organizations, etc.).[2]

[1] MICHAEL JOHNSTON, GOOD GOVERNANCE: RULE OF LAW, TRANSPARENCY, AND ACCOUNTABILITY 2 (Colgate University, 2002).
[2] Wim Voermans, *Judicial transparency furthering public accountability for new judiciaries,* 3(1) UNIVERSITEIT UTRECHT L. REV. 148, 159 (2007).

Transparency: official business conducted in such a way that information is available to, and understandable by, society (subject to reasonable limits protecting security and privacy).[3]

Accountability: procedures requiring officials and those who seek to influence them to follow rules defining acceptable processes and outcomes, and to demonstrate they have followed those same rules.[4]

Publicity: information communicated to and received by the principal (any citizen of the state).[5]

Good Governance: a set of parameters for designing, conducting and evaluating public policies in the context of a democratic government.[6]

These principles work together to produce a legitimate and effective government, as well as a civil society (the arena between the state, the market and the family in which people can take action to promote change or issues of shared interest) that can play an important supporting role.[7]

b. The Relationship between Transparency, Publicity, and Accountability

Accountability can be effective in governance by incorporating an institutional design that features both an explanatory requirement and a punitive element for government agency decisions.[8] In that same environment, Transparency can allow a principal to ensure that its "agent" (the government) does not engage in activities which promote its own interests rather than the principal's (*shirking*).[9] In order for this process to be successful, the principal, having acquired information about a shirking agent, must be able to apply sanctions.[10] Shirking can be prevented by increasing the risk or the costs of Accountability, or by decreasing the benefits of shirking.[11] Transparency is a possible determinant of Accountability, but Accountability is primarily a function of Publicity.[12] Transparency implies that documented information is *released*, while publicity means its content has become *received and understood* by citizens.[13]

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[3] JOHNSTON, *supra* note 1, at 2.
[4] *Id.*
[5] Catharina Lindstedt & Daniel Naurin, *Transparency is not Enough: Making Transparency Effective in Reducing Corruption*, INTERNATIONAL POLITICAL SCIENCE REVIEW, 301, 303-4 (2010).
[6] TUNISIAN ASSOCIATION FOR GOVERNANCE, PUBLIC GOVERNANCE IN TUNISIA: PRINCIPLES, STATUS AND PROSPECTS 4 (Nov. 2013).
[7] JOHNSTON, *supra* note 1, at 1; *see also* DANIDA, *Policy for Danish Support to Civil Society* 6 (Jun. 2014).
[8] Jennifer Shkabatur, *Transparency With(out) Accountability: Open Government in the United States*, 31 YALE L. & POL'Y REV. 79, 82 (2012).
[9] Lindstedt & Naurin, *supra* note 5, at 303.
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Id.* at 304.

Accountability assumes that increasing the risk of Transparency and Publicity will not induce any change unless the agent believes that the principal will impose the costs of Accountability.[14] The likelihood of Accountability is therefore a function of the likelihood of Publicity and sanctioning mechanisms.[15] The most important sanctioning mechanism for citizens in a political system is elections, complemented by Accountability through the courts.[16] Transparency will be less effective against corruption when it is not accompanied by circumstances favorable to Publicity and Accountability.[17]

1. Types of Transparency

A. Agent Control and Transparency

A free media belongs to *Non-Agent Controlled Transparency*, as do other forms of whistle-blower institutions.[18] Under this type of Transparency, information about agency behavior is released by a third party.[19] With *Agent Controlled Transparency*, such information is released by the agent in response to requirements that are either imposed by the principal, or self-imposed.[20] Agent Controlled Transparency makes it more complicated to engage in corrupt behavior.[21] However, the information will always be determined by the agent, and thus will seldom include direct indicators of corruption.[22] With Non-Agent Controlled Transparency, if there are Accountability mechanisms available to the principal, the agent may have to face the costs.[23]

B. Discretionary, Involuntary, and Mandatory Transparency

Discretionary Transparency leaves agencies with the choice to determine what information should be disclosed,[24] whereas *Involuntary Transparency* refers to the release of information against the wishes of such agencies.[25] The latter approach should not be used to the extent that it obstructs decision making, but its potential to reveal abuses should not be underestimated.[26] The Internet has made it easier to leak massive amounts of information, but harder to expose whistleblowers (the primary source of

[14] *Id.* at 305.
[15] *Id.*
[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *Id.* at 306.
[22] *Id.*
[23] *Id.*
[24] Shkabatur, *supra* note 8, at 106.
[25] *Id.* at 113.
[26] *Id.*

Involuntary Transparency).[27] Thus, agencies might be less likely to engage in dubious activities.[28] *Mandatory Transparency* obligates agencies to place specific information online.[29] In theory, public scrutiny and sanctions should become easier, since it is possible to retrieve information off of a widely-accessible platform like a website.[30] Therefore, Mandatory Transparency is the most promising of these three particular approaches to Transparency.

- **Types of Mandatory Transparency**

Information on Demand: actors can obtain government documents by request, unless there is a compelling interest for secrecy.[31] Such actors are typically professional media, advocacy organizations, or private corporations with a capacity for obtaining and analyzing information.[32] A critical limitation is that its scope is restricted primarily to information about government, and information most critical to citizens' interests can sometimes concern nongovernmental entities.[33]

Naked Government: incorporates a presumption about Publicity towards proactive dissemination of information.[34] This approach favors releasing vast troves of data.[35] However, it is difficult to use this data to register the accomplishments of public action.[36] Many audiences are pessimistic about government, and naked government may reinforce such perceptions.[37]

Targeted Transparency: policies that compel organizations to make disclosures so as to advance a public purpose, like improving public health.[38] These policies rely upon the coercive powers of government to secure information from organizations that would otherwise keep it secret.[39] In some societies, major threats to citizens' interests come from corporations and secondary associations.[40] There, citizens' main informational interest is in what can help them manage organizational

[27] *Id.* at 113-5.
[28] *Id.* at 117.
[29] *Id.* at 93.
[30] *Id*.
[31] Archon Fung, *Infotopia: Unleashing the Democratic Power of Transparency*, POLITICS & SOCIETY, 183, 187 (2013).
[32] *Id.*
[33] *Id.* at 188.
[34] *Id.*
[35] *Id.*
[36] *Id.* at 189.
[37] *Id.*
[38] *Id.*
[39] *Id.*
[40] *Id.* at 190.

risks.[41] Targeted Transparency is the best starting point between these three types of Mandatory approaches for Democratic Transparency.[42]

C. Democratic Transparency

Under this principle, provision of information is justified because citizens can use it to exercise influence over organizations affecting their lives.[43] It relies upon the benevolent public power of the state.[44] This form of Transparency demands that information be available by default and offered in highly detailed and disaggregated ways, but that such information must be important to protecting citizens' vital interests.[45] Government agencies and third parties can then analyze and package that information to make it more comprehensible for the public at large.[46] Democratic Transparency is very promising for purposes of our discussion.

➢ Elements of Democratic Transparency

Information about organizations should be available *in proportion* to the extent that their actions create risks to citizens' vital interests.[47] In their normal lives, citizens may face the risk of domination: that the order under which they live is not one that they chose, nor may it be serving their interests.[48] Proportionality pushes towards collecting information that can help citizens guard against such risk.[49] Here, four different kinds of information are especially relevant: Transparency of the actors who influence the political process; Transparency of the formulation of rules; Transparency of the implementation of policy, and Transparency of the consequences.[50] Citizens must know the identity of actors who seek to influence governance, and they should have access to the justifications for laws, rationale, and rejected alternatives.[51] Such efforts should focus on where liberty, needs, and fairness are most threatened.[52] Information about organizations should not be made public when it would threaten citizens' vital interests (for instance, trade secrets and "proprietary information").[53]

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[41] *Id.*
[42] *Id.*
[43] *Id.* at 185.
[44] *Id.* at 190.
[45] *Id.* at 191-2.
[46] *Id.*
[47] *Id.* at 192.
[48] *Id.* at 194.
[49] *Id.*
[50] *Id.*
[51] *Id.* at 194-5.
[52] *Id.* at 195.
[53] *Id.* at 198.

However, large organizations would not have bases for confidential information outside of those.[54]

This information must be *accessible* to citizens, and this will occur when they can make sense of such information as a factor guiding their actions.[55] More specifically, information must be *salient* to an individual's values, offered in a time and manner that matches their *habits of information acquisition*, and is *compatible* with their abilities to process information.[56] There are two broad categories of potential information users: individuals and intermediary organizations.[57] For Transparency, both are critical and mutually supportive.[58] Democratic Transparency presumes that individuals will make use of information when they view it as relevant to their values, when they can easily acquire it via ordinary routines, and when assimilating it is worthwhile.[59] There are often professional organizations devoted to mitigating different categories of risks, and these can be both end users of information and intermediaries for others who have developed platforms that make data accessible.[60] Many of these organizations possess channels of communication that facilitate the transfer of information.[61] Disclosure requirements and Transparency systems should be codesigned by public authorities working with such intermediary organizations.[62]

Lastly, information should be *actionable* – individuals must enjoy meaningful choices in their lives.[63] For instance, in order to inform a political choice, there must be competitive elections and a difference between candidates regarding quantity and sources of financing.[64] Those who favor disclosure of political spending should support candidates who want to increase political competition and choice.[65] In the short and medium term, Transparency activities should focus on arenas in which underlying variation and individual choice exist.[66] There must be a structure of advocacy organizations, public interest groups, and civic associations disposed toward Transparency and capable of using

[54] *Id.*
[55] *Id.* at 199.
[56] *Id.*
[57] *Id.*
[58] *Id.*
[59] *Id.* at 200.
[60] *Id.* at 201.
[61] *Id.* at 202.
[62] *Id.*
[63] *Id.*
[64] *Id.* at 202-3.
[65] *Id.*
[66] *Id.*

information, that desire to limit threats to citizens' interests.[67] The capacity of such groups should be greater where there are more serious risks.[68]

D. Incorporating Process and Performance Transparency

Transparency policies should also compel agencies to release information on process and performance.[69] A requirement of *process transparency* would target inputs flowing into decisionmaking, resulting in an ex post reasoning from a decisionmaker as to how a decision was made.[70] Public officials would be required to explain the values and priorities that informed their decisions; the most problematic parts of their decisions; the major difficulties associated with implementation; and the alternatives considered.[71] Such a policy should be complemented by a second mechanism: *performance transparency*.[72] It is important to understand the extent of implementation and success of decisions by federal agencies.[73] This policy should rely on uniform indicators, measured by independent bodies and open to public scrutiny.[74]

c. Enforcement via Litigation and Public Advocacy

Robust enforcement measures should be introduced, incorporating civil society and public interest groups in the process.[75] Two of the primary mechanisms civil society may use to hold agencies accountable are litigation and public advocacy.[76] If agencies release information to avoid sanctions, that information would allow civil society to take an agency to court, and trigger judicial oversight – ultimately forcing the agency to revisit its decision.[77] However, litigation requires substantial resources, expertise, and motivation, and citizen suits may not automatically have standing to proceed with such a case.[78] In lieu of litigation, public advocacy can serve as the major vehicle for Accountability.[79] Individuals or groups with shared interests could analyze the data released by agencies, flag issues, and disseminate findings via a range of mediums, such as social networks and collaborative journalistic platforms.[80] By sending a message about

[67] *Id.*
[68] *Id.* at 204.
[69] Shkabatur, *supra* note 8, at 121.
[70] *Id.* at 121-2.
[71] *Id.* at 122.
[72] *Id.* at 124.
[73] *Id.*
[74] *Id.*
[75] *Id.* at 120.
[76] *Id.* at 129, 131.
[77] *Id.* at 133.
[78] *Id.* at 132.
[79] *Id.* at 135.
[80] *Id.* at 136.

administrative misbehavior into the public sphere, members of civil society could exert public pressure on agencies, with the hope to shame them into changing their behavior.[81]

d. The Role of Transparency, Accountability, and Publicity in Reducing Corruption

How do these three interconnected principles impact corruption, when controlling for electoral democracy (the degree to which the government is selected in free and fair elections)?[82] This question was examined by political scientists Catharina Lindstedt and Daniel Naurin, with the assistance of measurements created by the World Bank.[83] The organization's Economic and Institutional Transparency index factors in access to information laws, the publication of economic data, e-government, transparency in the budget process, transparency of policy and of the public sector.[84] Its Political Transparency index considers press freedom and regulations concerning disclosure of political funding, as well as political competition and freedom of speech.[85] Accountability is measured by electoral democracy, which is also used as a control variable to transparency.[86] Testing the assertion that more transparency in political institutions is an effective method for combating corruption, the model includes three control variables: economic development, rule of law and colonial heritage.[87] The measure "rule of law" includes indicators of the strength and impartiality of the legal system, and of popular observance of law.[88]

Both Agent Controlled and Non-Agent Controlled Transparency have significant negative effects on corruption; however, a significant interaction effect with electoral democracy exists only for Non-Agent Controlled Transparency.[89] The power of Transparency to reduce corruption seems stronger in countries with higher levels of education, media circulation, electoral democracy and rule of law.[90] However, if the prospects for Publicity are slim, the Transparency effect on corruption will likely be slim as well.[91] Increasing the risks of Publicity will act as a deterrent against corruption only if there is some mechanism of Accountability in place.[92] In countries with no or low levels of electoral democracy, there is no significant negative effect of Non-Agent Controlled Transparency.[93] Such Transparency is enhanced by better opportunities for Accountability via elections.[94] The findings broadly confirm that Transparency is

[81] *Id.* at 137.
[82] Lindstedt & Naurin, *supra* note 5, at 307-8.
[83] *Id.*
[84] *Id*.
[85] *Id.*
[86] *Id.* at 308.
[87] *Id.* at 309.
[88] *Id.* at 308.
[89] *Id.* at 309, 314.
[90] *Id.* at 310.
[91] *Id.* at 311.
[92] *Id.* at 313.
[93] *Id.* at 314.
[94] *Id.*

dependent on Publicity and Accountability to be a check on corruption, but that different types of Transparency affect corruption differently.[95] At a low level of education, Transparency has no significant effect on corruption.[96] At an intermediate level, Non-Agent Controlled Transparency better reduces corruption.[97] At higher levels of education, the effect of Transparency becomes significant at an earlier point, and is stronger overall.[98]

Measures directed towards the agent may not be sufficient to obtain effects on agency behavior.[99] Reforms focusing on the principal, or on mediators between the agent and the principal, may be equally important.[100] In countries with low levels of education and media reach, and in semi-democratic political systems, improvements to Transparency must be accompanied by reforms to strengthen the capacity of people to access and process information, as well as impose sanctions, in order to reduce corruption.[101]

e. A Legitimate Judiciary's Relationship to Transparency and Accountability

Judicial corruption may be defined as acts or omissions that constitute the use of public authority for the private benefit of justice sector personnel, resulting in the improper delivery of judicial decisions.[102] Such acts include bribery, theft of public funds, extortion, intimidation, influence pedaling, the abuse of court procedures for personal gain, and any inappropriate influence on the impartiality of the judicial process by an actor within the court system.[103]

The traditional view of legitimate judicial action lies in the independent role of judges: reaching decisions free from outside pressures.[104] These favorable conditions include independence from the executive and legislative branches of government, and freedom from political and social influences.[105] A major factor inhibiting judicial independence is the control of the executive branch over elements such as the appointment, promotion, and remuneration of judicial officers and the judicial budget.[106]

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[95] *Id.*
[96] *Id.* at 315.
[97] *Id.*
[98] *Id.*
[99] *Id.* at 316.
[100] *Id.* at 316-7.
[101] *Id.* at 317.
[102] Herbert A. Igbanugo, *The Rule of Law, Judicial Corruption, and the Need for Drastic Judicial Reform in Sub-Saharan Africa's Nation*, AMERICAN BAR ASSOCIATION (Nov. 8, 2018), https://www.americanbar.org/groups/international_law/publications/international_law_news/2013/summer/the_rule_of_law_judicial_corruption_need_for_drastic_judicial_reform_sub_saharan_africas_nation/.
[103] *Id.*
[104] Voermans, supra note 2, at 149; *see also* THE CONSTITUTION PROJECT, THE NEWSROOM GUIDE TO JUDICIAL INDEPENDENCE, 4 (2015).
[105] Igbanugo, *supra* note 102.
[106] *Id.*

Scholars tend to divide judicial independence into two varieties. *Decisional* independence refers to a judge's ability to render decisions based only on the facts of each case and the applicable law.[107] *Institutional* independence distinguishes the judiciary as a fully co-equal branch of government.[108] "Hard" accountability methods towards the judiciary (i.e. an appeal system, permanent education, disciplinary action) have traditionally been aloof, in order to not compromise independence.[109] "Soft" Accountability pushes for procedural Transparency, and sensitivity regarding social movements; available instruments include open complaints processes, and a more open attitude on access to information.[110] With a more transparent Judiciary, a court may feel the need to advance information provision and come up with policies regarding Transparency and openness.[111] Furthermore, Transparency and information provision seem to be effective ways to introduce Accountability without compromising judicial independence.[112] Judges are required to perform their duties ethically, according to rule of law.[113] If a judge errs in deciding a case, the decision may be appealed.[114] If a judge engages in misconduct, disciplinary options exist.[115]

PART II: SELECTIVE SURVEY OF COUNTRY-CASES

I. Hong Kong

The city's Independent Commission Against Corruption (ICAC), established in the 1970s, works to build public support for, and participation in, its efforts on a range of governance issues.[116] Publicity efforts, school and television programs, and a range of other messages are aimed at breaking the sense that corruption is inevitable, and encouraging citizens to report abuses.[117] These efforts have been sustained for more than three decades; citizens report corruption, confident that their action will remain confidential, and that they will get a response.[118] The ICAC and local citizens have become anti-corruption partners, and large segments of society feel a stake in the movement towards enhanced Transparency and

[107] THE CONSTITUTION PROJECT, supra note 104, at 4.
[108] *Id.*
[109] Voermans, supra note 2, at 150.
[110] *Id.*
[111] *Id.* at 159.
[112] *Id.*
[113] THE CONSTITUTION PROJECT, supra note 104, at 4.
[114] *Id.*
[115] *Id.*
[116] MICHAEL JOHNSTON, GOOD GOVERNANCE: RULE OF LAW, TRANSPARENCY, AND ACCOUNTABILITY 19 (Colgate University, 2002).
[117] *Id.* at 20.
[118] *Id.*

Accountability.[119] A unique aspect of the Commission's mandate is that it has jurisdiction over business and government corruption.[120]

II. India

a. Efforts Towards Improved Local Governance

In 1993, a research agency gathered data on governance in the city of Bangalore, and its findings were compiled into "report cards".[121] Extensive bribery and waste was reported, drawing attention within government, the press, and the citizens.[122] Public meetings were held to consider options for improvement.[123] The Chief Minister of the state government of Karnataka established an "Agenda Task Force" of citizens, with the goal of getting both industry and civil society more involved.[124] A major public summit followed; private individuals committed funds to improve public activities and infrastructure.[125] The initiative demonstrated "quick wins", such as the development of a system for the self-assessment of property taxes.[126] Grievance procedures became open and well-defined, and information was disseminated through further meetings in cooperation with citizen groups and nongovernmental organizations (NGOs).[127] Objectives, such as improved services and institutional performance, were clear, and the links between civil society and governmental leaders provided political incentives.[128] The Bangalore example illustrates the value of reinforcing links between government and civil society, and between self-interest and reform.[129] Citizens were able to express their concerns and see results; agency heads were receptive to citizen feedback, and could target resources to key issues, and take credit for the resulting improvements.[130] Businesspersons, and leaders in government and civil society, were able to affiliate themselves with a popular body, and to share in the credit for improved services.[131]

b. Judicial Ethics

The following decade, the Bangalore Principles of Judicial Conduct were published, promoting several values designed as a framework for regulating judicial conduct, and intended to supplement existing rules of law and conduct.[132]

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[119] *Id.*
[120] *Id.*
[121] *Id.* at 15.
[122] *Id.*
[123] *Id.*
[124] *Id.*
[125] *Id.* at 15-6.
[126] *Id.* at 16.
[127] *Id.*
[128] *Id.*
[129] *Id.*
[130] *Id.*
[131] *Id.* at 16-7.
[132] Herbert A. Igbanugo, *The Rule of Law, Judicial Corruption, and the Need for Drastic Judicial Reform in Sub-Saharan Africa's Nation*, AMERICAN BAR ASSOCIATION (Nov. 8, 2018),

III. Mexico

The country's presidents once possessed secret funds, its elections were an exercise in intimidation, and its public procurement procedures were shrouded in mystery.[133] However, in recent years, Mexico has moved faster than most other large countries to achieve greater Transparency.[134] Such secret funds have been abolished, and many government procurement processes now take place on the Internet, with bids and prices trackable in real time.[135] Some of the world's best surveys on the effects of corruption at the household level are conducted in Mexico.[136] The result is a system in which people, parties, and the press can push for Accountability more effectively, and a climate in which laws enjoy broader support.[137] A major initiative, launched with World Bank support, was the Laboratory of Documentation and Analysis on Corruption and Transparency, which analyzes procurement procedures within agencies, and supports research and seminars across the country.[138]

IV. Peru

In the 1990s, the national Congress was effectively a rubber stamp for President Alberto Fujimori, until videotapes were leaked showing his security chief paying off legislators.[139] Fujimori would announce his resignation, and elections were held to repopulate Congress and the office of the President.[140] Not long before these events, with financial support from the Inter-American Development Bank and the Government of Japan, the Peruvian Congress had begun providing legislators with computers, and routinizing the provision of information via the Internet.[141] By 1999, it was a staple of national reporting to analyze the positions of individual legislators.[142] In the Fujimori era, discipline had often been enforced as a quid pro quo for basic logistical support (offices, secretaries, etc.).[143] Oftentimes, legislators simply received their voting instructions from party leaders.[144] The advent of recorded voting and public results provided the means by which legislators could be monitored.[145] The Transparency inherent in public voting induced legislators to respond to constituent pressures they would otherwise have preferred to ignore.[146] The result was perceived to increase the responsiveness of legislators to

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https://www.americanbar.org/groups/international_law/publications/international_law_news/2013/summer/the_rule_of_law_judicial_corruption_need_for_drastic_judicial_reform_sub_saharan_africas_nation/.

[133] JOHNSTON, *supra* note 1, at 18.

[134] *Id.*

[135] *Id.* at 18-9.

[136] *Id.* at 19.

[137] *Id.*

[138] *Id.*

[139] John M. Carey, *Transparency Versus Collective Action: Fujimori's Legacy and the Peruvian Congress*, COMPARATIVE POLITICAL STUDIES 1, 3-4 (2003).

[140] *Id.* at 4.

[141] *Id.* at 9.

[142] *Id.* at 10.

[143] *Id.* at 13.

[144] *Id.*

[145] *Id.* at 20.

[146] *Id.* at 22.

supporters, although, in strengthening individual Accountability, it might have impeded the ability of party leaders to coordinate action.[147] Evidence suggests that the decimation of the single-party majority; the executive's loss of control over resources to induce compliance; and the adoption of recorded voting – all contributed to the rise of individual Accountability within Peru.[148]

V. Sub-Saharan Africa

a. Broad Trends of Judicial Reform

Creating a viable judiciary and strengthening its democratic functions have long been concerns of African governments.[149] A common purpose of their efforts, dating back to when colonial powers began pulling out of the continent, has been to make national legal systems operate in a more efficient and fair manner.[150] In many of these states, the budget of the judiciary is controlled by the executive branch of government.[151] This control allows the executive to exert influence over the actions of the judiciary, often fueling corruption and further reducing independence.[152]

Attempts at judicial reform in Sub-Saharan Africa have been made through various types of interventions, including: legislative reform that develops the legal framework in response to the needs of the society and in accordance with international standards; court reform that improves the courts' efficiency, capacity, integrity, and responsiveness; judicial administration reform that targets the efficiency of the legal process and increases the independence and authority of the judiciary; community support to strengthen the quality of the legal process through norms that inform Accountability; and reform of legal education and training through development of curricula and training capable of producing competent legal practitioners and professionals.[153]

Most of these states' constitutions mandate judicial independence.[154] For example, Article 78 of the Constitution of Namibia declares:

> The Courts shall be independent and subject only to this Constitution and the law. No member of the Cabinet or the Legislature or any other person shall interfere with Judges or judicial officers in the exercise of their judicial functions, and all organs of the State shall accord such assistance as the Courts may require to protect their independence, dignity and effectiveness.[155]

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[147] *Id.*
[148] *Id.* at 21.
[149] Igbanugo, *supra* note 17.
[150] *Id.*
[151] *Id.*
[152] *Id.*
[153] *Id.*
[154] *Id.*
[155] *Id.*

Some states have turned to methods of justice outside the traditional court system. For example, Nigeria has implemented an alternative dispute resolution system that has proven effective in increasing both access to justice and judicial efficiency.[156] The Citizens' Mediation Centre processes legal disputes through mediation for individuals who cannot afford to go to court.[157] A public compliance office will receive complaints, analyze whether the claim is suitable for mediation, and then refer them to a mediator employed by the Centre.[158]

b. National Approaches to Corruption

1. Botswana

In the early 1990s, a series of high-level corruption scandals tied to the ruling Botswana Democratic Party (BDP) erupted, causing public outrage.[159] Ever since its independence in 1966, the country had gained international praise for its good governance and sustained economic growth.[160] However, it lacked Transparency measures such as freedom of information laws, whistleblower protections, and civil society groups focused on governance issues.[161] In response to the scandals, the Corruption and Economic Crime Act (CECA) Act was passed into law, establishing the Directorate on Corruption and Economic Crime (DCEC).[162] The government sought to show the public that they were responding quickly to the scandals featured heavily in the media.[163] The government was careful to build upon traditional family-based authorities and values.[164] As a result, its actions had legitimacy, and were linked to established social values.[165] Moreover, law-breakers encountered social sanctions and legal penalties.[166] This social and political framework facilitated efforts to improve governance at the local level.[167] National administrative agencies were complemented by bodies charged with devolution and the decentralization of planning.[168] District and Village Development Committees, and a variety of other organizations, participated in setting priorities and building support.[169] The administrative capacity of local level organizations of governance steadily improved.[170]

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[156] *Id.*
[157] *Id.*
[158] *Id.*
[159] Linnéa Larsson, *Fighting Corruption in Botswana*, CENTRE FOR PUBLIC IMPACT (Jan. 18, 2018), https://www.centreforpublicimpact.org/case-study/fighting-corruption-botswana/.
[160] *Id.*
[161] *Id.*
[162] *Id.*
[163] *Id.*
[164] JOHNSTON, *supra* note 1, at 17.
[165] *Id.*
[166] *Id.*
[167] *Id.*
[168] *Id.* at 17-8.
[169] *Id.* at 18.
[170] *Id.*

The overall objective of the DCEC was to combat corruption, and this has been done by implementing a three-pronged strategy: to investigate allegations of corruption and economic crime; to audit systems within government and institutions to detect loopholes allowing corrupt practices to occur; and to teach the public about corruption and soliciting public support.[171] The DCEC was given wide-ranging powers, such as the power to arrest, trace and freeze assets, search and seize, and to extradite suspects.[172] It could also recommend prosecutions to the state's Directorate of Public Prosecutions.[173]

Combating corruption was incorporated into the curricula of schools, the training of public servants, and outreach activities to the wider community (in the form of campaigns, anticorruption clubs, workshops and seminars).[174] In general, Botswana's political system is open, and the government consults the public on policy and legislation.[175] In terms of input from non-state actors, the DCEC used the Botswana Institute for Development Policy Analysis to help them develop a national anticorruption policy.[176]

The DCEC has always recruited highly qualified staff, thanks to ongoing funding from the government and its close links with Hong Kong's ICAC, the UK and New Zealand.[177] The Directorate conducted training courses for new staff, and also introduced performance management training, implemented by "performance improvement coordinators".[178] In 2010, the DCEC hired a director of training and development who, together with foreign experts, developed an internal training framework.[179] It included a new investigative manual, an induction course, and regular classes for all investigators in topics like operational planning and the management of cases.[180] In 2011, the DCEC created an assessment section to better organize corruption reports – officers analyzed complaints and supporting evidence to produce reports for panels of experienced officers.[181] These measures resulted in a 50 percent reduction in caseload from 2011 to 2013.[182]

The DCEC measures its performance according to its own indicators, which include: the number of investigations launched; the number of investigations completed; and the ratio of investigations to numbers of staff.[183] It also conducts

[171] Larsson, *supra* note 44.
[172] *Id.*
[173] *Id.*
[174] *Id.*
[175] *Id.*
[176] *Id.*
[177] *Id.*
[178] *Id.*
[179] *Id.*
[180] *Id.*
[181] *Id.*
[182] *Id.*
[183] *Id.*

public opinion surveys to keep track of perceptions of its performance.[184] Individuals within selected households are required by law to provide the requested data.[185] In its efforts, the DCEC collaborates with other oversight bodies in the office of the President, other Botswanan law enforcement agencies, and international organizations (such as Interpol).[186]

In 2004, the World Bank held the DCEC to be the top-performing anticorruption agency of all participating African countries.[187] Apart from its success in the areas of education and prevention, the agency had successfully complemented state institutions established to improve governance and deepen Accountability and Transparency.[188] The 2012 Rule of Law report by the World Justice Project ranked Botswana first among all African countries in its "absence of corruption" parameter.[189] A poll in 2014/15 showed that 72 percent of survey participants either agreed or strongly agreed that citizens can make a difference in the fight against corruption.[190] This was the highest of all 36 countries surveyed, and indicated that the DCEC's outreach and educational efforts had made a positive impact.[191] In Transparency International's 2016 Corruption Perceptions Index, Botswana was the best-performing African country, standing at 35th out of 176 in the overall results table.[192] Opinion polls have continued to indicate public approval of the DCEC's efforts.[193] The percentage of people who agreed that the government was handling corruption in government fairly well or very well increased from 49 percent in 2002/2003 to 54 percent in 2014/2015.[194]

2. Liberia

In 2010, Liberia passed the Freedom of Information (FOI) Law, establishing that each public agency and government ministry must have a Public Information Officer (PIO) to handle access to information requests from the public.[195] Persons denied information or dissatisfied with a response could seek an appeal, or request judicial review.[196] A commission was required to share quarterly reports on recruitment and training practices, as well as agencies' compliance.[197] Civil society partners have helped to carry out the capacity building trainings, and an online

[184] *Id.*
[185] *Id.*
[186] *Id.*
[187] *Id.*
[188] *Id.*
[189] *Id.*
[190] *Id.*
[191] *Id.*
[192] *Id.*
[193] *Id.*
[194] *Id.*
[195] Open Government Partnership, Liberia: Appoint Public Information Officers (PIOs) (LR0007), https://www.opengovpartnership.org/members/liberia/commitments/LR0007/.
[196] *Id.*
[197] *Id.*

platform has been established to enable citizens to request information.[198] The government has carried out awareness-raising activities through town hall meetings.[199] A succeeding action plan has been developed, aimed at completing the appointment and training of additional PIOs, and increasing the amount of FOI requests.[200]

3. Mozambique

Civil service Accountability and local governance reform were strategic points for United Nations Development Programme campaigns in this country.[201] Efforts focused upon anti-corruption legislation and plans for implementing public sector management reforms, as well as public involvement through opinion surveys and forums.[202] Judges, inspectors, and police were trained on Transparency and Accountability matters; a parallel effort involved training journalists to report on integrity and Accountability issues, and to make the most of opportunities resulting from greater Transparency.[203] Local governance had long suffered in Mozambique because it followed an inappropriately centralized colonial model.[204] Now, municipal governments were chartered with efforts to involve citizens.[205] A first phase was aimed at building governmental capacity and effectiveness; a second phase emphasized anti-poverty and opportunity programs, and also a reassessment of phase one.[206] Mozambique's effort is noteworthy in part for the long timeframe envisioned, and because of its emphasis upon local governance capacity.[207]

VI. The European Union

a. Access to Information in a Judicial Context

The right of access to information has been widely recognized by international authorities, and there are now over 80 countries with access to information laws.[208]

In a recent study on information provision, among the entire sample group of European countries, court sessions were open to the public as a general rule.[209] However,

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[198] *Id.*
[199] *Id.*
[200] *Id.*
[201] JOHNSTON, *supra* note 1, at 25.
[202] *Id.*
[203] *Id.*
[204] *Id.*
[205] *Id.* at 26.
[206] *Id.*
[207] *Id.*
[208] ACCESS INFO EUROPE & THE CENTRE FOR LAW AND DEMOCRACY, RIGHT TO INFORMATION: A GUIDE TO BEST PRACTICE IN TRANSPARENCY, ACCOUNTABILITY AND CIVIC ENGAGEMENT ACROSS THE PUBLIC SECTOR 1 (Transparency & Accountability Initiative, 2011).
[209] Wim Voermans, *Judicial transparency furthering public accountability for new judiciaries,* 3(1) UNIVERSITEIT UTRECHT L. REV. 151 (2007).

in no country was the right to a public hearing absolute.[210] Most states had legislation enabling closed-door court sessions, with several justifications being given (the interest of an orderly trial; the protection of public morals; state-related interests; the interest of the parties; and the interest of public health).[211] Where the public are allowed to attend proceedings, the press are also admitted.[212] Most countries, however, had restrictions on "intrusive" methods of reporting (making sketches, photography, audio or videotaping, live broadcasting).[213]

In general, the admission of the press was a matter for court discretion.[214] Reporting could be refused on two grounds: interference with proceedings, and risk of undue defamation or damage to privacy interests.[215] In some countries, the court could only permit recording after the parties to a case consented.[216] If an overriding social interest existed in publicity of the proceedings, the permission to record could be granted without such consent.[217] However, permission could be revoked during proceedings.[218] Verdicts, judgments and rulings were generally public, but access to documents or information from ongoing proceedings could be more restricted.[219] Additionally, restrictions on the access of non-parties existed in most countries.[220]

The distinction between what constituted "administrative judicial action" (subject to open access) and "judicial action" (not subject to open access) was not always apparent.[221] Courts were generally not considered to be a public authority, as they were not part of the executive branch.[222] Thus, courts were often exempted from general access to information legislation.[223] In most countries, the law on access to government information was enshrined in acts of parliament.[224] Common exceptions to the right were non-disclosure in view of the safety of the state, public security, the interest of criminal investigations, commercial interests of firms, internal company secrets and the interest of privacy of persons.[225] In most countries, annual reports were published by the court services.[226]

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[210] *Id.* at 152.
[211] *Id.* at 153.
[212] *Id.*
[213] *Id.*
[214] *Id.* at 154.
[215] *Id.*
[216] *Id.*
[217] *Id.*
[218] *Id.*
[219] *Id.* at 155.
[220] *Id.*
[221] *Id.* at 156.
[222] *Id.*
[223] *Id.*
[224] *Id.*
[225] *Id.* at 156-7.
[226] *Id.* at 158.

Overall, judiciaries in Europe are using information strategies as a means to further the Transparency of the courts' functioning, thereby increasing Accountability and responsiveness.[227]

b. National Approaches to Corruption

1. Albania

The Minister of State for Local Issues recently adopted a plan to standardize the process for corruption complaints.[228] Ministries will have to officially publish standards, and inform the public on the progress of specific issues.[229] In June 2016, the Parliament adopted the Whistleblower Protection Law, and civil society (with support from the Netherlands) began carrying out a national awareness campaign and series of roundtables on the law.[230] A future action plan is focused on reinforcing the law's implementation regarding capacity building, amendments and bylaws.[231] In March 2015, the prime minister had issued an order adopting regulation on the procedures for registering, handling, and storing complaints, and these have been integrated into an online portal.[232] The portal allows citizens to submit corruption complaints and upload evidence, such as photos, videos, or documents, and they may do so anonymously.[233] In order to improve Transparency and access to information, the portal added a "statistics section" to track its performance.[234]

2. Denmark

The government has promoted a national plan to strengthen partnerships with civil society organizations, in order to develop human-rights-based organizations that are aligned with the principles of participation, Accountability, non-discrimination, and Transparency.[235] The approach focuses on partnership, capacity development, advocacy and networking, with a goal of building more space for civil society's participation in national decision-making.[236] Acts will be taken based on a political-economy analysis of local context, and dialogue with civil society actors and communities.[237] Denmark hopes to encourage civil society actors to increasingly conduct locally-based, participatory monitoring approaches, combined with indicators

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[227] *Id.* at 159.
[228] Open Government Partnership, Albania: Standardization of Corruption Complaints (AL0031), https://www.opengovpartnership.org/members/albania/commitments/AL0031/.
[229] *Id.*
[230] *Id.*
[231] *Id.*
[232] *Id.*
[233] *Id.*
[234] *Id.*
[235] DANIDA, *Policy for Danish Support to Civil Society* 8 (Jun. 2014).
[236] *Id.*
[237] *Id.* at 9.

showing progress in human-rights-based policy work, and in such actors' capacity to engage in advocacy processes.[238]

VII. The United States

a. Insufficient Efforts Towards Greater Transparency and Accountability in Federal Agencies

The design and implementation of many online Transparency policies have been flawed, allowing federal agencies to retain control over certain types of information.[239] Such policies have largely been developed for the sake of public Accountability, but fail to achieve it.[240]

If agencies had been required to release data with information on their decision-making processes, there could have been more impact.[241] Moreover, most legislation is not accompanied by enforcement measures like sanctions, and so noncompliance is the norm.[242] The online platforms in use generate a bias of access in favor of organizations and individuals with programming skills.[243]

1. The Administrative Procedure Act (APA)

The APA's "notice and comment" procedure allowed the public to comment on proposed rules, and obliged agencies to explain its purpose; it nonetheless largely failed to keep agencies accountable.[244] Meaningful participation required both knowledge of the field and resources; agencies spent the bulk of their time responding to comments submitted by a limited number of professional interest groups and industry representatives.[245] Agencies were also reluctant to explain rulemaking priorities and preferences.[246]

2. The Federal Funding Accountability and Transparency Act

In an effort to increase the Transparency and Accountability of federal spending, the Act instructed the Office of Management and Budgeting (OMB) to create a website (USAspending.gov) that provided public access to information about grants, loans, and contracts.[247] However, USAspending.gov had "over 1.2

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[238] *Id.* at 38.
[239] Jennifer Shkabatur, *Transparency With(out) Accountability: Open Government in the United States*, 31 YALE L. & POL'Y REV. 91 (2012).
[240] *Id.* at 140.
[241] *Id.* at 111.
[242] *Id.* at 133.
[243] *Id.* at 112.
[244] *Id.* at 85.
[245] *Id.* at 86-7.
[246] *Id.* at 87.
[247] *Id.* at 101.

trillion dollars' worth of misreported spending in 2009."[248] A larger problem was a lack of context for released data.[249] The details represented a random part of the entire federal spending chain.[250] Also worth noting is that E-rulemaking endeavors were sponsored through agency budgets.[251] Hence, agencies supported "only those features that seem obviously worthwhile to their operations."[252]

3. The (E-)Freedom of Information Act (FOIA)

FOIA granted "any person" the right to seek information, with a presumption in favor of disclosure.[253] FOIA required agencies to publish certain types of information, and to proactively release other categories.[254] However, the effectiveness of FOIA depended on well-funded intermediaries, which was problematic because they were hindered by "the need to remain on good terms with government, and the demands of priorities for their resources."[255] Additionally, long backlogs of requests and responses were common.[256] Congress later adopted an online extension, E-FOIA, to lower the threshold for requests, requiring agencies to publish copies of records released from prior FOIA requests, as well as information "likely" to become the subject of requests.[257] Agencies must "make reasonable efforts" to release records, with expedited processing where the requester "demonstrates a compelling need."[258] A survey conducted ten years after E-FOIA's introduction found that more than forty percent of the surveyed agencies had not posted a single frequently requested record.[259] The Department of Justice sought to solve these problems by employing FOIA.gov, which compiled reports into a searchable database.[260] The website also provided public guidance on the FOIA process and preparing FOIA requests.[261]

b. Positive Steps Towards Greater Transparency and Accountability in Agencies and Elections

Congress and the President possess substantial oversight authority over federal agencies.[262] The performance of agencies is scrutinized by the OMB, congressional

[248] *Id.* at 103.
[249] *Id.* at 104.
[250] *Id.*
[251] *Id.* at 97.
[252] *Id.*
[253] *Id.* at 88.
[254] *Id.*
[255] *Id.* at 89.
[256] *Id.* at 90.
[257] *Id.* at 98.
[258] *Id.* at 99.
[259] *Id.*
[260] *Id.* at 100.
[261] *Id.*
[262] *Id.* at 132, 137.

committees, and the Government Accountability Office (GAO).[263] The Government Performance and Results Modernization Act instructed agencies to submit to Congress and the OMB plans with goals and objectives for a period of not less than five years.[264] "Performance plans" supplement these documents and explain how agencies intend to evaluate their programs.[265] As part of annual "program performance reports," agencies compare their original objectives to the actual performance and explain any discrepancies.[266] Another piece of legislation, the Congressional Review Act, requires agencies to submit final rules for review by Congress and the GAO before they can take effect.[267] The GAO investigates potential cases of waste and abuse by agencies, and this system is complemented by a wide array of committees in both the House of Representatives and the Senate.[268] The monitoring activities of these committees typically involve hearings in which administrators are required to explain the performance of their agencies.[269] These interactions often result in agreements that require agencies to commit to a certain course of action.[270] Another useful measure has been the involvement of inspectors general – independent government officers responsible for the detection of fraud, waste, and abuse in agencies.[271] Inspectors general report their findings to Congress and agency heads.[272]

Federal agencies themselves have invested in strategies to increase access to information, with Portable Document Format being the primary format used for released documents.[273] There are a number of tools available to extract PDF document information and to make it available for use by intermediaries.[274] Additionally, several agencies have established a strong presence on social media. For example, with over 500 unique social media accounts, the National Aeronautics and Space Administration delivers content that millions of people interact with on a daily basis.[275] Similarly, the Federal Emergency Management Agency uses social media as a means to educate citizens on the importance of safety and preparedness with infographics – a way to provide valuable content that people will want to consume and share.[276]

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[263] *Id.* at 124-5.
[264] *Id.* at 125.
[265] *Id.*
[266] *Id.*
[267] *Id.* at 138.
[268] *Id.*
[269] *Id.*
[270] *Id.*
[271] *Id.* at 130.
[272] *Id.*
[273] *A Primer on Machine Readability for Online Documents and Data*, DATA.GOV (Sep. 24, 2012), https://www.data.gov/developers/blog/primer-machine-readability-online-documents-and-data.
[274] *Id.*
[275] Nick Rogers, *Government Social Media Accounts: 3 Agencies that Inspire on Social*, MELTWATER (Nov. 18, 2018), https://www.meltwater.com/blog/government-social-media-accounts-3-agencies-that-inspire-on-social/.
[276] *Id.*

To assist in the assessment of government performance, the National Performance Management Advisory Committee laid out 7 Principles of Performance Management:

1. A results focus for strategies, processes, organizational culture, and decisions.
2. Information, measures, goals, priorities, and activities that are relevant to the well-being of the government and the community.
3. Transparent information on performance, decisions, regulations, and processes.
4. Goals, programs, activities, and resources that are aligned with priorities.
5. Decisions and processes that are driven by timely, accurate, and meaningful data.
6. Practices that are sustainable over time and across organizational changes.
7. Transformation of the organization and the policymaking process.[277]

The Committee also identified vital implementation steps:
-Present the case for performance management to decision makers.
-Identify key purposes and objectives of performance management, and define the performance management process.[278]

Regarding Transparency and Accountability in federal elections, online platforms are available in the U.S. which track the different types of financial donations to congressional campaigns – namely, political action committees; individual contributions; and money from the candidates' own pockets.[279] The data shows funds raised by candidates running for election in each cycle, based on data released by the Federal Election Commission.[280]

c. The Judiciary (on the Federal and State Level)

Historically, the U.S. has maintained a judicial branch on equal footing with its executive and legislative branches.[281] The judiciary may review the constitutionality of laws, and judges cannot be removed at the whim of displeased litigants or officials.[282] If a judge has made a decision that does not correctly interpret the law, higher courts can overturn it.[283] The structure plays a major role in maintaining judicial independence and checking judicial power.[284]

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[277] NATIONAL PERFORMANCE MANAGEMENT ADVISORY COMMITTEE, A PERFORMANCE MANAGEMENT FRAMEWORK FOR STATE AND LOCAL GOVERNMENT: FROM MEASUREMENT AND REPORTING TO MANAGEMENT AND IMPROVING 8 (2010), https://www.nasact.org/files/News_and_Publications/White_Papers_Reports/2010_06_01_NASACT_GFOA_A_Performance_Management_Framework.pdf.
[278] *Id.* at 12.
[279] *Where the Money Came From*, CENTER FOR RESPONSIBLE POLITICS, https://www.opensecrets.org/overview/wherefrom.php (last visited Dec. 16, 2019).
[280] *Id.*
[281] THE CONSTITUTION PROJECT, THE NEWSROOM GUIDE TO JUDICIAL INDEPENDENCE 4 (2015).
[282] *Id.*
[283] *Id.* at 15.
[284] *Id.*

1. Appointments and Elections

Judges of the Supreme Court, the Circuit Courts of Appeal, and the District Courts (all federal courts) are nominated by the President and confirmed by majority vote in the Senate.[285] Nominees must appear before the Senate Judiciary Committee for a confirmation hearing, and win committee approval before a full vote occurs.[286] The President usually appoints judges who share their political philosophy, and judgeships are often awarded to friends of either the President or a senator from the judge's state, and to key members of the President's party.[287]

On the state level, different jurisdictions have different methods of choosing judges.[288] There are five primary methods:

> Partisan elections: Judges are elected by citizens, and candidates are listed on the ballot alongside a label designating political party affiliation.
> Nonpartisan elections: Judges are elected by citizens, and candidates are listed on the ballot without a label designating party affiliation.
> Legislative elections: Judges are selected by the state legislature.
> Gubernatorial appointment: Judges are appointed by the Governor.
> Merit selection: A nominating commission reviews the qualifications of judicial candidates and submits a list of names to the Governor, who appoints a judge from the list. After serving an initial term, the judge must be confirmed by citizens in a yes-no retention election to remain on the court.[289]

States may apply more than one of these methods across different levels of courts.[290] For example, appellate court judges in the state of New York are chosen by assisted appointment, but the state's trial court judges are chosen in partisan elections.[291] About 80 percent of state judges are elected initially and/or must win a retention vote.[292] Sometimes, when a judge retires, the Governor appoints a successor on an interim basis; the appointee then stands for election for a full term.[293] Most states have retained judicial elections in some form for certain offices.[294] Many states that use merit selection also subject judges to a retention election.[295]

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[285] *Id.* at 16-7.
[286] *Id.* at 17.
[287] *Id.*
[288] *Id.* at 19.
[289] *Judicial selection in the states*, BALLOTPEDIA, https://ballotpedia.org/Judicial_selection_in_the_states#Overview_of_judicial_selection_methods_by_state (last visited Dec. 31, 2019).
[290] *Id.*
[291] *Id.*
[292] THE CONSTITUTION PROJECT, *supra* note 166, at 19.
[293] *Id.*
[294] *Id.* at 20.
[295] *Id.* at 21.

The President and the Governors wield substantial power in appointments.[296] The Senate generally affords great deference to the President's choices for federal judges.[297] Governors frequently exercise control through interim appointments.[298]

In states where judges are elected, candidates must campaign for office, and this process forces them to behave politically.[299] Moreover, candidates for executive and legislative offices often vow to nominate judges who will not render unpopular judicial decisions, or to work to remove judges who do.[300] Such tactics put pressure on judges to decide cases in ways that will achieve particular outcomes, a practice antithetical to judicial independence.[301] Further election problems may include fundraising and expenditures, inappropriate political activity, or even judicial misconduct.[302] Especially problematic are two kinds of judicial campaign speech that can cross the line into actual conduct: improper campaign promises; and inappropriate attacks on opponents.[303]

Congress has used the federal confirmation process as a way to exert influence over the executive branch, the judiciary, or their colleagues.[304] The result has been a substantial lengthening in time from nomination to confirmation, which affects the ability of the courts to function properly.[305]

2. Efforts Towards a more Ethical Judiciary

By statute, responsibility for administering the federal judiciary rests with the Judicial Conference of the United States (a body that frames policy guidelines for administration of the national courts), regional circuit judicial councils, individual courts, and the Administrative Office of the U.S. Courts (AO).[306] Internal safeguards exist at the local, regional, and national levels to deter waste and wrongdoing, and enable detailed performance assessments.[307]

Allegations regarding fraud, waste, or abuse are submitted to the appropriate chief judge or circuit judicial council.[308] Allegations regarding the AO itself are submitted to an AO investigator.[309] The AO is authorized by the Judicial Conference

[296] *Id.* at 31.
[297] *Id.*
[298] *Id.* at 33.
[299] *Id.* at 34.
[300] *Id.*
[301] *Id.*
[302] *Id.* at 36.
[303] *Id.*
[304] *Id.* at 34.
[305] *Id.* at 34-5.
[306] *Administrative Oversight and Accountability*, U.S. Courts, https://www.uscourts.gov/about-federal-courts/judicial-administration/administrative-oversight-and-accountability (last visited Dec. 31, 2019).
[307] *Id.*
[308] *Id.*
[309] *Id.*

to provide investigative assistance at the request of a chief judge or circuit judicial council.[310] The AO investigator or a review team examines relevant records, interviews staff, and analyzes activities to determine compliance with applicable law, regulations, and Judiciary policy.[311] At the conclusion of the investigation, a report is provided to the relevant Judiciary officials.[312] If the AO identifies any loss due to fraud, the matter is referred to the Department of Justice for potential prosecution.[313] AO officials maintain confidentiality to the greatest extent possible, including protecting the identity of the person submitting a complaint.[314]

Certain matters do not fall within the scope of the AO's authority.[315] Therefore, an allegation will not be investigated if it does not fall within the jurisdiction of the federal Judiciary (for example, allegations regarding state courts or agencies).[316]

Judges, judicial employees, and public defender employees are bound by ethics laws and prescribed codes of conduct.[317] These govern the proper performance of official duties, and limit certain outside activities to avoid conflicts of interest.[318] Under the Judicial Conduct and Disability Act, chief judges, circuit judicial councils, and the Judicial Conference of the United States may investigate and resolve any submitted claim that a judge "has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts" or "is unable to discharge all the duties of office by reason of mental or physical disability."[319] The website of each judicial circuit also includes rules that explain what may be complained about, who may be complained about, where to file a complaint, and how the complaint will be processed.[320]

Every judge is required to develop a list of personal and financial interests that would require recusal, which courts use with conflict-checking software to identify cases in which a judge may have a disqualifying conflict of interest under the Code of Conduct for U.S. Judges.[321] All judges, high-ranking judiciary officials, and senior staff must file public financial disclosure reports each year, as required by the Ethics in Government Act.[322]

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[310] *Id.*
[311] *Id.*
[312] *Id.*
[313] *Id.*
[314] *Id.*
[315] *Id.*
[316] *Id.*
[317] *Id.*
[318] *Id.*
[319] *Id.*
[320] *Id.*
[321] *Id.*
[322] *Id.*

The AO oversees comprehensive audits of judiciary funds.[323] Independent certified public accounting (CPA) firms audit all district and bankruptcy courts, and all courts of appeal, every two to four years.[324] These firms also audit federal public defender organizations, probation and pretrial services offices, and bankruptcy trustees on a regular basis.[325] At the national level, audits are performed of the Judiciary's appropriation accounts, and of other activities, systems and funds.[326] The AO tracks all audit findings to ensure that auditor recommendations are implemented.[327]

The AO also reviews court and defender services operations to provide management advice and determine compliance with Judicial Conference policies.[328] These program reviews may be broad in scope or narrowly focused – they may address operations; personnel; budget and finance; property management; jury administration; court reporting; court interpreting; or information technology management and security.[329] If either program uncovers fraud, waste, or abuse, the AO will notify the appropriate authority.[330]

The AO maintains an integrated management and financial planning system, with financial controls governing budget formulation and execution.[331] The AO also regularly surveys court operations and judicial workloads and assesses operational effectiveness and economy.[332] National standards and guidelines are promulgated in an official administrative policy manual, and the AO prepares supplemental court guidance materials.[333] Every six months, the AO reports to the Judicial Conference Committee on Audits and Administrative Office Accountability on recent financial audits, program reviews, special investigations, and prosecution referrals.[334] The Federal Judicial Center (the education and research agency of the federal courts) and the AO offer training for chief judges and unit executives on their management and oversight responsibilities.[335] In addition, the director of the AO has a statutory duty to "supervise all administrative matters" in the courts.[336]

Regionally, each circuit includes a circuit judicial council that carries out oversight responsibilities, with broad authority to "make all necessary and appropriate

[323] *Id.*
[324] *Id.*
[325] *Id.*
[326] *Id.*
[327] *Id.*
[328] *Id.*
[329] *Id.*
[330] *Id.*
[331] *Id.*
[332] *Id.*
[333] *Id.*
[334] *Id.*
[335] *Id.*
[336] *Id.*

orders for the effective and expeditious administration of justice within its circuit."[337] Council functions cover judicial conduct and disability review processes, and councils review district court plans on a range of topics such as indigent defense and jury selection.[338]

Each court is required to have clearly defined procedures for making financial management decisions and producing timely financial reports.[339] Courts must produce management plans for monitoring various court operations, including a budget organization plan, budget spending plan, internal controls plan, employment dispute resolution plan, jury plan, court reporter management plan, Criminal Justice Act plan, and long-range facilities plan.[340] Data on every court's caseload and processing times are compiled and published on the judiciary's public website.[341]

The Code of Conduct demands that federal judges exercise the powers of appointment only on the basis of merit.[342] Also, no person may be employed in any court office who is related within the degree of first cousin to any justice of such court.[343] A public official may not appoint, employ, or advocate for a relative regarding a civilian position in the agency in which he is serving or over which he exercises jurisdiction or control.[344] Another prohibition is on "Favoritism," which concerns the appearance that someone may gain an advantage in the appointment or employment process, for reasons other than merit, because of his or her broader connections to a judge or judicial employee.[345]

The Federal Judicial Center provides annual reports on its activities, submitted under statute to the Judicial Conference.[346] Case information is available online from both commercial services (Westlaw, LexisNexis, Bloomberg Law, LoisLaw, Fastcase, etc.) and free websites (Google Scholar, FindLaw, LexisONE, Legal Information Institute, court sites, etc.).[347]

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[337] *Id.*
[338] *Id.*
[339] *Id.*
[340] *Id.*
[341] *Id.*
[342] U.S. COURTS, GUIDE TO JUDICIARY POLICY VOL. 2: ETHICS AND JUDICIAL CONDUCT PT. B: ETHICS ADVISORY OPINIONS CH. 2: PUBLISHED ADVISORY OPINIONS 82 (Feb. 28, 2019), https://www.uscourts.gov/sites/default/files/vol02b-ch02.pdf.
[343] *Id.* at 86.
[344] *Id.* at 238.
[345] *Id.* at 241.
[346] *Annual Reports,* FEDERAL JUDICIAL CENTER, https://www.fjc.gov/content/annual-reports (last visited Dec. 16, 2019).
[347] *Legal Research*, GARBRECHT LAW LIBRARY, https://lawguides.mainelaw.maine.edu/LR/cases (last visited Dec. 16, 2019).

On the state level, all fifty states and the District of Columbia have judicial conduct agencies to investigate allegations of judicial misconduct.[348] For example, Massachusetts has a "Commission on Judicial Conduct" (CJC). Any citizen may file a complaint with the CJC.[349] Its purpose is to preserve judicial independence and public Accountability; provide a fair and reasonable process to address judicial misconduct and disability; and to maintain the public's confidence in the integrity of the judicial system.[350] The Commission is also careful to articulate limits on its powers: it cannot serve as an appellate court to review judges' rulings, and it does not have the authority to order a judge to step down from hearing a case.[351]

The American Bar Association suggests Rules for Judicial Disciplinary Enforcement to be used against judicial employees. Under its guidelines, grounds for discipline should include: any conduct constituting a violation of the applicable ethics codes; or a willful violation of a valid order of the highest court, commission or panels of the commission in a proceeding under these Rules, a willful failure to appear personally as directed, or a knowing failure to respond to a lawful demand from a disciplinary authority.[352] Discipline should consist of: removal or suspension by the highest court; imposition of lawyer discipline by the highest court; public reprimand by the highest court; private admonition by an investigative panel of the commission, provided that this admonition may be used in subsequent proceedings as evidence of prior misconduct upon the issue of the sanction to be imposed; and deferred discipline agreement.[353]

Developments in the MENA Region After the Arab Spring

I. Egypt

Among prominent political parties, there was a sort of tacit agreement reached on a model for judicial reform, which included: upgrading the law curriculum; amending laws that allowed for executive interference; easing bureaucratic burdens for courts; establishing a system for access to court rulings; separating the powers of investigation and indictment; increasing the number of judges; and guaranteeing enforcement.[354] Many concerned with the judiciary agreed on several further measures of reform:

-improve law schools

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[348] *Massachusetts Commission on Judicial Conduct (CJC)*, Mass.gov, https://www.mass.gov/orgs/massachusetts-commission-on-judicial-conduct (last visited Dec. 31, 2019).
[349] *Id.*
[350] *Id.*
[351] *Id.*
[352] *Model Rules for Judicial Disciplinary Enforcement: Section II. General Provisions, Rule 6. Grounds For Discipline; Sanctions Imposed; Deferred Discipline,* AMERICAN BAR ASSOCIATION CENTER FOR PROFESSIONAL RESPONSIBILITY (Oct. 5, 2011), https://www.americanbar.org/groups/professional_responsibility/model_rules_judicial_disciplinary_enforcement/rule6/.
[353] *Id.*
[354] EURO-MEDITERRANEAN HUMAN RIGHTS NETWORK, THE REFORM OF JUDICIARIES IN THE WAKE OF THE ARAB SPRING: PROCEEDINGS OF THE SEMINAR 11-12 FEB. 2012, RABAT 22 (2012).

-streamline judicial procedures
-allow appeals of rulings and guarantee the right to resort to a higher court
-promote the freedom of judges to establish associations that defend their interests
-ensure the financial independence of the judiciary
-provide media support to efforts aimed at achieving independence.[355]

II. Jordan

After the regional unrest, an emerging reform movement focused on changing the relationship between the branches of government, as well as creating a constitutional court.[356] Among the most significant constitutional reforms that resulted were the following:

-independent judicial power exercised by the courts
-a constitutional court was established, consisting of nine members, each serving a term of six years
-courts would interpret the provisions of the Constitution if requested by decision of the Council of Ministers or by resolution taken by the National Assembly.[357]

Only the Senate, Chamber of Deputies, or Council of Ministers had the right to challenge the constitutionality of laws before the Court.[358] Additionally, a member of the Court had to be a Jordanian of fifty years or older, selected from among current or former judges of the Court of Cassation or the High Court of Justice; current or retired law professors; lawyers in the profession for a minimum of fifteen years or legal experts and specialists who met requirements set by the Senate.[359] The amendments concerning the Court were criticized for limiting the term of service for judges to six years, and confining the right of access to specific bodies.[360]

III. Lebanon

a. Timid Efforts Against Corruption in the Judiciary

In the wake of the Arab Spring, the National Assembly decided to increase judges' salaries – mostly aimed at stimulating the judiciary and ensuring its independence.[361] Additionally, the Minister of Justice claimed to have persuaded the state's judges to accelerate trials.[362] The government desired to attract new judges (partly to counter the apparent "feminization" of the judiciary) and reduce their migration elsewhere – especially to Gulf states.[363] However, necessary judicial reform was not implemented in tandem with such efforts.[364]

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[355] *Id.* at 24.
[356] *Id.* at 47.
[357] *Id.* at 47-8.
[358] *Id.* at 48.
[359] *Id.*
[360] *Id.*
[361] *Id.* at 87.
[362] *Id.*
[363] *Id.*
[364] *Id.*

A wider initiative to ensure Accountability took two forms: the disqualification of some judges pursuant to Article 95 of the Code of Judicial Organization, and the revitalization of the Disciplinary Council.[365] However, there were concerns that putting the Accountability of judges under a spotlight – without an accompanying initiative to support judiciary independence – would make the executive authority appear as though it were purging a "corrupt" judiciary.[366] Such a perception might make demands for independence seem less legitimate.[367] Furthermore, Article 95 sanctions harsh measures against judges without granting them the right to defense or a fair trial.[368]

A committee was appointed by the Minister of Justice to discuss reforming the Code of Judicial Organization, consisting of lawyers and two former HJC presidents, but no judges – an approach that viewed judges as recipients of reform rather than reformers.[369]

Other judicial initiatives occasionally emerged.[370] In one, ten judges signed up to establish a judicial association focused on the regional impact of the Arab Spring.[371] Judges from Egypt and Tunisia were among the attendants, and the signatories held several meetings.[372] Another initiative involved the assembly of about 40 judges at the Palace of Justice.[373] The judges created a mini-committee to call on the Judicial Inspection Department and the HJC to initiate reforms.[374]

b. Positive Involvement of International Organizations

The useful work of international organizations within Lebanon is perhaps best demonstrated by the ongoing role of the United Nations Interim Force in Lebanon (UNIFIL). There are several facets to UNIFIL's relationship with the population of South Lebanon: informing the people about its activities; providing or facilitating assistance; sharing in local cultural concerns; participating in community events, and ensuring minimum disturbance to daily life from its operations.[375] UNIFIL liaises with a wide range of actors at the local, regional and national level, including local government representatives, community leaders, religious figures, civil society groups and international agencies.[376] UNIFIL's Civil Affairs Office assists in developing and strengthening the capacity of civil society organizations, and also facilitates the creation

[365] *Id.*
[366] *Id.* at 87-8.
[367] *Id.* at 88.
[368] *Id.*
[369] *Id.*
[370] *Id.* at 89.
[371] *Id.*
[372] *Id.*
[373] *Id.*
[374] *Id.*
[375] UNIFIL Civil Interaction (Sept. 13, 2019), https://unifil.unmissions.org/unifil-civil-interaction.
[376] *Id.*

of networks between various organizations and funding support from external donors.[377] Although not a humanitarian or development agency, UNIFIL has, from the early years of its deployment, had a strong humanitarian disposition in addressing the consequences of war in south Lebanon.[378] Its battalions deliver a range of basic services to communities using the expertise of peacekeepers, as well as operational resources.[379] UNIFIL contingents provide free medical, dental, and veterinary services, and have also conducted various training programs for the local community in fields such as computers, languages, cooking, yoga, and martial arts.[380]

IV. Libya

The Constitutional Declaration of August 3, 2011 provided for the independence of the judiciary, prohibited exceptional courts, and guaranteed the right to litigation.[381] An additional law abolished the presidency of the Minister of Justice over the High Judicial Council.[382] The Public Prosecutor and Chief Justices of the courts of appeals now served as members of the Council.[383] Although such efforts were made to consolidate the independence of the judiciary, there were several obstacles, including: the presence of detention centers, the lack of Prosecutor supervision, and the detention of those affiliated with Gaddafi's regime without interrogation or fair trial.[384]

V. Morocco

The new constitution established a Supreme Council of the Judiciary, to report on the judiciary and make recommendations.[385] The Council delivered opinions at the request of the Government, and its decisions were subject to appeal on the grounds of abuse of authority.[386] The Council would include 10 elected representatives, having to incorporate women magistrates in numbers proportionate to their presence in the judiciary as a whole.[387] The Council had administrative and financial autonomy.[388]

Access to justice is guaranteed for the defense of rights protected by law, and every legal act taken in administrative matters may be appealed.[389] The accused are presumed innocent until found guilty – however, national laws give powers to the prosecution and the police force which nullify this principle.[390] Damages resulting from a miscarriage of justice carry an entitlement to

[377] *Id.*
[378] *Id.*
[379] *Id.*
[380] *Id.*
[381] EURO-MEDITERRANEAN HUMAN RIGHTS NETWORK, *supra* note 239, at 81.
[382] *Id.*
[383] *Id.*
[384] *Id.* at 82.
[385] *Id.* at 39.
[386] *Id.*
[387] *Id.* at 40.
[388] *Id.*
[389] *Id.* at 41.
[390] *Id.*

compensation.[391] The constitution prohibited the creation of special courts.[392] However, these improvements remain dependent on the adoption of laws which may not be implemented for several years.[393]

The Constitutional Court is composed of twelve members, each serving a nine-year term.[394] Six members are appointed, and six are elected, half by the Chamber of Representatives and the other half by the Chamber of Councillors, from among candidates proposed by each Chamber.[395] International laws may be referred to the Court by membership of either Chamber.[396] Access to justice is free of charge to those lacking sufficient resources, but there are factors that impede such access, including legal costs and lawyers' fees; and the systematic failure to publish laws and case law.[397] Sites maintained by the Justice Ministry are not updated; while programs for modernizing the courts have been introduced with the support of international partners, there is little evidence of their effectiveness.[398]

VI. Tunisia

a. Obstacles Towards Good Governance

Initially, efforts to combat corruption and nepotism without adequate legislative texts yielded no tangible result.[399] The transitional period after the Arab Spring created an institutional vacuum by suspending the constitution and dissolving parliament.[400] The successive governments did not allow the constitutional process to evolve properly, leading to a lack of synergy between the government and civil society.[401]

The state established several independent public authorities.[402] The High Authority for the Achievement of the Goals of the Revolution, Political Reform and Democratic Transition was created to initiate reforms towards democracy.[403] Initially a commission of experts, the Authority transformed itself into a political organ by decree, and established a decree-law on the election of the National Constituent Assembly.[404] The Independent High Authority for Elections was responsible for the registration of voters on electoral lists, the management of the nominations, the control of litigation related to the election campaign, ballots counting, the announcement of the results, the

[391] *Id.*
[392] *Id.*
[393] *Id.*
[394] *Id.*
[395] *Id.* at 41-2.
[396] *Id.* at 42.
[397] *Id.* at 42-3.
[398] *Id.* at 43.
[399] TUNISIAN ASSOCIATION FOR GOVERNANCE, PUBLIC GOVERNANCE IN TUNISIA: PRINCIPLES, STATUS AND PROSPECTS 2 (Nov. 2013).
[400] *Id.*
[401] *Id.* at 3.
[402] *Id.*
[403] *Id.* at 6.
[404] *Id.*

examination of the appeals, and the drafting of a final report on the elections.[405] The latter Authority managed to achieve the holding of free elections in October 2011, ushering in the second phase of the transition towards democracy.[406]

The transitional government tried to be transparent through regular press conferences.[407] However, according to the Tunisian Union for the Public Service and the Neutrality of the Administration, 90% of appointments in the public sector from December 2011 to February 2013 were made by the government on the basis of partisan, regional or family connections.[408] Out of 212 appointments in the public administration, only 114 were published in the Official Journal of the Republic of Tunisia (JORT), a violation of the state's rule of publication.[409] During the selection of the election commission, Transparency was respected more fully.[410] The sorting of the nominations was subject to a published selection grid, and the process was open to the control of the citizens and the media.[411]

In July 2011, the Association of Tunisian Judges issued a report on the "Requirements of the Tunisian Judiciary During Transition" following a symposium in cooperation with the United Nations Office of the High Commissioner for Human Rights and the United Nations Development Programme.[412] The report emphasized the need to abolish the executive authority's supervision over the judiciary, purge the judiciary of corrupt figures and provide judges with the necessary safeguards.[413] The Association held another conference in October 2011 and issued two documents containing its vision of independence of the judiciary.[414]

The Law on the Provision Regulation of Public Authorities declared that the judiciary shall exercise its prerogatives with full independence.[415] After consultation with judges, a law would be issued defining the composition, prerogatives and mechanisms of a representative body to oversee the courts.[416] Laws would be enacted that reorganize the judiciary, restructure high judicial councils, and set the foundations for reforming the judicial system in accordance with international standards.[417]

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[405] *Id.* at 6-7.
[406] *Id*. at 7.
[407] *Id.* at 13.
[408] *Id*.
[409] *Id*.
[410] *Id.* at 14
[411] *Id.*
[412] *Id.* at 31.
[413] *Id.*
[414] *Id.*
[415] *Id.* at 30.
[416] *Id.*
[417] *Id.*

b. Local Governance Success

In an effort to make government more accountable, a set of conditions were established with support from the World Bank; these conditions were related to sustainability and management, and local governments (LGs) would have to meet them in order to receive funds.[418] As around 70 percent of Tunisia's population lived in towns and cities, the government set up a system whereby LGs were independent of central control for local decisions.[419] LG decision-making was assured through fiscal transfers of investment resources annually from the state, within a 5-year period, to allow investment programming.[420] In addition, the government directed that a transparent system for allocating grant funds be developed.[421] It would evaluate each LG's performance against indicators covering governance, sustainability, and management, and performance would be measured annually by independent audit.[422] The government's intentions were to make the outcome of the annual performance assessments (PA) public, so citizens could see how well their LG had performed; and to incentivize good LG performance by linking each LG's score under the PA to the amount of annual grant entitlement.[423] The Program's first year was devoted to establishing institutional and fiscal reforms.[424] Against the target of 70% of LGs to meet the mandatory conditions necessary for grant funds, over 90% satisfied them, including undertaking citizen consultative procedures, and preparing budgets comprising detailed investment plans.[425] This success prompted the Ministry of Finance to release the 2016 grant funds to LGs to allow for on-schedule implementation of LGs' investment plans.[426]

[418] *Transparency and Accountability: Keys to Tunisia's Decentralization Success*, THE WORLD BANK (Sept. 15, 2016), https://www.worldbank.org/en/news/feature/2016/09/09/transparency-and-accountability-keys-to-tunisia-s-decentralization-success.
[419] *Id.*
[420] *Id.*
[421] *Id.*
[422] *Id.*
[423] *Id.*
[424] *Id.*
[425] *Id.*
[426] *Id.*

BIBLIOGRAPHY

A Primer on Machine Readability for Online Documents and Data, DATA.GOV (Sep. 24, 2012), https://www.data.gov/developers/blog/primer-machine-readability-online-documents-and-data.

ACCESS INFO EUROPE & THE CENTRE FOR LAW AND DEMOCRACY, RIGHT TO INFORMATION: A GUIDE TO BEST PRACTICE IN TRANSPARENCY, ACCOUNTABILITY AND CIVIC ENGAGEMENT ACROSS THE PUBLIC SECTOR (Transparency & Accountability Initiative, 2011).

Administrative Oversight and Accountability, U.S. Courts, https://www.uscourts.gov/about-federal-courts/judicial-administration/administrative-oversight-and-accountability (last visited Dec. 31, 2019).

Annual Reports, FEDERAL JUDICIAL CENTER, https://www.fjc.gov/content/annual-reports (last visited Dec. 16, 2019).

DANIDA, *Policy for Danish Support to Civil Society* (Jun. 2014).

EURO-MEDITERRANEAN HUMAN RIGHTS NETWORK, THE REFORM OF JUDICIARIES IN THE WAKE OF THE ARAB SPRING: PROCEEDINGS OF THE SEMINAR 11-12 FEB. 2012, RABAT (2012).

Herbert A. Igbanugo, *The Rule of Law, Judicial Corruption, and the Need for Drastic Judicial Reform in Sub-Saharan Africa's Nation*, AMERICAN BAR ASSOCIATION (Nov. 8, 2018), https://www.americanbar.org/groups/international_law/publications/international_law_news/2013/summer/the_rule_of_law_judicial_corruption_need_for_drastic_judicial_reform_sub_saharan_africas_nation/.

Jennifer Shkabatur, *Transparency With(out) Accountability: Open Government in the United States*, 31 YALE L. & POL'Y REV. 79 (2012).

John M. Carey, *Transparency Versus Collective Action: Fujimori's Legacy and the Peruvian Congress*, COMPARATIVE POLITICAL STUDIES, 1-22 (2003).

Judicial selection in the states, BALLOTPEDIA, https://ballotpedia.org/Judicial_selection_in_the_states#Overview_of_judicial_selection_methods_by_state (last visited Dec. 31, 2019).

Legal Research, GARBRECHT LAW LIBRARY, https://lawguides.mainelaw.maine.edu/LR/cases (last visited Dec. 16, 2019).

Linnéa Larsson, *Fighting Corruption in Botswana*, CENTRE FOR PUBLIC IMPACT (Jan. 18, 2018), https://www.centreforpublicimpact.org/case-study/fighting-corruption-botswana/.

Massachusetts Commission on Judicial Conduct (CJC), Mass.gov, https://www.mass.gov/orgs/massachusetts-commission-on-judicial-conduct (last visited Dec. 31, 2019).

MICHAEL JOHNSTON, GOOD GOVERNANCE: RULE OF LAW, TRANSPARENCY, AND ACCOUNTABILITY (Colgate University, 2002).

Model Rules for Judicial Disciplinary Enforcement: Section II. General Provisions, Rule 6. Grounds For Discipline; Sanctions Imposed; Deferred Discipline, AMERICAN BAR ASSOCIATION CENTER FOR PROFESSIONAL RESPONSIBILITY (Oct. 5, 2011), https://www.americanbar.org/groups/professional_responsibility/model_rules_judicial_disciplinary_enforcement/rule6/.

NATIONAL PERFORMANCE MANAGEMENT ADVISORY COMMITTEE, A PERFORMANCE MANAGEMENT FRAMEWORK FOR STATE AND LOCAL GOVERNMENT: FROM MEASUREMENT AND REPORTING TO MANAGEMENT AND IMPROVING (2010), https://www.nasact.org/files/News_and_Publications/White_Papers_Reports/2010_06_01_NASACT_GFOA_A_Performance_Management_Framework.pdf.

Nick Rogers, *Government Social Media Accounts: 3 Agencies that Inspire on Social*, MELTWATER (Nov. 18, 2018), https://www.meltwater.com/blog/government-social-media-accounts-3-agencies-that-inspire-on-social/.

Open Government Partnership, Albania: Standardization of Corruption Complaints (AL0031), https://www.opengovpartnership.org/members/albania/commitments/AL0031/.

Open Government Partnership, Liberia: Appoint Public Information Officers (PIOs) (LR0007), https://www.opengovpartnership.org/members/liberia/commitments/LR0007/.

THE CONSTITUTION PROJECT, THE NEWSROOM GUIDE TO JUDICIAL INDEPENDENCE (2015).

Transparency and Accountability: Keys to Tunisia's Decentralization Success, THE WORLD BANK (Sept. 15, 2016), https://www.worldbank.org/en/news/feature/2016/09/09/transparency-and-accountability-keys-to-tunisia-s-decentralization-success.

TUNISIAN ASSOCIATION FOR GOVERNANCE, PUBLIC GOVERNANCE IN TUNISIA: PRINCIPLES, STATUS AND PROSPECTS (Nov. 2013).

U.S. COURTS, GUIDE TO JUDICIARY POLICY VOL. 2: ETHICS AND JUDICIAL CONDUCT PT. B: ETHICS ADVISORY OPINIONS CH. 2: PUBLISHED ADVISORY OPINIONS (Feb. 28, 2019), https://www.uscourts.gov/sites/default/files/vol02b-ch02.pdf.

UNIFIL Civil Interaction (Sept. 13, 2019), https://unifil.unmissions.org/unifil-civil-interaction.

Where the Money Came From, CENTER FOR RESPONSIBLE POLITICS, https://www.opensecrets.org/overview/wherefrom.php (last visited Dec. 16, 2019).

Wim Voermans, *Judicial transparency furthering public accountability for new judiciaries,* 3(1) UNIVERSITEIT UTRECHT L. REV. 148-159 (2007).