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Master's Thesis of Public Administration

Corruption in the Peruvian Judiciary:

Focusing on the Provisional judges

페루 사법체계의 부패:

임시재판관을 중심으로

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Abstract

Corruption in the Peruvian Judiciary: Focusing on the Provisional Judges

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Corruption in the judicial system undermines the rule of law and the ability to guarantee the rights of individuals. The fight for justice against corruption is not an easy task and therefore it is entrusted to the judges, the strengthening of justice with appropriate judicial proceedings; unfortunately, this situation is not happening in the Peruvian courts. This paper is an inquiry into whether provisional judges are more vulnerable to corrupt practices in the judicial system with the main objective of tackling the corruption within the Peruvian Judiciary. It specifically aimed at analyzing and explaining the influence of corruption over provisional judges in the Peruvian courts, identifying factors that may threaten impartiality in the decisions of the provisional judges and thus the independence of the justice system.

Indeed, in order for the study to achieve the aforementioned objectives, this paper provided a theoretical background and conceptual definition to highlight the key concepts of judicial corruption, provisional judge as well as their derivatives. Besides, this paper assumed that bribery and undue political interference represent the most corrupt practices in the Judiciary. The paper

used both qualitative and quantitative data in order to test the hypotheses by means of a questionnaire intended for judges, courts clerk, and lawyer who had interacted with the judicial system as well as interviews with provisional and permanent judges.

Besides, after analyzing the collected data, the results have confirmed the hypothesis of this paper stating that provisional judges are more vulnerable to corruption. Thus, different internal and external factors that influence in this issue were identified in order to give appropriate responses and make recommendations and policy implications to tackle and reduce corruption in the judicial system. Finally, the paper ends with conclusions that briefly confronts the objectives of the study and its findings and provide new perspectives for future researchers.

Keywords: Judicial system, corruption, provisional judges, permanent judge, Peru

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CHAPTER 1: INTRODUCTION

1.1 Background of the Study

Corruption significantly impedes the economic, social and political development in Peru. High-level and petty corruptions are common, especially in the judicial system. The judicial corruption is surrounding the Courts to the detriment of the citizen's rights and denies procedural rights guaranteed by Peruvian Constitution. The rapid expansions of corrupt practices coupled with inadequate policies facilitate an informal justice between judicial actors who sell themselves for private benefits. The Peruvian judicial system requires from government and any institutions the guarantees against any inappropriate or unwarranted interference. However, compliance with these guarantees in practice is lagging behind.

Quite amazing is the fact the high leaders are asking for an adequate and fair judicial service when they also know the poor conditions in which the judicial system is developing, lack of resources such as humans and material, are one of the biggest challenges that each president of the Judiciary has to face each year. Indeed, all these deficiencies make corruption flourish in the environment and many of these corrupt practices are associated with the work of judges in the delivering of justice. Since honest judges are expected to warranty appropriate judicial proceedings to safeguard the rights of individuals and over all, in the strengthening of justice, they must be shielded from any kind of inappropriate interventions.

Unfortunately, the judicial system is endangered by the presence of judges who do not enjoy of independence and impartiality for taking their decisions freely, for presenting conditions that do not ensure the security of their tenure, being them freely removed or suspended; likewise they are

appointed by a "supposedly" short time under an irregular process because of the lack of an independent body and a national contest to occupy their tenures, as well as receiving low salaries in the development of their judicial functions. And they are known as provisional judges.

The corrupt practice within judicial system is well-known, but also well-hidden, that's why few corruption cases committed by judges, especially by provisional ones, are reported. First at all, provisional judges are not a new phenomenon in the organizational structure of Judiciary, nevertheless the indiscriminate use of this exception became in one of the main rule during the Fujimori Government. The judicial structure was completely affected by his personal interests where the independency and impartiality were undermined under his dictatorship to keep the control over this power of State. In this sequence, one of the evidence that can be cited was the plan to carry out the electoral fraud in the third consecutive term in office of Alberto Fujimori Fujimori for the year 2000, a majority vote of provisional judges were needed in the Plenary Chamber for the election of the representative of the judiciary to the National Elections Board.

Despite of that there are not serious studies about the provisional judges, mainly related to the judicial corruption however, there are also clear evidences about the problematic of provisional tenures, a nexus among corruption and provisional judges shook the country in 2006. Eduardo Palacios, a provisional Supreme Court Magistrate was surprised by the police after pocketing a bribery of 1,000 soles (307 dollars) from a litigant in exchange for helping him a trial against the police force. Likewise, in 2015, Malzon Urbina, provisional superior judge of the Third Superior Criminal Chamber was questioned for ruling in favor of the merchants of "La Parada" market, in a functional irregularity in the exercise of his position, being suspended.

Moreover, on September 1, 2015, Haydee Vergara Rodriguez, a provisional judge of the 54th Court for Criminal Matters of Lima, sentenced in favor of release of 52 people involved in usurpation of a building in Lince, Lima, she was already separated from her post. Other case was reported on Jun 28, 2004 by which Luz Armenia Salazar Berroa, Provisional Judge of the First Mixed Court of Justice of Ilo (Judicial District of Tacna y Moquegua) was suspended from her post since one of the cases was handled with certain irregularities, with undue pressure from the brother of former president Alejandro Toledo Manrique.

Another investigation in 2015 was conducted against provisional judge Maria Martinez in the famous case of Business Track where two USB with Audio disappeared from the office of this judge without any explanation. Some public officers from the government of the former President Alan Garcia were involved in this case. Also, other former provisional judge from the Supreme Court and a former president of the Superior Court Alejandro Rodríguez Medrano was accused and sentenced for being the nexus of former presidential adviser Vladimiro Montesinos in the Judiciary to obtain favorable sentences for the regime of Alberto Fujimori.

As mentioned, the current magistrate of the Constitutional Court, Marianella Ledesma (2015) commented in a Peruvian journalistic article entitled "La Ley" that, the situation of the provisional judges is one of permanent unconstitutionality which affect the independence and impartiality of the function of judge demands. Based on these afore-mentioned facts about provisional judges and corruption in the judicial system, the researcher finds it worthwhile to undertake the research work for a better understanding by this topic under study.

1.2 Statement of the Problem

Corruption is one of the oldest and incurable diseases of the society, an endemic problem which deeply affects not only the economic development but likewise the morale of the nation and welfare of the citizens. Not a single country escape from its powerful influence and how dangerous it could be in the foundations of the Government, especially in the justice system.

Indeed, one of the big challenges for the judicial system is battled corruption. In 2015, the Peruvian pollster PROETICA released the last corruption perception on the public institution, a total of 1308 people were survey and around 47% of the participants believed that the Judiciary is the most corrupt institutions at the national level; in agreement with the first-mention, the U.S Department of State (2013) opined on Peruvian judicial system that “the competence of individual judges varies, and allegations of corruption, political interference, and outside interference in the judicial system are common¹”; in addition, the Global Competitiveness Rankings of the World Economic Forum (2015-2016) focus its attention in the bribes and irregular payments in our Courts mentioning that they are very commonly exchanged to obtain favorable court decisions.

Within this context, Lizeth Paola Martinez Laguna (2011) in her study about corruption in the Peruvian judicial system mentioned that one of the main problems in the Courts is the judge’performance. It is not questionable that the labour of judges in their role of decision-maker is one of great importance in the delivery of justice service of Courts. Elementally, the responsibility of the Judges is not only confined to the application and interpretation of the law also they are expected to rule against corruption since that, they should be them fair at all times and working under an independent

¹ Available in: <https://www.state.gov/e/eb/rls/othr/ics/2013/204714.htm>

judicial system, free from all undue outside pressures and influence, this is as the citizens are expecting for a clean and fair judicial system.

Nevertheless, when the conditions of judges are not favorable to protect their independence and impartiality, the risk of the increase in corrupt practices is latent. About that, Transparency International² (2007) claims that factors like poor salaries, insecure working conditions, unfair promotion, lack of continuous training and others affect a judge's susceptibility and make them vulnerable to bribery.

So, lack of security in the tenure, temporary positions, irregular process in their appointments and low salaries, could create the perfect breeding ground for corruption, that's the particular issue in this paper; and all these characteristics are grouped in a well-know figure named provisional judge. Regarding to that, the Organization of American State in its report on Administration of justice and rule of law for the case of the Fujimori's government claimed: *"This high percentage of "provisional" judges has a serious detrimental impact on citizens' right to adequate administration of justice (...) The independence of the judicial system is also undermined by the fact that the "provisional" judges do not enjoy the right to stability in their posts when they are placed on a level approximately equal to permanent judges, which means the decision as to whether they keep their jobs is made unilaterally by the Executive"*³.

In the light of above, one of the main reasons in this research is written to better address the factors that threaten the independence of delivering of judicial service by judges so as to reduce the commission of acts of corruption.

²https://www.transparency.org/news/pressrelease/20070523_judicial_corruption_fuels_impunity_corrodes_rule_of_law_says_repor

³ Available in: <https://www.cidh.oas.org/countryrep/Peru2000en/chapter2.htm>

From another perspective, the Consultative Council of European Judges (2014) in the report entitled "Opinion N° 17, on the evaluation of judge's work, the quality of justice" mentioned that in the protection of judicial system, the ways of maintaining and improving the quality and efficiency of judicial systems are also needed, therefore affirming that "The principles of security of tenure and of irremovability are well-established key elements of judicial independence", as well in the appointment based on objective criteria, in particular ability, integrity, and experience.

That's why this issue on the provisional judges and the threat to the independence and impartiality can finally end in corrupt practices that affect the justice system. Therefore, this paper intends to discuss the situation of pressure of the provisional judges for the commission of acts of corruption, in the understanding that certain factors, in this type of judges, condition to the propagation of the corruption in the Courts.

1.3 Significance of the Study

Security of the tenure, permanent position, good salaries and regular process of appointments are the main pillars of an independent and impartial system of justice. Given this context, an effective practice in preventing corruption in judicial systems, according to Transparency International (2007) is seen in systems with judicial appointments based on meritocracy whose members have been appointed in an objective and transparent process by independent body as well as working conditions and salaries protect by Law, security of tenure and others.

In the case of Peru, it is a country with a high percentage of corruption and particularly, in the judicial system. As the former President of the National Council of the Judiciary mentioned, Máximo Herrera Bonilla

(2013), the judicial corruption is a "historical problem", which intensified during the Fujimori government in lack independence in the judicial service and the impartiality in decisions. In this line of ideas, under the Fujimori's interest, the insecurity of tenure, irregular appointments process, temporary positions were keys to affect and maintain control over the judicial structure; and these factors were grouping in the well-known figure of provisional judges.

As Gaceta Juridica (2015) in the report entitled "Justice in Peru, Five big problems" empathized that provisional judge constitutes a threat to independence and impartiality in the judicial functions. In this sense, as a consequence of the aforementioned, this paper somewhat focuses on how provisional judges can be linked with judicial corruption and therefore, to demonstrate the serious threat in our courts these days.

Similarly, this study helps in reveals how corruption is expanding in the courts and what are these factors that allow it, especially when they have an impact on the work performed by judges and particularly, by provisional judges. Importantly, this study fulfils the research findings identified by the "International Bar Association and Basel Institute on Governance"(2016) report on corruption within judicial systems around the world. Moreover, this study will contribute with information about provisional judge since there are not serious studies about this issue as well as, be useful to those who are interested in judicial corruption and provisional judges.

1.4 Organization of the Study

The structure of this study is organized as follows. Chapter 1 is about introduction which includes the background of the study, statement of the problem and significance of the study. In Chapter 2, review of literature is done. Chapter 3 is about research methodology and explains the research design, and methods of data analysis. Chapter 4 deals with data presentation and analysis. Chapter 5 summarizes the different findings of the study, provides implications and makes policy recommendations. Chapter 6 provides a summative conclusion of the paper and points out its different limitations.

CHAPTER 2: REVIEW OF LITERATURE

2.1 The Judiciary

Every State has three basic powers: The Executive, Legislative and the Judiciary. Through them, the State can develop, modify and apply laws in order to seek the general welfare of society. In this line of thought, the Judiciary is the branch of government which administers justice according law. In this way, the State resolves litigation, protects the rights of citizens and enforces the obligations and responsibilities into society.

The term judiciary also is used to refer broadly to the courts, judges, judicial staff and other support personnel who work there. Essentially, “The judicial sector refers to the court system, the offices for court administration, the bureaucracy for enforcing judgments of the court, the administrative hierarchy that runs the court system on a daily basis, and the administrative hierarchy in charge of overall organization of the court system and the appointment of officials (including judges) within that system. The judicial system is often the ultimate source of accountability in a polity and is thus of unique importance” (United States Agency for International Development, 2005).

The judiciary is also understood like the Justice symbol because it must act into the justice without any powerful interests and favoring individual parties. It is symbolized by a statute of a blind folded woman holding a sword or scroll in one hand and scales in the other. The balance scale represents the weighing of evidence; weighs the factors of a case to render a verdict. The blinded folded woman indicates ignorance to abuse the law, or being fair and just and not looking at anything to influence the outcome of the case. The sword on the other hand, implies punishment, authority. The scales are held higher than the sword to show how evidence comes before punishment. In this

abstraction of the figure of justice and its connection with the judges, Richard A. Posner (2010) explains "that means judging the case rather than the parties, an aspiration given symbolic expression in statues of justice as a blindfolded goddess and in the judicial oath requiring judges to make decisions without respect to persons".

In the Peruvian context, the judiciary is one of three branches of the democratic government which is defined and explained in the Chapter VIII of the Peruvian Constitution of 1993. The Article 138 of the Constitution point out that "The power of administering justice emanates from the people. The Judicial Branch exercises it through its hierarchical entities in accordance with the Constitution and laws. In all proceedings, when an incompatibility exists between a constitutional and a legal rule, judges shall decide based on the former. Likewise, they shall choose a legal rule over any other rule of lower rank". And having as principles and rights of the jurisdictional function (Article 139) are:

- ✓The unity and exclusivity of the jurisdictional function.
- ✓The independence in the exercise of the jurisdictional function.
- ✓The observance of due process and jurisdictional protection.
- ✓The publicity of proceedings, unless otherwise provided by law.
- ✓The written explanation of court orders at all levels.
- ✓The plurality of the jurisdictional level.
- ✓Compensation, in the manner prescribed by law, for miscarriages of justice in criminal trials and arbitrary arrests, with prejudice to any liability that may be determined.
- ✓The principle of never failing to administrate justice, despite loopholes or deficiencies in the law.
- ✓The principle of inapplicability through analogy of the criminal law and laws restricting rights.
- ✓The principle that no one shall be punished without judicial proceedings.

- ✓The most favorable application of the law to the defendant in cases of doubt or conflict between criminal laws.
- ✓The principle that no person shall be convicted in absentia.
- ✓The prohibition of reopening closed cases with a final order of conviction. Amnesty, pardons, stays of execution and prescription produce the effects of res judicata.
- ✓The principle that no person shall be deprived of the right to defense at any stage of the proceedings.
- ✓The principle that every person must be informed immediately and in writing of the causes or reasons for his arrest.
- ✓The principle of free administration of justice and a free defense for persons of limited means, as well as for everyone in those cases stipulated by law.
- ✓The participation of the people in the appointment and removal of judges, in accordance with the law.
- ✓The obligation of the Executive Branch to collaborate in trials, when required.
- ✓The prohibition of the exercise of the judicial function by anyone who has not been appointed in the manner prescribed by the Constitution or the law.
- ✓The principle that every person has the right to make analyses and criticisms of court orders and sentences, within the limits of law.
- ✓The right of inmates and convicted individuals to be provided suitable facilities.
- ✓The principle that the purpose of the criminal justice system is the reeducation, rehabilitation, and reintegration of the guilty into society.

Likewise, the Judicial Branch consists of jurisdictional bodies, which administer justice on behalf of the Nation and they are the following: the Supreme Court of Justice at the top, the second level is composed of superior

courts, the third level is composed by courts of first instance or trial court and the lowest level is formed by courts of peace.

In view of the foregoing, the State guarantees judges in the Article 146 of the Constitution: 1.Their independence. They are subject only to the Constitution and the law.2. The irremovability of their office. They shall not be transferred without their consent.3. Their continuance in office, as long as they show proper conduct and qualification for their function. 4. A compensation ensuring them a standard of living befitting their office and rank. So, these safeguards exist to protect the independence of judges, mainly. This means that their tenure is constitutionally guaranteed and they cannot be removed from office because a government disagrees with their decisions.

The judicial branch is a cornerstone of democratic government that guarantees the rule of law and the welfare of its citizens. Society looks to the judiciary to uphold their rights while the courts to interpret laws.

2.2 Corruption

The concept of corruption can be found in many literature reviews. It has different definitions depending on who is defining or qualifying it. Corruption is considered a social disease that is difficult to cure and also tagged as a “social betrayal”. The most well-known definition provides that corruption is the “*misuse or the abuse of public office for private gain*” (World Bank, 1997), i.e, an illegal act committed by anyone occupying an official position who abuse his or her power entrusted by law and thereafter take advantage of his/her or position for personal gain or for own benefit or to provide favor to third persons. In the same criteria is going the definition of corruption by The Organization of Economic Co-operation and Development (OECD, 2002) as “the active or passive misuse of the powers of public

officials (appointed or elected) for private financial or other benefits⁴". In this scope, Boris Begovic (2004) aimed that the problem with this definition is that not all abuses by public officers are corrupt acts, having fraud, theft, embezzlement or other similar as clear examples of abuse of power, so this scholar mentions that for corruption is needed the reciprocity like in a contract, in this case it would be an illegal contract. According to him, "this very specific feature of corruption as an illegal contract generates its substantial transaction costs, the most important of which are: finding the counterpart, formulating the contract (particularly taking into account all foreseeable and unforeseeable contingencies), monitoring the contract, and enforcing the contract".

Likewise, in this feature of abuses by public office, the institution Transparency International (2007) defines that this entrusted power for private gain can be referred to any kind of legitimate formal authority so it is not limited only to the public sector, as also refers Vito Tanzi (1998) that include in the private sector activities managed by government.

On the other hand, according to the scholar Michael Jhonston (2005), corruption is understood in the abuse of public power for getting private benefits which are not always coming in form of money, although it is usually given. So corruption is hidden in various "tricks" that often make it impossible to recognize the act, if it is indeed corruption or not. For instance, extending some favors to friends can be qualified as corruption because the misuses of power not only include money if not other physical goods (Rasma Karklins, 2005). So, according to him, "when officials trade public power for private profit, they gain concrete benefits as well as intangible goods such as increased personal power, position, prestige, access to information or cultural goods, and the gratitude of friends or kin". It is worthwhile to mention that

⁴<http://www.oecd.org/>

such benefits are not always immediate; it may be a promise in the future or for some kind of commitments, among others. In this context, the author Vito Tanzi (1998) adds that the abuse of power not only has a private benefit, it can be also enjoyed by a group, like friends, family, class, party and so on, for example political parties. In this context, the study conducted by Norwegian Agency for Development Cooperation-Norad (2008) proposes to modify the well-known definition of corruption regarding to “*private gain*” and focusing on the “illicit aspect” of the corrupt transaction with actors either from state and non-state spheres, and insists that corruption is “abuse of entrusted authority for illicit gain⁵” when the structural or positional relation between the parties influences the results.

Likewise, the experiences demonstrate that corruption has many faces and the impact on the ability of the State to carry out its functions increases while is becoming in more systematic. So, Transparency International⁶ mentions that no society can safe from any corrupt practice, either it is committed at the petty or grand level. Essentially, petty corruption involves the bureaucrats’ sphere where low- and mid-level public officials are taking contact with the public directly. Transparency mentions that “Petty corruption refers to everyday abuse of entrusted power by low- and mid-level public officials in their interactions with ordinary citizens, who often are trying to access basic goods or services in places like hospitals, schools, police departments and other agencies”. This kind of corruption is profiled in the lowest sectors of government which usually imply much smaller sums than those that change hands. The U4 Anti-Corruption Resource Centre mentions “Petty corruption disproportionately hurts the poorest members of society, who may experience requests for bribes regularly in their encounters with

⁵ Available at https://www.norad.no/globalassets/import-2162015-80434-am/www.norad.no-ny/filarkiv/vedlegg-til-publikasjoner/study2_2008.pdf

⁶http://www.transparency.org/whoweare/organisation/faqs_on_corruption

public administration and services⁷". In the meanwhile, grand corruption involves high level of government; taking place at the policy formulation end of politics⁸ (U4 Anti-Corruption Resource Centre) where money is not often the main factor if not has other scopes usually of large in scale, Transparency International explains "Grand corruption consists of acts committed at a high level of government that distort policies or the central functioning of the state, enabling leaders to benefit at the expense of the public good". In this aspect, the essential difference between them is that grand corruption distorts the central function of a government and petty corruption is given in the context of functioning governance and social frameworks (United Nations, 2004).

Definitely, either in a broad or narrow way, corruption will be understood according to the observer's judgment. Nevertheless, it is important to consider that corruption is a two sided offense, the one who is giving and the one who is receiving, and that in this interaction the corruption is becoming more difficult to detect when it is more systemic (United Nation, 2001). So, they mention that "as corruption becomes more systemic, enforcement measures of the traditional kind affecting the expected punishment of committing illicit acts become less effective and other preventive measures, such as organizational changes (e.g., reducing procedural complexities in the provision of public services), salary increases, and other measures, become much more effective".

2.3 Judicial Corruption

There is not unique understanding on judicial corruption since that the forms of corruption may differ of each corrupt practice, however when this is mentioned, the idea of a judge taking bribes appears, in this context, the scholar Boris Begovie (2004) explains that judicial corruption "is usually

⁷<http://www.u4.no/glossary/petty-corruption-see-bureacratic-corruption/>

⁸<http://www.u4.no/glossary/grand-corruption>

considered as a voluntary, thought illegal activity, in which an interested party offers, and a judge or other court official receives a bribe in return for a specific action”.

Unfortunately, judicial corruption is not only bribery; it involves many forms, corrupt behaviors which are sometimes impossible of detecting. In this line of thought, the author Siri Gloppen (2014) refers to judicial corruption like “all forms of inappropriate influence that may damage the impartiality of justice, and may involve any actor within the justice system, including lawyers and administrative support staff”, having a financial or material gain and non-material gain by judges or any judicial staff, in opinion of Transparency International (2007) that points out “as the abuse of entrusted power for private gain to include any inappropriate influence on the impartiality of the judicial process by any actor within the court system” .

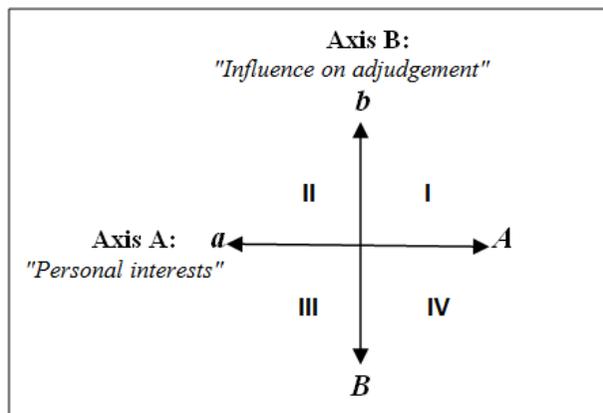
It is also supported by Cristi Danileț (2009) who highlights the incorrect conduct by justice workers for obtaining personal gain, adding the private official’s participation (like lawyers or notaries public) because, in general, what corruption affects is the public interest of the professional carriage of acts, measures and decisions in the legal field. According to him "Judicial corruption is defined as any act through which workers in the justice system are negatively influenced that affects the impartiality of judicial proceedings for the purpose of obtaining an illegitimate benefit for themselves or other persons"⁹. In the above definition, the author explains about the negative influences upon justice, pointing out that there are two classes; the first one is about improper influences affecting both institutional and individual (judges) independence. In this extreme, he includes "political intervention in the recruitment and appointment of judges, negative influences on judges’ salaries, and influencing the allocation of cases or of judges to the various

⁹ Available at: http://www.kas.de/wf/doc/kas_22459-1522-1-30.pdf?110411094618

cases". The second one is lack of integrity, "the violation of ethical conduct by officials of the justice system or to 'buying' their benevolence".

In the road to define this phenomenon, Yaxing Wang (2011) points out that judicial corruption is understood as "behaviors conducting by judges who try to influence adjudgement with their official authorities so as to obtain some personal interests". For defining it, the scholar uses a graph with four quadrants to represents typical "judicial corruption" in which includes two crucial factors namely "personal interests" and "influence on adjudgement" in order to measure the behavior and the severity reaches by judicial corruption, as following:

Figure 2.1:Representation of the judicial corruption



So, by that graph the author explains that the first axis "obtaining personal interests" is axis A, the most serious pole is "A", the slightest one is "a"; and the second axis "influence on adjudgement" is axis B, the most serious pole is "B", the slightest one is "b". The fourth quadrant (AB) represent extreme or not extreme cases of "swearing black is white" or "perverting the law" which are conducted by judges who take bribes, practice favoritism or submit to strong intervention or pressure. The second quadrant (ab) represents some preferences based on face, common intervention or some kind of social

exchange. The first quadrant is about "taking the bribes but no preventing the law" in which if well there are personal interests but its influence on adjudgment is slight. And the third quadrant "judges impose serious negative influences on adjudgment for common feeling, superior-inferior relationship and therefore quite limited personal interests".

Summarizing, through the above graph, the author wants to express the difficulties and contradictions to define judicial corruption, taking in consideration those two axes "judges' personal interest" and their "influence on adjudgment". Adding that "it is difficult to draw a clear line between the permissible personal interests and the non-permissible ones in judicial practice since the axis of "judges' personal interests" has two poles and there are infinite situations between them. Similarly, it is always difficult to confirm which preferences that impose "influence on adjudgment" rest in the scope of judge's discretion and which one are not so as to constitute abuse of authority". In this way, it is tough to determine the quality and quantity of personal interests and influence on adjudgment to qualify an act as corrupt.

Other scholars focus their concept of judicial corruption on judicial decisions in which improper pressure affects the independence and impartiality of the judicial sentences, in this way "judicial corruption can be understood as an act or omission that profit the judge, court staff or other persons involved in the judiciary and the behavior leads to inappropriate or unjust court decisions" (Amélie Arvidsson and Emelie Folkesson, 2010). Likewise, Mary Noel Pepys (2007) shares the same idea that judicial corruption is related to "acts or omissions that constitute the use of public authority for the private benefit of court personnel, and results in the improper and unfair delivery of judicial decisions", she emphasizes that the role of the judge in protecting the rights of citizens and ensuring a fair trial is threatened by corruption in the judicial system, such acts and omissions like bribery, extortion, intimidation, influence peddling are used to get private benefits by judicial officials in the misuse of entrusted power therefore, judicial system

must be structured in order to protect the judge from undue influences and not foster corruption because, in her words "the external pressures on a judge to act unethically are greater, and the risks of being caught and punished are lower".

As mentioned above, corruption is the abuse of entrusted power for private gain and particularly in the justice sector a judge may allow or exclude evidence with the aim of justifying the acquittal of a guilty defendant of high political or social status, or judges or court staff may manipulate court dates to favor one party or another. These are the common things that can happen or maybe happening in the judiciary. With this kind of corruption, fair justice can never be served. Judges must hear and decide cases with justice and fairness. Judges must be free from any form of interference or influences in dealing with cases lodged before their chambers.

2.4 Causes of Corruption in Judiciary

Many studies were already conducted about the causes of corruption in the judiciary mostly in the developing countries. As a social ill, corruption has to be fought against as it does not only affect the institutions but the whole economy as well. The commission of corruption is commonly committed in the government, where public officials take advantage of their positions for private gain. To make things more complicated, corruption now is being committed in a systematic ways such as detection of the commission has becoming more difficult.

In this address, studying about the causes of corruption within the Judiciary, Mary Noel Pepys (2007) mentions seven factors that contribute to judicial corruption such as undue influence by the executive and legislative branches, in which once judges are chosen and appointed by the undue political influence, those may feel compromised to respond positively to their demands to maintain their positions or status. Also, the fear of retribution

which is based on the fear of choosing the correct, but unpopular, decision by inexperienced or insecure judges and thus, may be taken against them for example firings, disciplinary action and others.

Likewise, social tolerance of corruption is seen sometimes as part of the culture of each social sector, in where "social interactions are governed less by law than customary or familial codes" (Mary Noel Pepys, 2007) and even the scholar mentions that paying a bribe is considered an essential prerequisite for judicial services in some countries.

On the other side, low judicial and court staff salaries can purchase position, favorable decisions and preferential treatments and more when judges' salaries are not enough attractive to achieve a moderate standard of living. As well as the poor training and lack of rewards for ethical behavior. Collusion among judges, "judges conspire to support judicial decisions from which they will personally benefit" (Mary Noel Pepys, 2007) and, finally the inadequately monitored administrative court procedures.

In this sequence, Petter Langseth (2001) points out that low remuneration is a factor spreading judicial corruption as well as the lack of transparency and the absence of comprehensive and regularly updated databases. Delaying in the Court or slow judicial processes fostered by the absence of time standards and their close monitoring are parts of the potential factors of judicial corruption. In this idea, Amélie Arvidsson and Emelie Folkesson (2010) also coincide that the low salary can encourage asking or giving bribes; however the raising of salaries doesn't guarantee a corruption-free judiciary and more when it is deeply rooted.

On the other side, Amélie Arvidsson and Emelie Folkesson (2010) mention that "short terms of office" is other of the main factor for inclining to corrupt behavior as well as the non-transparency in the recruitment process of judicial personnel because judicial actors may be influenced by interests from the very beginning. Likewise, political instability and democratic insecurity

which could get involved in the work of the judiciary in order to keep its political strength. In other aspect, the absence of technological equipment can make it easier for corrupt behavior to pass by unnoticed. Lack of transparency in the court administration and court procedures and complex procedural rules are other main factor to spread corruption within the Judiciary.

In the light of the situation, Edgardo Buscaglia and Maria Dakolias (1999) claim that the causes of corruption within Judiciary is due to the lack of adequate equipment, for example they mentions that "the lack of computer systems is considered by many Latin American lawyers and judges to be the main cause of the inconsistencies found in the application of jurisprudence and of the lack of judicial monitoring of the courts" and coupled with the lack of internal monitoring, they create an environment where corruption is given freely. Likewise they mention that "the lack of standards applied to the time to dispose of each type of case contributes to the existence of corruption" as well court delays make "charge a price" for expediting the procedure. Also they claim that "an increase in median times and procedural steps would be expected to also increase the degree of corruption found within the courts".

Edgardo Buscaglia and Maria Dakolias (1999) also mention that a higher concentration of internal roles such as decision-making assumed by few actors, like judges, create opportunity for corruption and this is given because often "the lacks effective external and internal organizational supervisory mechanisms", as well as an increase in collusive behavior among the parties demanding a legal or illegal service from a public agent or agency.

Other scholar that mentions the causes that contribute to the spreading of corruption is Cristi Danileț (2009) who categorizes them in four sections: 1. A shortage of information; 2. Lack of control and accountability; 3. Opportunities; and 4. Social circumstances. Regarding to the first one, he mentions to "personnel conduct" in which the unfamiliarity with the cases and

internal documents to find a piece of information and the disinterest in resolving faster stimulate corruption. Also, the ignorance on how the system works by citizens helps to increase corrupt behaviors. Inadequate access for citizens to legislation and poor access to jurisprudence, it is when citizens has no access to any database even for their own cases. And, the improper cooperation with mass media due to the handling of confidential information.

Likewise, the second one include the lack of judicial democracy where often bosses not be criticized, authorities have the power to do whatever they want in an incompetence and corruption environment which are concealed while the institution's union or representatives of employee are weakened or discredited. Also, the external monitoring is poor, that is the lack of participation of civil society in monitoring the judicial system. Excessive bureaucracy and disorganization within courts which make people don't have other way for solution their cases through bribery. Next to, poor professional competences which promote opportunities for extra gains, as well as fear of retaliation because of the risk of exposure, being them included in corrupt acts. Flawed accountability mechanisms, in a environment where gains are high and the risk of exposure and penalties is low. Regulations that allow for discretionary decisions, indeed the wide discretion of the judges may rules differently in similar cases.

Regarding to the "Opportunities", Cristi Danileț (2009) coincides with other scholars that a small salaries may encourage judicial corruption. Besides, constraints imposed by the nature of the position that is, judicial actors cannot be employed in other posts with exception of teaching, so this prohibition affects the chances of obtaining additional legal income. On the other hands, the direct contact with the public, coupled with the discretion of judges generates weaknesses and creates chance for corruption. And the high-profile cases who can afford to offer large amounts of money or other benefits in exchange for favorable decisions.

And finally, about social circumstances he mentions that attending the same schools, associations and circles, as well as close kinship relations can facilitate direct contact with judicial workers and with corruption as well. Besides, other cause is the tolerance of society since bribery or other improper factors are seen as normal practices. Also, failure to foster honor and integrity and habit or instinct as long as a worker is not penalized for a corrupt acts his co-workers will adopt the same behavior.

While Transparency International (2007) identified the most commonly causes that promotes judicial corruption in 32 studied countries which are: Lack of Judicial appointment on merit because it can influence in choosing corruptible judges as well as poor salaries and insecure working conditions and also, an unfair processes for promotion and transfer, and the lack of continuous training for judges lead judicial actors to be vulnerable to bribery. Likewise, unfair or ineffective processes for the discipline and removal of corrupt judges can often lead to the removal of independent judges for reasons of political expediency. And, the lack of transparency of information to avoid the monitoring of the courts and exposing cases of corruption.

In this way, the aforementioned causes of judicial corruption do not exclude other practices or possible corrupt acts, however it is possible to build knowledge over common causes that boost judicial corruption and, although always subject to change, it is also that through their identification will be possible to give successful anti-corruptive measures.

2.5 Provisional Judges

It is known that guarantees for judicial independence are enshrined in the Peruvian Constitution and it is also known that such as guarantees are not followed in practice. Constitution secures judicial independence by requiring that judges be selected through public contests and removed by misconduct of

judges with clear circumstances and motivated statements into a sanctioning legal proceeding. However, this is not perceived when the independence of judicial system is seriously threatened by the lack of security of tenure through temporary appointments like it happens with provisional judges.

What is a provisional judge? According to Inter-American Commission on Human Right (2003) are “those who do not enjoy security of tenure in their positions and can be freely removed or suspended; this implies that their actions are subject to conditions and that they cannot feel legally protected from undue interference or pressure from other parts of judiciary or from external sources”¹⁰.

To the lights of the above, Jessica Walsh (2016) claims that "these judges are more susceptible to influence because both the process for selection and removal are not subject to the same rigorous criteria and clear guarantees as those for regular judges". And while, just in limited situations can be justified the appointing of provisional judges, “with caution and only when no alternatives are available” (J van Zyl Smit, 2016) however those must be "the exception and not the rule"¹¹ (Inter-American Court of Human Rights, 2011). Often it is seen that these provisional appointments are for indefinite periods of time, without any guarantees of stability, undermining the independence of the judicial system because "in practice that these judges may be selected according to political interests and quickly removed where their decisions are problematic for the ruling political party of the time" (Jessica Walsh, 2016).

In addition, the Inter-American Court of Human Rights has ruled various cases about provisional judges such as Reverón Trujillo case through which, the Court found that provisional judges exercised exactly the same

¹⁰ For further information:

<http://www.cidh.org/countryrep/venezuela2003eng/chapter1.htm>

¹¹ Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela, supra note 121, para. 43, and Case of Reverón Trujillo v. Venezuela, supra note 12, para. 118.

functions as permanent judges like "administer justice"; however they didn't have stability in their posts, being appointed discretionally and removed without being subject to any pre-established procedure¹². Within this context, "the State must offer the guarantees derived from the principle of judicial independence to both permanent and provisional judges"¹³ and "if provisional judges do not have the security of permanence during a predetermined term, they will be vulnerable to pressure from different sectors, mainly from those who have the authority to decide on dismissals or promotions in the Judiciary"¹⁴.

Likewise in *Chocrón Chocrón* case, the Court mentioned that provisional and permanent judges must have the same guarantees however these guarantees will not be the same because they are selected in a different way and their time in their post can be indefinite just for permanent ones¹⁵ besides, the Court emphasized that a provisional judge subject to a procedure to annul his appointment for non-disciplinary causes should know clearly what are the reasons of his firing in order to contest such comments¹⁶. So the Court insists that "in the same way that the State is obliged to guarantee an appropriate procedure for appointing provisional judges, it must guarantee them a certain tenure in their posts"¹⁷, in order that provisional judges may enjoy all the benefits of permanence until the ending of their mandate.

Moreover, in the *Apitz Barbera* case the Court mentioned that "regardless of whether the judges in a country are permanently tenured or provisional, they must be and appear to be independent"¹⁸ and the State

¹² Case of *Inter-American Court of Human Rights : Chocrón Chocrón v Venezuela*, Series C No 277, 1 July 2011, para 106.

¹³ Case of *Reverón Trujillo v. Venezuela*, supra note 12, para. 114.

¹⁴ Case of *Reverón Trujillo v. Venezuela*, supra note 12, para. 117

¹⁵ Case of *Chocrón Chocrón v. Venezuela*, para 103.

¹⁶ Case of *Chocrón Chocrón v. Venezuela*, para 122.

¹⁷ Case of *Chocrón Chocrón v. Venezuela*, para 105.

¹⁸ Cf. Case of *Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela*, supra note 121, para. 42.

should respect their right to due process in case of their removal. To this respect, the Court insists that “this [Code] must ensure both the impartiality of the disciplinary organ, permitting, inter alia, that its members may be recused, and its independence, providing for an appropriate process for the appointment of its members and ensuring their permanence in office”¹⁹. Moreover, the Court claims that “the Judiciary to fulfill its function of guaranteeing the greatest suitability of its members, provisional appointments cannot be prolonged indefinitely so that they become permanent appointments”²⁰, under this motive provisional judges should be admitted like exception but not the rule and with limited duration in order to be compatible with the right of access to public service under equal conditions. In the light of this last, J van Zyl Smit (2016) points out that some limited situations the appointment of temporary judges may be justifiable, and even valuable and even can provide experience for future candidate who want to become in permanent judges, nevertheless the risk is the lack of security of tenure which weak the independence of the judiciary that’s why temporal appointments must use in a limited way when there are no alternatives available.

The issue of the provisional judges is caught by the IBA Minimum Standards of Judicial Independence in its Article 23.b mentioning that “the institution of temporary judges should be avoided as far as possible except where there exists a long historic democratic tradition” to this respect J van Zyl Smit (2016) insists that an appropriate security of tenure is important in the life of the judicial system and the use of provisional status must be avoided where there are better alternatives, and giving like example to the problematic of Venezuela and Peru to emphasize this situation.

¹⁹Case of Apitz Barbera v. Venezuela, para 253.

²⁰Case of Apitz Barbera v. Venezuela, para 107.

Finally it is worth quoting the Constitutional Chamber of Venezuela²¹ in this context related to the situation of the provisional judges on finding that:

“Provisional judges [...] occupy judicial posts, but they do not enjoy the status of career judges, because they were not hired as the result of a competitive examination in which, following different examinations (written, practical and oral), they were evaluated. The Judicial Commission appointed them, delegated to do so by the Plenum of the Supreme Court of Justice, owing to the need to fill judicial posts while the said process of restructuring and reorganization of the Judiciary was completed. [...] Evidently, there is a difference between career judges and provisional judges: the former acquire their permanence after passing the examination; in contrast, provisional judges are appointed in a discretionary manner, following an analysis of their credentials. Career judges enjoy stability and can only be sanctioned or removed from their posts if it is proved that, during a public oral hearing with guarantees of defense [...] they committed the disciplinary violations established in the Organic Law of the Council of the Judicature and the Law on the Judicial Career. This is not the case with provisional judges, who may be removed from their posts in the same way as they were appointed: discretionally”

²¹ For further information: Case of Chocrón Chocrón v. Venezuela, para 68.

CHAPTER 3: RESEARCH METHODOLOGY

3.1 Introduction

In chapter 2, the theoretical and conceptual issues regarding the study topic have been discussed. Previous investigation on corruption, judicial corruption and provisional judges were reviewed to get the conceptual foundation for this study.

This chapter will discuss the methodology of this study. It presents the research design, the study area, variables, and data collection tools and techniques and data analysis plan. So, the next chapter of this text presents the descriptive statistic and characteristics of the respondents. The cross tabulation analysis to examine the relationships between variables.

3.2 Sample Selection and Study Unit

The accuracy or inaccuracy of corruption perceptions is bound with each group of respondents because perceived levels of corruption can vary significantly and may not be reliable indicators in general. Notwithstanding, this study was made to three different groups in order to have a big panorama about the current corrupt situation in the Peruvian Judiciary: Judges and court clerks currently working in the Judiciary as well as lawyers who had interacted with the judicial system. So this means, the respondents have roles and interactions within judicial system and outside of this, which increasing the ability to generalize findings. The sample was defined by random selection of respondents.

All of the survey questionnaires were conducted on-site at the establishments of the Peruvian judiciary in the Lima district. During these interviews, the respondents were given a copy of the survey form and were explained about the purpose of the questionnaire. They were asked about the corruption in the Judiciary; causes, indicators and typology of corruption in the Judiciary; corruption and judges; provisional judges; and corruption and

provisional judges. The questions formulated in the questionnaire tended to identify areas of corruption in the judiciary and provisional judges. This research is the first of a kind exercise carried out about of corruption by provisional judges. The collection period lasted from on May 22, 2017 to May 31, 2017. Survey questionnaire was used to collect quantitative and qualitative data from respondents.

3.3 Research Design

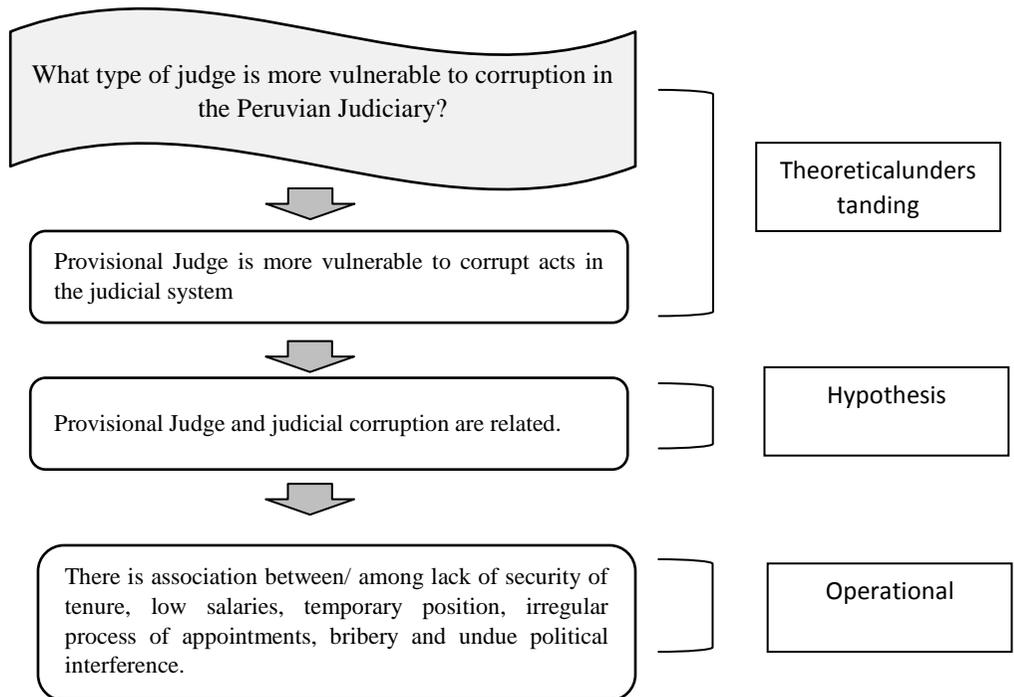
The research design represents the major methodological thrust of the study. This study contains different theoretical or scientific approaches. In this sense to obtain sufficient information that is required to analyze the relation between judiciary corruption and provisional judges and its effects, this paper has used descriptive and explanatory research design. The research design will be used to look for the cause and effect relationship with variables.

On the other hand, a special attention will be paid in this study on corruption using techniques and designs will help to understand the sphere on judicial corruption and provisional judges. For this it is necessary apply mixed methods design of research which look for as many different sources as much is possible in order to secure and validate the data. So, in this research is used qualitative, in-depth interview with provisional and permanent judges and quantitative data (survey with selected sample, N=140) for the research purpose.

3.4 Framework of the Study

The present study is based on the deductive model which is used in testing theories. Figure 3.1 depicts the framework of the research- deductive model for theory construction.

Figure 3.1 Framework of the Study



3.5 Objectives, Research Questions and Hypothesis

3.5.1 Objectives of the Study

The general objective of this study is to analyze provisional judges and its relation to corruption in the Peruvian judicial system. The specific objectives are:

- Explaining and giving a clearer view of the figure of the provisional judge within the judicial system,
- Identifying the factors that influence judges for the commission of acts of corruption, and
- Showing to what extent between the lack of security of tenure, low salaries, temporary position and the irregular process of appointments can be determining for the commission of acts of corruption in Courts.

3.5.2 Research Question

It has already been established that corruption affects the judicial system. In this line of argument the responsibility of the judges is not only confined within the application and interpretation of the law, but likewise they are expected to rule against corruption as the citizens are expecting for a clean and fair judicial system. Judges are expected to be fair at all times, and they should be working under an independent judicial system, free from all undue outside pressures and influence, however “most Judicial corruption comes in the form of judges who are bribed to settle a case out of court or to rule in favour of a particular party²²” (Larweh Therson-Cofie, 2015).

Studying about corruption in Peruvian judicial system, Lizeth Paola Mariluz Laguna (2011) reports that one of the main symptoms of corruption within Courts is the judge’s performance. Her study about this point is based on the relationship between the high corruption perceptions of Judiciary in which 70% of the Peruvian population considers to judicial system as “corrupt or extremely corrupt” according to pollster “IPSOS APOYO” (2010), 166 judges were involved in corruption cases reported in 2010 by the Council of Judicial Defense of the State. In addition, she cited two of the most scandalous cases of judicial corruption committed by judges, the case Family Sanchez Paredes²³ (2010) and the Case Used Cars Importation²⁴.

Since there are provisional and permanent judges in the Peruvian justice system, the research followed by Lizeth Paola Mariluz Laguna (2011) only mentioned, that the judges are one of the main reasons for the existence of corruption in the judiciary; however, she didn’t point out whether the

²²Available in: <http://www.graphic.com.gh/features/opinion/judicial-corruption-perception-worldwide.html>

²³The Forth Criminal Court of Lima benefitted the Sanchez Paredes family by granting a Habeas Corpus petition in order to avoid any investigation for drug trafficking and money laundering, without any juridical basis. Charges for prevarication and abuse of authority were pressed against the three judges of the Forth Criminal Court, who in an illegal way tried to benefit the Sanchez Paredes family.

²⁴The Civil Court of Tacna issued decisions granting legal protection to companies that in an illicit way imported used cars that did not fulfill the minimum legal requirements. Besides, 30 judges around the country took similar decision.

incidence of acts of corruption were presented mainly by provisional or permanent ones. That is why; this study is intended toward knowing that information in specific.

Research Question: Is Provisional judge more vulnerable to acts of corruption in the Peruvian Judiciary?

Judicial corruption is a systematic problem which distorts the proper role of the judge, making impossible the exercising of independence and freedom to determine and hear cases with all fairness and justice. An ethically compromised judiciary means that the mechanism is designed to curb corruption, unfortunately, corruption in the Peruvian justice sector is steadily and widespread in each level of judicature, especially by judges. This institution is deeply rooted with acts of corruption by judges that undermine the confidence of citizens, the independence and impartiality which are two essential attributes of the public service of justice, rule of law, social and economic development impedes the effort to eradicate poverty and so on. In this context, after knowing that there is a high incident of acts of corruption committed by judges and since in the Peruvian Judiciary there are two types of judges, permanent and provisional ones, it is important to identify if between them, are the provisional judges more vulnerable to corruption.

3.5.3 Hypotheses

Provisional judges are more vulnerable to corruption within the Peruvian Judiciary. The lacks of security of tenure, low salaries, irregular process of appointment, and temporary position condition them to be more prone to corrupt acts. In this way, the judicial system is seen less independence and impartial, with difficult accessing to justice and protection to due process for a fair trial. On the contrary, it causes that acts of corruption such as bribery or under-the-table arrangements or undue influence to be easy

to accept, tilting the scales of justice in favor of a litigant and with the destruction of public trust on justice sector.

In light of the above, most of the researchers have a mutual theoretical understanding that “serious threat to the tenure, and therefore the independence, of judges is the practice of appointing temporary judges” (Jessica Walsh, 2016) and that such "appointments being used systematically to shape and limit the power of the judiciary"(J van Zyl Smit, 2016). However, there is not a serious study from different perspective from judicial actors and lawyers about the perception of what is happening to the provisional judges.

Whether provisional judges have negative or positive effect in the Judiciary, especially in the incidence of the level of corruption, it is worthwhile to analyze. In this regards, three hypotheses are proposed to analyze the relationship between/among them.

Hypothesis 1: There is a different perception regarding the implications of corruption in the justice system between judges and court clerks and lawyers who had interacted with the judicial system.

Hypothesis 2: Judges are positively prone to corruption in the Peruvian Judiciary.

Hypothesis 3: Provisional judge is, the most vulnerable to judicial corruption.

Hypothesis 1 is little bit different from other hypotheses. It has been proposed because there is a chance of finding conflict of interest between the different social groups of analysis, such as judges, court clerks and lawyer for this research. And this is because conflict interests are built on the sociological concept of roles, describing an individual or social group’s behaviour, developed each one in a specific social context or group of reference. The author Jhon Harsanyi (1961) mentions that "given a conflict of interest between two or more individuals, the natural inclination of each party will be to judge the situation from his own one-sided point of view". In fact, it is expected every person follows an impartial criteria when they are asked

about a certain situation, however the scale is often tilted by own factors of interest that distorts the real events. For that reason, considering this situation, it would be reasonable to measure the perception differences on judicial corruption between the study units.

3.6 Model and Variables

JUDCOR judges \neq JUDCOR court clerk \neq JUDCOR lawyer.....(1)
 JUDCOR= JUDGE+BRIB+UNPOLIN(2)
 PROVJUD=INSECTE+LOWSA+TEPO+LAINJUBO+IRRPROCESS+BRIB+UNPOLIN.(3)

Where,
 JUDCOR= Judicial corruption, JUD=Judges, PROVJUD=Provisional judge, INSECTE=Insecurity of tenure, LOWSA=Low salaries, TEPO=Temporary position, IRRPROCESS=Irregular process of appointment, BRIB=Bribery, UNPOLIN=Undue political interference
 JUDCOR judges=Perceived level of judicial corruption by judges
 JUDCOR court clerk=Perceived level of judicial corruption by court clerk
 JUDCOR lawyer=Perceived level of judicial corruption by lawyer who had interacted with the judicial system.

3.7 Operational Definitions

- a. **Provisional Judge (PROVJUD):** Provisional judges in this study means those appointed in a temporary and can be freely removed or suspended without any causes, coupled with the fact that they are not appointed by an independent body to occupy their positions of provisional ones and therefore, their "selection and removal are not subject to the same rigorous criteria and clear guarantees as those for regular judges" (Jessica Walsh, 2016). Besides, the Inter-American Commission on Human Rights of Organization of American States (2000) mentions that "It is not just that "provisional" judges are selected by an organ other than that stipulated in the Constitution, but

that in addition those judges are allowed to perform functions for which they have been neither prepared or evaluated, as mandated by the Constitution".

- b. Judicial corruption (JUDCOR):** Judicial corruption is the misuse of official position to gain an advantage or benefit for favoring one of parties; including any inappropriate influence on the impartiality of the judicial process by any actor within the court system (Transparency International, 2007) and that often involves a vicious dynamic in which judges trade in justice for favors and personal gains (Okechukwu Oko, 2005).
- c. Insecurity of tenure (INSECTE):** Insecurity of tenure is the lack of a legal guarantee for a judicial office-holder to stay in office and therefore being freely removed or suspended without any reasonable cause or specified legal circumstances.
- d. Low salaries (LOWSA):** Lack an adequate or fair remuneration with regard to judges' salaries, particularly when duties and responsibilities are the same. Mary Noel Pepys (2007) suggested that "judicial salaries are too low to attract qualified legal personnel or retain them, and that do not enable judges and court staff to support their families in a secure environment".
- e. Temporary position (TEPO):** Temporary position in this study means judges are generally employed on temporary contracts, they are not assigned to hold full-time positions, and it is limited to a certain period of time.
- f. Irregular Process of appointment (IRRPROCCCESS):** Because to the lack of appointments by independent judicial body, there is an irregular appointment to provisional judges. A body responsible for appointing and promoting judges with institutional independence from the Judiciary; whose members have been appointed in an objective and transparent process (Transparency International, 2007), ensuring that "persons selected for judicial office shall be individuals

of integrity and ability with appropriate training or qualifications in law"²⁵. According to The International Institute for Democracy and Electoral Assistance-International IDEA(2014) there are three factors to consider for a judicial appointment: (i) independence of the judiciary from the executive and legislature, party politics and vested interests; (ii) ensuring the representativeness and inclusiveness of the judiciary, especially with regard to gender, status, ethnicity or origin; and (iii) ensuring that judges are of sufficient quality and calibre to perform their duties. Relying on International IDEA (2014), this study considers items (i) and (iii).

g. Bribery (BRIB): Bribery involves money, goods or other forms of recompense offered to a public official or requested by a public official, "directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties" (International Bar Association, 2016). In this study, public official must be understood like the judge.

h. Undue Political interference (UNPOLIN): For the International Bar Association (2016) is the "manipulation of policies, institutions and rules of procedure including, not exclusively, in the allocation of resources and financing by political decision-makers who abuse their position to sustain their power, status and wealth". Thus, undue political interference is the misuse of the power or authority exercised to press or influence in the judicial procedures and decision-making to ensure a desired result. Adding to this, Transparency International (2007) that "political interference comes about by threat, intimidation and simple bribery of judges,

²⁵ Principle 10 of the Basic Principles on the Independence of the Judiciary by United Nations (1985).For further information:
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/IndependenceJudiciary.aspx>

manipulation of judicial appointments, salaries and conditions of service".

- i. **Judges (JUD):** For International Transparency (2007) judge is an official who presides over a court and adjudicates on a legal matter that is in dispute.
- j. **Court clerks:** Court clerks assist and advise his or her judge in making legal determinations, as a judge's personal attorney, "working efficiently under a tremendous workload and strict deadlines"²⁶.
- k. **Lawyers:** Lawyers in this study are those who had interacted with the judicial system.

3.8 Sample size

Like it was mentioned, there are three groups of respondents in this study, judges and court clerks currently working in the Judiciary as well as lawyers who had interacted with the judicial system. The detail of sample size has been presented in Table 3.2:

Table 3.1: Distribution of sample size by respondent types

S.N	Respondent types	Sample size (n)
1.	Judges	18
2.	Court clerks	20
3.	Lawyers (who had interacted with the judicial system)	102
TOTAL		140

3.9 Data Collection Techniques and tools

Respondent interview and survey methods were applied to collect the data and information. Regarding to questionnaire was used a pre-tested which was done personally. After that, the pre-tested questionnaire was used to collect quantitative data. The questionnaire was given individually to the

²⁶For further information: <http://www.law.edu/career/clerkingwhat.cfm>

respondents. The used method of selecting of the sample (judges and court clerks) was simple random sample within the Lima district. During the data collection period (On May 22 to 31, 2017) were asked to complete the survey questionnaires.

As well as in the case of lawyers who have interacted with the judicial system were asked to complete the survey instrument. This last data were collected from 9am to 3pm in one of the main headquarters of the Peruvian judiciary, called "Alzamora Valdez".

The survey provides information on both actual experiences with judicial corruption and its level of perception. The details of the questions that were used collecting quantitative data have been attached in the Annex 1. The main components covered by the survey are:

Section A: Respondents information

Section B: Corruption in judiciary

Section C: Causes, indicators and typology of corruption in judiciary

Section D: Corruption and judges

Section E: Provisional judges

Sub section E1: For judges and court clerks

Sub section E2: Lawyers

Section F: Corruption and provisional judges

On the other side, Yes/No questions and Likert scaling were employed to collect quantitative data.

In the case of qualitative information, researcher herself conducted face to face interview with few respondents. Nine judges among permanent and provisional judges provided their views about judicial corruption and provisional judges. The information obtained by them were carefully written and used as a verbatim expression to validate the quantitative information.

The details of checklist that was used for qualitative information has been attached in Annex 2.

3.10 Data Processing, Analysis, and Testing of Hypotheses

The collected data was scrutinized and entered in the software program to get the required tables and information.

Out of the total 160 distributed questionnaires, 140 were fully completed and usable and the other 20 were not completed, which constitutes a rate of 87.5 per cent of completed and 12.5 per cent for the remaining which were excluded and not taken for the analysis.

After being collected by means of a questionnaire through a personal interview, the data are organized, categorized and analyzed. For the answers to close-ended questions, the analysis was done by Microsoft Excel which provides graphs, diagrams, etc. The findings of the questionnaire were transformed into simple comparison tables that are then described and interpreted through descriptive approach. These Tables will allow us to better understand the differences and similarities of perceptions between samples and especially, reflect the perception of groups in general. Moreover, the answers to open-ended questions from the personal interview with the nine judges were analyzed through interpretation, induction or deduction techniques by the researcher. Consequently, a discussed summary of the different findings is provided as well as policy implications based on the main outcomes of the research.

On the other hand, during the data collection, the researcher made sure the questionnaire, as a data collection instrument, was reliable by taking into consideration a certain number of measures. The respondents were allowed to reply just one answer and in three questions they were authorized

to vote in a more than one answer because they were questions with multi-options; in addition, the respondents couldn't anymore see their answers once submitted and couldn't edit their answers either. Regarding the nine interviews with judges, the researcher did personally each one of interviews without any kind of influences over interviewers which could alter the response. Besides, the information collected from qualitative data was taken to validate the information obtained from quantitative data in order to make this study more reliable.

When it comes to validity considerations, the questionnaire included a variety of questions dealing with diverse issues of corruption in judicial system and questions were designed in line with the objectives of the study, the information got from the literature review, the research questions based on others study- findings in order to keep this research in unity.

CHAPTER 4: BACKGROUND CHARACTERISTIC AND DESCRIPTIVE FINDINGS

4.1 Introduction

In chapter 3, the methodology of this study has been discussed. This chapter contains analysis of the data collected through survey and interview. A total of 160 questionnaires were distributed. Of the 160 distributed questionnaires, 140 were returned and used for getting the present outcomes. Chapter 4 evaluates and presents descriptive statistics and characteristics of the respondents. Besides the cross tabulation analysis is presented to examine the connection between variables. As well as analyzes the survey data with respect to corruption in judiciary, causes, indicators and typology of corruption in judiciary, corruption and judges, provisional judges and their relation with judicial corruption.

On the other side, information provided by the General Management of the Peruvian Judiciary related to the number of judges will be analyzed in order to help to provide better recommendations. Chapter5 summarizes the different findings of the study, provides implications and makes policy recommendations intended for policy improvements. Chapter 6 provides a summative conclusion of the paper and points out its different limitations

4.2 Background Characteristics of the Respondents

In the 10 days of data collection, judges and court clerks from Lima district were visited. In the case of lawyers²⁷, questionnaires were given by hand all those lawyers who were in the “Alzamora Valdez building” from

²⁷Only "lawyer" will be used to refer to those who had interacted with the judicial system onward.

9am to 3pm. As stated in chapter 3, 140 questionnaires were fully completed and constitute a rate of 87.5%.

The next Table 4.1 summarizes the background characteristics of respondents. Regarding to gender, males are in a clear majority (59.3%) in comparison to the females (40.7%). The highest proportion regarding to the age of the respondents (31.4%) belongs to the age group of 25 to 34. Similarly, the highest proportion of being in office- like being judges, court clerks or lawyer- (35%) belongs to the group of 5 to 9 years.

About of the study group, out of the total respondents, 18 are judges, 20 court clerks and 102 lawyers. These three samples help in analyzing two different opinions from who deliver the judicial service and receive the judicial service, helping in strengthening the analysis of information.

Table 4.1 Background Information of the Respondents

Variable	f	%
Age group		
18–24	15	10.7
25–34	44	31.4
35–44	37	26.4
45–54	34	24.4
55–64	10	7.1
65 and above	0	
Being in office by years		
1–4	27	19.2
5–9	49	35
10–14	39	27.9
15 and above	25	17.9
Gender		
Female	57	40.7
Male	83	59.3
Study Group		
Judges	18	12.9
Court clerks	20	14.2
Lawyer	102	72.9
Total	N= 140	

Source: Survey 2017. Note: Table is created to explained describe the parameters of the sample.

4.3 Descriptive Statistics

The delivering the judicial service of the sample includes judge and court clerks who are actually working in the Peruvian Judiciary. The receiving the judicial service of the sample consists of the lawyers who had interacted with the judicial system.

4.3.1 Judicial Corruption Perception Ranking Index

Corruption hurts people around the world, especially when it undermines justice system in an unfair and illegal process, debased by bribery, political influences, extortion and other negative influences that undermine confidence in the Judiciary and clearly, in the Government by facilitating acts of corruption across the courts. A judiciary free from corruption is a fundamental requirement for the upholding of the rule of law and the ability to guarantee basic human rights in society (David W Rivkin, 2015)²⁸, however corruption is drilling independence and professionalism all justice systems in the world, depriving them of a fair legal process. So, in order to see the global picture of judicial corruption in Peru and strengthen the data collected from the survey, the data available from different organizations such as Transparency International (international level) and Proetica (national level) will be helpful in this study.

4.3.1.3 By Transparency International

A) Transparency International Global Corruption Barometer 2003

In July 2003, Transparency International released the first TI Global Corruption Barometer survey²⁹. A total of 30,487 people were polled in 44 of the countries on the following question: If you had a magic wand and you

²⁸President of the International Bar Association. To present some preliminary findings arising from the IBA's Judicial Integrity Initiative on 9 December 2015: London, UK.

²⁹ For further information:

<https://www.transparency.org.ro/files/File/BGC%202003%20Comunicat%20TI-S.pdf>

could eliminate corruption from one of the following institutions, what would your first choice be? Table 4.2 illustrates this point.

The findings of this survey identified that political parties and the Courts were the institutions that citizens would most like to eliminate corruption. For this last institution, Transparency International rates Peru and Indonesian like the most concerned about corruption in the courts with a 35% and almost 33%, respectively.

So focusing in the Peruvian context, it is not difficult to overstate the large difference among the corruption perception of the courts and political parties. Peruvians described their judiciary as an institution extremely corrupt like it is perceived in the following survey of Transparency International.

Table 4.2 Transparency International Global Corruption Barometer 2003

Country	Business licensing %	Courts %	Customs %	Education System %	Political parties %	Utilities (Telephone etc.) %	Medical services %	Immigration, passports %	Police %	Private sector %	Tax revenue %	Other %
Argentina	3.6	19.2	3.2	4.3	58.2	0.5	0.9	0.2	3.1	0.6	3.4	2.7
Austria	7.5	8.4	2.7	2.7	35.7	3.9	5.7	6.9	10.8	2.7	12.0	0.9
Bolivia	18.2	7.7	10.8	2.4	34.8	2.2	1.2	1.2	16.0	0.9	3.7	0.9
Bosnia & Herzegovina	14.5	17.0	4.2	6.6	24.2	2.4	20.4	0.3	4.8	1.7	3.5	0.3
Bulgaria	9.9	19.8	16.5	4.8	20.2	3.3	14.3	0.9	4.1	1.8	2.7	1.7
Cameroon	3.8	31.0	6.5	11.1	10.4	1.2	11.2	2.1	13.7	3.2	4.3	1.4
Canada	3.2	8.3	1.8	6.5	39.7	2.3	9.7	8.8	5.7	4.4	5.7	3.8
Colombia	2.4	3.4	3.4	8.8	38.0	8.1	8.8	1.0	8.5	1.4	12.9	3.4
Costa Rica	4.3	8.6	14.0	3.2	29.0	1.1	2.2	12.9	5.4	4.3	15.1	0
Croatia	12.9	21.6	0.4	2.8	18.6	4.2	22.5	1.9	4.9	3.4	2.5	4.2
Denmark	4.0	16.3	1.8	2.2	36.1	2.2	11.5	4.8	7.7	6.2	3.3	4.0
Dominican Republic	2.0	12.1	6.1	8.1	25.3	13.1	0	2.0	4.0	0	8.1	19.2
Finland	9.5	27.7	0.7	1.3	38.0	1.6	6.1	3.6	4.2	3.1	3.9	0.3
Georgia	4.8	18.1	8.2	6.0	12.4	4.5	19.7	0.9	13.4	0.4	6.0	5.7
Germany	4.9	8.6	0.8	3.1	39.2	3.9	9.9	7.8	2.9	7.2	10.5	1.2
Guatemala	3.0	8.0	14.0	12.0	27.0	6.0	4.0	8.0	10.0	6.0	2.0	0
Hong Kong	1.7	8.9	5.4	3.9	15.4	4.8	3.3	1.3	35.4	12.1	5.0	2.8
India	2.0	3.8	1.8	24.9	41.2	4.4	4.0	0.5	12.8	1.4	2.1	1.2
Indonesia	5.8	32.8	3.2	8.7	16.3	11.1	1.8	0.4	10.2	2.8	6.4	0.7
Ireland	3.9	8.8	0.8	3.7	38.3	0.8	13.4	5.1	10.3	2.7	10.7	1.4
Israel	2.5	14.8	1.0	10.2	33.4	9.6	8.4	3.3	7.1	1.7	5.6	2.3
Italy	10.4	18.0	1.1	4.4	29.0	4.4	15.0	4.0	3.8	1.3	7.2	1.5
Japan	8.7	3.7	1.4	3.8	51.9	4.0	7.3	0.2	9.6	1.2	2.8	5.4
Korea (South)	19.1	10.3	3.0	15.7	27.9	6.2	3.7	0.1	5.0	2.9	6.0	0.1
Luxembourg	9.8	18.1	1.6	4.9	15.6	5.3	9.3	7.9	5.8	4.9	12.6	4.2
Macedonia	8.5	15.4	17.9	9.4	28.2	2.7	8.5	0.9	2.8	0.6	3.3	1.8
Malaysia	6.8	8.5	8.0	5.0	24.6	0.8	1.3	4.0	32.0	3.5	3.6	1.9
Mexico	2.9	6.6	3.3	8.7	19.9	9.0	3.5	1.4	36.5	0.8	6.1	1.1
Netherlands	4.0	10.0	1.0	0.6	27.1	0.8	6.7	11.5	7.7	26.3	3.5	0.8
Nigeria	4.3	4.8	3.0	12.6	27.0	7.4	3.4	1.1	32.1	0.7	2.5	1.2
Norway	12.5	12.3	2.8	1.4	19.7	1.6	4.9	17.2	6.0	17.2	3.0	1.4
Palestinian Authority	7.4	8.6	3.2	16.4	10.4	4.7	4.6	2.4	23.8	1.5	3.8	8.5
Panama	3.0	15.0	6.0	2.0	35.0	10.0	3.0	3.0	11.0	2.0	2.0	8.0
Peru	2.6	35.0	3.1	2.3	15.9	10.0	2.0	3.1	10.0	2.3	9.7	4.1
Poland	5.8	15.4	2.2	5.0	27.2	3.5	21.6	0.7	11.1	1.8	4.5	1.2
Portugal	9.2	14.8	1.4	4.2	18.7	4.6	18.7	6.2	6.7	0.7	14.5	0.2
Romania	15.1	20.2	2.7	2.9	24.3	1.6	12.6	1.2	6.4	1.9	9.3	1.7
Russian Federation	5.3	10.9	1.1	8.8	24.5	8.3	15.3	2.0	17.9	0.4	4.2	1.3
South Africa	2.1	3.9	0.2	14.4	21.1	5.5	11.3	6.0	23.8	3.5	5.1	3.1
Spain	4.7	26.6	2.3	3.8	34.8	0.9	3.4	11.3	1.6	2.3	6.8	1.6
Sweden	8.2	16.2	2.4	1.7	19.3	2.9	12.8	11.6	9.7	7.5	6.3	1.4
Switzerland	5.8	9.8	1.3	4.9	23.0	4.1	13.6	11.5	6.2	6.0	10.2	3.6
Turkey	7.1	6.6	3.4	11.7	42.5	5.1	7.3	0.8	6.2	1.5	4.8	3.0
UK	2.7	8.6	1.7	4.0	41.2	1.1	10.5	8.8	11.8	3.6	4.8	1.3
USA	3.4	9.1	1.1	8.6	39.1	1.6	10.1	8.3	7.2	4.4	3.8	3.2
Overall total (%)	7.0	13.7	4.2	7.5	29.7	4.1	8.4	3.3	11.5	3.1	5.2	2.2

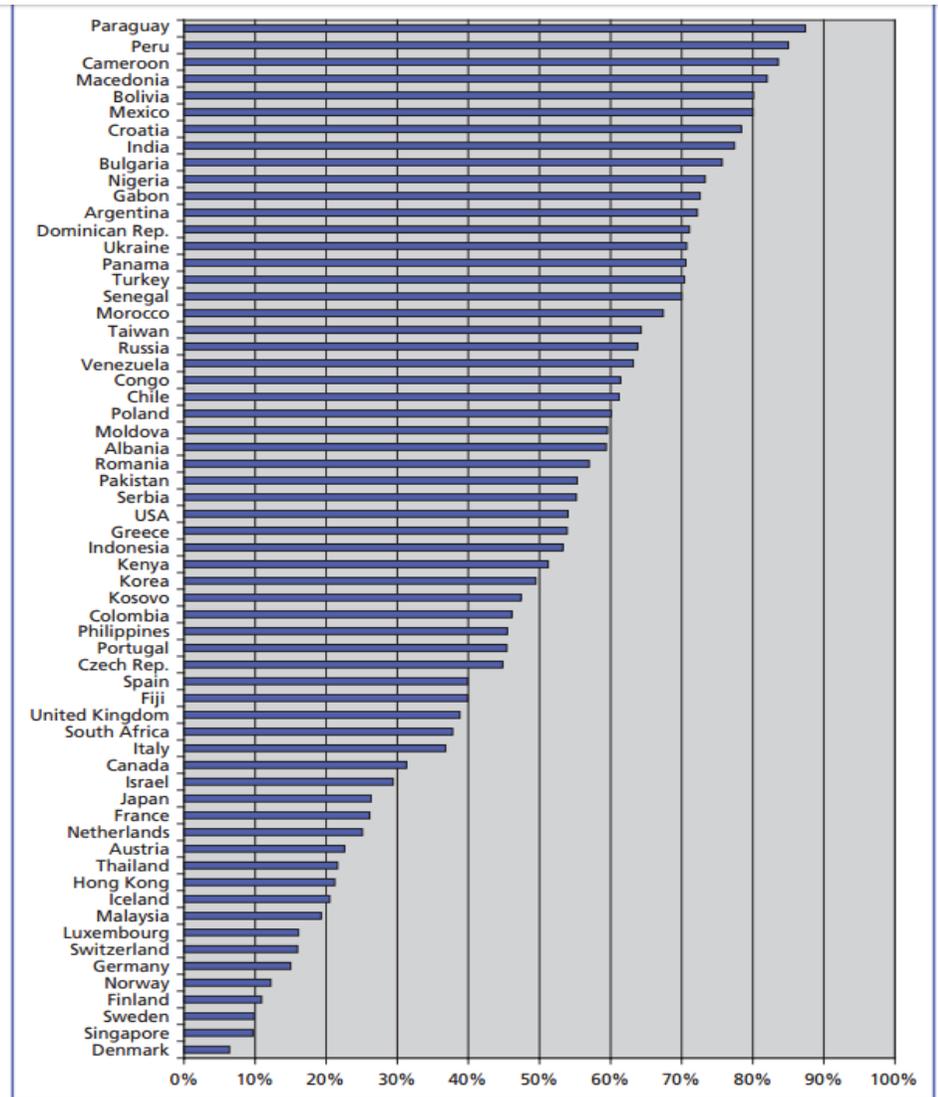
Source: Transparency International, 2003

B) Transparency International Global Corruption Barometer 2006

In 2006, a total of 59,661 people were surveyed in 62 countries were asked: what do you think of the judicial system in your country? The results

are seen in the Table 4.3, Africa and Latin America are the regions with the perceptions of judicial corruption higher. A majority of people in all Latin American countries least one (Colombia) perceived the legal system/judiciary like corrupt. Trailing the table are Paraguay and Peru where almost 90 % or more of respondents described the judicial system as corrupt.

Table 4.3 Percentage of Respondents Who Described Their Judiciary as Corrupt



Source: Transparency International, 2006

4.3.1.2 By PROETICA

The Table below shows the result of the surveys conducted by PROETICA to assess the level of the public's or citizen's perception of corruption on the public Peruvian institution such as National Police, Parliament, Central Government, Army, local governments, education sector, private sector and most importantly the Judiciary during the period 2002, 2003, 2004, 2006, 2008, 2010, 2012, 2013, 2015.

Table 4.4 Peruvian Corruption Perception in Public Institutions

	First survey ³⁰	Second survey ³¹	Third survey ³²	Fourth survey ³³	Fifth survey ³⁴	Sixth survey ³⁵	Seventh survey ³⁶	Eight survey ³⁷	Ninth survey ³⁸
Categories	2002	2003	2004	2006	2008	2010	2012	2013	2015
Judiciary	73%	74%	70%	66%	61%	38%	56%	49%	47%
National Police	66%	71%	66%	55%	53%	45%	52%	53%	42%
Political Parties	19%	21%	18%	—	12%	17%	27%	22%	30%
Parliament	29%	49%	60%	24%	47%	46%	47%	55%	44%
Central Government	14%	47%	61%	11%	16%	20%	9%	11%	16%
Army	16%	24%	18%	—	8%	—	9%	10%	—
Local governments	—	34%	34%	23%	19%	15%	24%	27%	—
Ministry of Education/Schools	—	—	—	12%	8%	—	9%	—	—
Prosecutor's Office	—	—	—	—	—	—	16%	13%	19%
Private businesses	—	—	—	—	—	—	—	7%	—
HOUSEHOLD	5122	5810	5815	5831	5790	5900	5914	1202	1308

Source: PROETICA pollster

³⁰Date of elaboration: October 10 and November 6, 2002.

³¹Date of elaboration: December 8 and December 20, 2003.

³²Date of elaboration: September 4 and September 20, 2004.

³³Date of elaboration: September 2 and September 22, 2006.

³⁴Date of elaboration: September 13 and October 17, 2008.

³⁵Date of elaboration: May 14 and June 6, 2010.

³⁶Date of elaboration: March 23 to April 27, 2012.

³⁷Date of elaboration: June 21 and June 23, 2013.

³⁸Date of elaboration: October 28 to November 16, 2015.

Table 4.4 shows the results obtained for 9 surveys released 2002, 2003, 2004, 2006, 2008, 2010, 2012, 2013 and 2015, in terms of respondents who perceived on corruption in Peruvian public institutions. On average, a majority of respondents describe the justice system as the most corrupt institution in Peru. Also in the case of perception in Judiciary, the percentage of corruption is considerable in 2003 (74 %), while the lowest percentage has been recorded in 2010 (38 %). Data also show that, the median of percentages for these years survey is 59.4% which indicates that more of Peruvians still think that corruption is affecting the Judiciary.

A closer look at Table above reveals that from the period 2006 to 2015, with exception of 2010 and 2013, Judiciary occupied the highest level in the survey, followed by the National Police and the Parliament and for the years 2010 and 2013, Parliament was in the highest position followed by National Police and in the third is the Judiciary.

Bearing in mind the findings above, corruption is found in all judicial systems of all countries, in some more extreme than others. So, given its overarching importance to the good operation of a legal system, this research will carefully analyses of the facts of corrupt activities in the Peruvian system, focusing on provisional judges.

4.4 Corruption in the Judiciary

The global prohibition of corruption is one of the major topics which are repeated on the agenda of each government. However, badly functioning public institutions as Judiciary make that impunity of corrupt facts are easy to allow in the country. Despite its wide prohibition it still persistent in state institutions as reflected in the public perception on corruption.

And while perceptions of the level of corruption in the justice system may be different from the reality, an understanding of its many reasons will

influence in the decision-making and the credibility of the institution. In principle, the patterns of judicial corruption as perceived by judges, court clerks and lawyers will be explored in this section. The survey results for this part are showed in the Table 4.5. The survey questions from 1 to 3 are the questions with 5 response Likert scale categories (Strongly Agree, Agree, Neutral, Disagree, and Strongly Disagree). The responses from 5 categories are collapsed into 3 categories (Agree, Neutral and Disagree) to help in analysis while performing descriptive statistics.

Table 4.5 Perception of Corruption in the Judicial System

Perception of corruption in the judicial system	Agree (%)	Neutral (%)	Disagree (%)
Corruption exists in the judicial system	83.6	15	1.4
Corruption in the judicial system has been reduced compared to previous years	40	35.7	24.3
Corruption is a serious issue in the judicial system	86.4	11.4	2.1
TOTALN= 140			

Source: Survey 2017. Note: all the columns equal 100%, and N= 140.

For all three sample groups were asked to provide their opinions on whether there is corruption in the judiciary, whether it was reduced compared to previous years as well as whether it constituted a serious problem for the justice system.

On a negative note, most respondents believe corruption exist in the justice system (83.6%), this finding has sustenance with the result of the previous surveys by Transparency International and PROETICA that is, the Judiciary is among public institution perceived to be most corrupt. And on a positive side, most of the respondents have the opinion that corruption has been reduced compared to previous years (40%).

Not surprisingly, more than half of the respondents believe that corruption in the justice sector is a serious issue (86.4%), so addressing judicial corruption requires attention to the broader context of justice system.

One of the most urgent problems to solve in the Peruvian Judiciary is the corruption (Permanent Judges. Respondent N° 2 and N° 5)

Within this context, it is important to know if the three samples have the same perception about corruption in the Judiciary, taking into account the particular characteristics of the groups. That's why Table 4.6 was created through which it is seen that 66.7% of judges participant, 90% of court clerks participant and 85.3% of lawyers sample reach a consensus that corruption is spread in the judicial system.

Table 4.6 Crosstab of "Corruption in the Judicial System"

		Study Group							
		Judges		Clerks		Lawyers		Total	
		f	%	f	%	f	%	F	%
Corruption exists in judicial system	Strongly Disagree	0	-	0	-	0	-	0	-
	Disagree	1	5.6	0	-	1	1.0	2	1.4
	Neutral	5	27.8	2	10.0	14	13.7	21	15.0
	Agree	12	66.7	18	90.0	43	42.2	73	52.1
	Strongly agree	0	-	0	-	44	43.1	44	31.4
TOTAL		N=18		N=20		N=102		N=140	

Source: Survey, 2017. Note: N is the number of respondents in the respective group.

4.5 Causes, Indicators and Typologies of Corruption in Judiciary

Judicial professionals play a key role in the struggle against corruption; nevertheless, they can be exposed to risks of corrupt practices within of the judicial systems. In this context, there are "special interest

groups" are engaged in those corrupt practices in the seeking of different benefits and with the confidence that their illicit acts will not be punished, that's why corruption is the misuse of entrusted power for private gain. Continuing with the idea, it is important to start by identifying of causes, indicators and typology of judicial corruption in order to understand the varied forms of judicial corruption and that measure to prevent and control corruption to be taken.

4.5.1 Causes of Corruption in the Judiciary

The causes of judicial corruption vary significantly from State to State (Petter Langseth, 2001), its identification must be a task very careful, otherwise the decisions employed to fight and eliminate corruption could be misdirected and finally failing.

Although the causes of corruption are multiple and difficult to determine for a specific context, however, conducting a comparative study among several studies on the causes of judicial corruption in Peru, it is possible to distinguish certain patterns in order to continue the present investigation.

For that purpose Beatriz Mejía Mori (2001) claims that specific causes of corruption in the Peruvian context are: 1. Poor ethical, moral, professional and judicial training of the judicial actors. 2. Ignorance of the objective and scope of the judicial role. 3. The lack of an ideal judge model to follow. 4. Access to the judicial career because of a secure remuneration and social prestige. 5. Necessity of permanence in the judicial positions by lack of labor alternatives. 6. Low salaries. 7. Influence of economic, social and politic groups. 8. Deficiency of control systems and their perception of inefficiency by citizenship. 9. Perception of impunity respect of acts of corruption by those who committed them. 10. Abuse of power by judicial officials. 11. The reserved and authoritarian style in carrying out judicial proceedings and 12.

People's needs and the exclusivity of justice function by the inefficient Judiciary.

For its part, Félix C. Vargas Machuca (2015) mentions that are causes of judicial corruption, the abuse of power, culture of money by the desire for personal gain, weak legal system and inappropriate regulatory framework, judicial authority allows others (whether judges, clerks, administrative staff, lawyers or others) a functional misconduct, Collusion when the authority works by mutual agreement with subjects living outside the law. Likewise, the lack of control on the part of the citizens, the bad example of the judicial authorities, Influence peddling and prevaricate.

On the other hand, the Restructuring Commission report of 2003³⁹ identified various mechanisms of corruption in the Peruvian Justice system which can be summarized in:

- i) The request and offer, directly or indirectly, to a judicial agent - Judge or judicial staff - who provide services in the Judiciary, for any object of pecuniary value or advantages for itself or third parties in exchange for any illegal action or omission, in the exercise of their functions.
- ii) Improper use of any kind of information by a judicial actor for the benefit of himself or a third party with occasion of the function performed.
- iii) Illicit enrichment, a judicial actor, excessively increases its assets that can't reasonably be justified by him.
- iv) Influence peddling.
- v) Abdication, the tacit waiver of the actors Judicial to their duties of function imposed by the constitution and law, subject at the service of third parties or power groups.

³⁹ Available at: http://www.justiciaviva.org.pe/webpanel/doc_trabajo/doc10052012-173234.pdf

- vi) Taking away judicial files, either permanent or temporary way. "Loss" of files.
- vii) Lack of clear labor policies.
- viii) Improper manipulation of the computer system.
- ix) Sponsorship, magistrate or judicial staff to provide advisory and / or sponsorship services, taking advantage of its privileged position within the Judiciary with Lawyers and / or law firms.
- x) Intervention of a magistrate in a judicial process of direct or indirect relative, and others.
- xi) The appropriation or improper use of judicial goods.
- xii) Irregular schedules of delivery of trades, bills, consignments, external procedures.

In addition, in order to obtain first-hand information and build the next Table 4.7, one of the questions asked to the nine interviewees (provisional and permanent judges) was: what are possible causes or factors that promote corruption? Summarizing, the possible causes of corruption mentioned by all of them are found the followings outcomes:

1. Slow judicial processes (Respondent N° 1, Permanent Judge. Respondent N° 3, Permanent Judge).
2. Poor management of the Judiciary (Respondent N° 1, Permanent Judge).
3. Lack of personal values of judges. (Respondent N° 1, Permanent Judge. Respondent N° 9, Provisional Judge).
4. Impunity (Respondent N° 2, Permanent Judge).
5. Undue political influence (Respondent N° 2, Permanent Judge. Respondent N° 5, Permanent Judge).
6. Excessive workload (Respondent N° 3, Permanent Judge).
7. Strong influence of the media(Respondent N° 3, Permanent Judge).

8. Lack of moral criteria in appointments (Respondent N° 4, Provisional Judge).
9. Deficient academic training (Respondent N° 5, Permanent Judge).
10. Low salaries (Respondent N° 5, Permanent Judge).
11. Cultural environments that approve corruption (Respondent N° 6, Provisional Judge. Respondent N° 7, Provisional Judge.)
12. Lack of a good Budget allocation (Respondent N° 7, Provisional Judge).
13. Influence peddling (Respondent N° 8, Provisional Judge).

Summarizing all common causes that promote corruption in the Peruvian justice system, the following Table 4.7 is created. According to the information provided from this Table, a majority of the participants (84.3%) believe that excessive workload because of lack personnel and equipment as well as deficiencies in selection and promotion system are main causes of corruption within the Judiciary. Likewise, Table 4.7 also shows that more than 80% of the participants have the opinion that "Undue political influence" (80.7%), "Influence peddling" (81.4%) coupled with "Slow judicial processes" (82.9%) are substantive causes of corruption in Courts.

Table 4.7 Causes of Corruption in the Judiciary

Causes of corruption	Agree (%)	Neutral (%)	Disagree (%)
Slow judicial processes	82.9	11.4	5.7
Excessive workload due to insufficient personnel and inadequate and/or antiquated equipment	84.3	12.9	2.9
Influence peddling	81.4	17.1	1.4
Undue political influence	80.7	17.9	1.4
Low salary	71.4	11.4	17.1
Deficiencies in selection and promotion system	84.3	13.6	2.1
An increase in collusive behavior among the parties demanding a legal or illegal service from a judicial actor	78.6	17.9	3.6
Lack of personal values of judges or misconduct of judges	75.0	23.6	1.4
Inadequate penalties for corruption	78.6	19.3	2.1
Poor professional competence	73.6	22.9	3.6
Cultural environments that approve corruption	71.4	22.1	6.4
Lack of transparency in the court administration and court procedures	79.3	19.3	1.4
Sensationalist/exaggerated media reports	68.6	24.3	7.1
Lack of moral criteria in appointments	76.4	19.3	4.3
Lack of a good Budget allocation	77.9	18.6	3.6
Few mechanisms for internal and external control	64.3	33.6	2.1
The absence or malfunction of monitoring body	74.3	23.6	2.1
TOTALN= 140			

Source: Survey 2017. Note: all the columns equal 100%, and N= 140

Moreover, "Low salary" has the highest percentage of disagreed responses (17.1%). It is interesting in knowing why this statement got the highest percentage of disagreed responses. That is why; Table 4.8 was created to see the crosstabulation of "low salary" by "study group". The result in Table 4.8 shows that there is a difference in the opinion of services providers

and services receivers regarding this statement. Almost the 20% of service receivers (lawyers) believe the "low salary" is not an issue regarding to commit acts of corruption in comparison a service providers (judges) who in their majority (83.3%) believe "low salary" is an important cause on the corrupt actions of the justice system.

Table 4.8 Crosstab of “Low salary”

		Study Group							
		Judges		Clerks		Lawyers		Total	
		<i>f</i>	%	<i>f</i>	%	<i>f</i>	%	<i>f</i>	%
Low salary	Strongly Disagree	0	-	0	-	0	-	0	-
	Disagree	1	5.6	4	20.0	19	18.6	24	17.1
	Neutral	2	11.1	3	15.0	11	10.8	16	11.4
	Agree	13	72.2	6	30.0	48	47.1	67	47.9
	Strongly agree	2	11.1	7	35.0	24	23.5	33	23.6
	TOTAL	N=18		N=20		N=102		N=140	

Source: Survey, 2017. Note: N is the number of respondents in the respective group.

4.5.2 Corruption Indicators in the Judiciary

Contribute to the understanding of judicial corruption problems by monitoring of potential indicators of corruption will help neatly to identify corrupt behavior in the judicial system. In this regards, different potential indicators of corruption were identified by Petter Langseth (2002) based in the public perception which are: a) delay in the execution of court orders; b) unjustifiable issuance of summons and granting of bails; c) prisoners not being brought to court; d) lack of public access to records of court proceedings; e) disappearance of files; f) unusual variations in sentencing; g) delays in delivery of judgments; h) high acquittal rates; i) conflict of interest; j) prejudices for or against a party witness, or lawyer (individually or as member of a particular group); k) prolonged service in a particular judicial station; l) high rates of decisions in favor of the executive; m) appointments perceived as resulting from political patronage; n) preferential or hostile

treatment by the executive or legislature; o) frequent socializing with particular members of the legal profession, executive or legislature (with litigants or potential litigants); and p) post retirement placements.

Based on most of potential indicators of judicial corruption developed by Petter Langseth is build the next Table 4.9. According to the study sample, “Delay in the execution of court orders” (80.7%), "Delay in delivery of judgments" (77.9%) and "Appointments perceived as resulting from political patronage" (77.9%) are the highest perception of corruption indicators within the judiciary.

Table 4.9 Corruption Indicators in the Judiciary

Corruption indicators	Agree (%)	Neutral (%)	Disagree (%)
Delay in the execution of court orders	80.7	13.6	5.7
Prisoners not being brought to court	70.7	17.9	11.4
Lack of public access to records of court proceedings	67.1	25.0	7.9
Disappearance of files	47.9	40.0	12.1
Unusual variations in sentencing	65.7	28.6	5.7
Delay in delivery of judgments	77.9	16.4	5.7
Prejudices for or against a party witness, or lawyer (individually or as member of a particular group)	57.9	32.9	9.3
Appointments perceived as resulting from political patronage	77.9	19.3	2.9
Frequent socializing with particular members of the legal profession	69.3	24.3	6.4
TOTALN= 140			

Source: Survey 2017. Note: all the columns equal 100%, and N= 140

4.5.3 Typologies of Corruption in the Judiciary

Different typologies of corruption in the Judiciary can be found, however most of the scholars are agreed that bribery and political interference are often types of conduct of judicial corruption.

So, in a study about "Typologies of corruption in the judiciary" by the International Bar Association and conducted in partnership with the Basel Institute on Governance (2016) about corruption within of the judicial systems around the world suggested that bribery and undue political influence are the most frequently types of corruption in the judicial systems; in this way, they mention that "*while bribery is particularly prevalent when the rule of law is considered weak, undue political influence as a form of corruption occurs in countries across the board regardless of governance structures*". Likewise, "Extortion, misuse of funds and other forms of corrupt behavior" and "nepotism and favouritism" were the others categories in that study.

The typology of judicial corruption chosen for the study has been taken into considering as the most recurrent corrupt practices in the Judiciary relying on that report such as bribery which is possible to divide in "bribery required" in the context that the judge offers to sell a favorable decision and "bribery offered" when the interested party (litigant or lawyer) offers to buy a favorable decision; moreover, "Undue political influence" is seen in the context that an actor from the political arm of Government is taking advantage of his position of power to submit a judge in favoring of his own convenience. In this aspect, it is also included "extortion of judicial professionals" and the misuse of judicial funds, this last like the manipulation contracts for buying equipment, material resources and others. However, its selection does not exclude the other practices or possibilities of acts of corruption in the Peruvian Judiciary. The next typology suggested by the International Bar Association, is represented in Table 4.10.

In line with the observation of the study by International Bar Association, Table 4.10 shows that "Bribery" and "undue political influence" were the highest percentages of agreed responses. A large percentage of participants (76.4%) of the sample participants reach a consensus that "undue political interference" is the most frequently type of corruption within the

judicial system. Followed, 69.3% of the participants hold the view that bribery(request and offers) is other of the main types of judicial corruption.

Table 4.10 Typologies of Judicial Corruption

Typologies of judicial corruption	Agree (%)	Neutral (%)	Disagree (%)
Bribery (request)	69.3	22.1	8.6
Bribery (offers)	69.3	25.0	5.7
Political interference/ undue political influence	76.4	22.1	1.4
Extortion of judicial professionals	58.6	34.3	7.1
Misuse of judicial funds	62.9	31.4	5.7
TOTALN= 140			

Source: Survey 2017. Note: all the columns equal 100%, and N= 140

Some forms of corrupt behavior like bribery and undue political interference are highly identified across this judicial system and based on result from the current survey, it is important to distinguish between the perceptions of each group under analysis. Table 4.11 is created to see the cross tabulation of bribery (request and offers) and political interference by "study group".

The results in Table 4.11 reveals that based on the perception of different groups under examination regarding to all justice system, more than 70% of judges answered that requested bribery is greater than that offered (44.4%); contrarily to the sample by court clerks who said that the requested bribery (35.0) is less than that offered (45.0%) and same with the 75.5% of lawyers participant who believe that is less the requested bribery, compared to 78.4% for the result of offered bribery.

Likewise, Table 4.11 depicts that all study groups- judges with 55.6%, court clerk with 85.0% and lawyers with 78.5% have the same high tendency in mentioning that the political interference play a main role in how corruption occurs in the judicial system.

Table 4.11 Crosstab of "Bribery" and "Undue Political Influence"

		Study Group							
		Judges		Clerks		Lawyers		Total	
		f	%	f	%	f	%	f	%
Bribery (request)	Strongly Disagree	0	-	0	-	0	-	0	-
	Disagree	3	16.6	5	25.0	4	3.9	12	8.6
	Neutral	2	11.1	8	40.0	21	20.6	31	22.1
	Agree	10	55.6	6	30.0	36	35.3	52	37.1
	Strongly agree	3	16.7	1	5.0	41	40.2	45	32.2
	TOTAL	N=18		N=20		N=102		N=140	
Bribery (offers)	Strongly Disagree	0	-	0	-	0	-	0	-
	Disagree	4	22.2	3	15.0	1	1.0	8	5.7
	Neutral	6	33.4	8	40.0	21	20.6	35	25.0
	Agree	4	22.2	8	40.0	31	30.4	43	30.7
	Strongly agree	4	22.2	1	5.0	49	48.0	54	38.6
	TOTAL	N=18		N=20		N=102		N=140	
Political interference/ undue political influence	Strongly Disagree	0	-	0	-	0	-	0	-
	Disagree	1	5.6	0	0.0	1	1.0	2	1.4
	Neutral	7	38.9	3	15.0	21	20.6	31	22.1
	Agree	9	50.0	14	70.0	58	56.9	81	57.9
	Strongly agree	1	5.6	3	15.0	22	21.6	26	18.6
	TOTAL	N=18		N=20		N=102		N=140	

Source: Survey, 2017. Note: N is the number of respondents in the respective group.

4.6 Corruption and Judges

Usually corruption within the Judiciary is associated with the figure of the judges taking bribery; it means the role played by judges is very important within Judiciary. At a general level, "they interpret the law, assess the evidence presented, and control how hearings and trials unfold in their

courtrooms" (Canadian Superior Courts Judges Association⁴⁰, 2006) and finally they are decision-makers in each judgeship. In this section will be seen the relation among judges and corrupt facts within the justice system, emphasizing in two principal types of corruption that most affect judiciaries, bribery and undue political influence

4.6.1 Understanding Why Our Judges Become Corrupt

There are good judges out there, but unfortunately there are quite a few bad ones as well. There are potential reasons why judges get corrupted and are so persistent in the judicial system that it even encourages future judges to become corrupt after obtaining the position.

So, what makes judges corrupt? As a result of his study, Adriaan Bedner (2002) claims it is likely to occur under the following conditions: 1) Unclear boundaries between the public and private spheres, this suggests that the public/professional relations are closely interwoven that sometimes are not clearly demarcated, making difficult for an official to refuse to use his official position for private affairs. 2) Needs, these needs are addressed to the importance of money as a determinant of social status increases, the economic capital as a fundamental role in determining of the lifestyle. 3) Absence of an incomplete legal information, all is about of the nature of the legal system: "legislators produce unclear laws and if judges produce judgments that are hard to use as guidelines for subsequent judgments, the discretionary power of judges in individual cases increases". In this context corruption is more difficult to recognize. 4) Imperfect legal education and differences in legal style, it is when the lack of proper training leads an inadequate or poor legal reasoning which make impossible or difficult to understand to others. And the other one is the legal culture related to legal style.

Taking in a consideration those four proposed conditions of the scholar Adriaan Bedner, Table 4.12 is created. The statements listed in Table

⁴⁰For further information: http://www.cscja-acjcs.ca/role_of_judge-en.asp?l=5

4.12 will help to know particularly why judges are committing acts of corruption. This Table depicts that around 81.4% of the participants agree that "the ambition to become in rich as quickly as possible" is one of the main reason behind of corrupt behaviors of judges, as well as 75.7% of the participants hold the view that absolute power of the judge position is another factor why judges commit acts of corruption, compared to 45.0% of the participants who believe that "low salaries" is not a principal reason for a judge commits acts of corruption as indicated in the table below.

The judges take advantage of their position in order to perform improper acts (Permanent Judges. Respondent N°2).

Judge occupy a position of power relative to other actors (Permanent Judges. Respondent N°1).

Table 4.12 Reasons Why Judges Commit Acts of Corruption

Reasons	Agree (%)	Neutral (%)	Disagree (%)
Low salaries	45.0	27.1	27.9
The ambition to become in rich as quickly as possible	81.4	13.6	5.0
No ethics or moral	72.9	20.0	7.1
Enjoy absolute power because of his/her position	75.7	17.1	7.1
Unclear laws which create gaps to take advantage of and commit acts of corruption	46.4	43.6	10.0
The lack of proper training which leading a poor legal reasoning	74.3	21.4	4.3
TOTALN= 140			

Source: Survey 2017. Note: all the columns equal 100%, and N= 140

4.6.2 Motives Behind Bribery to the Judges

The field of bribery is completely diverse. Commencing with the motives behind of this one, followed by the ways in which it is materialized constitute a significant aspect of the studies on corruption. The judiciary is not alien to these practices, especially made by its main members, the judges. To

this respect, in a study conducted by Institute of the Legal Defense (Justicia Viva) of the Catholic University of Peru (2008), regarding the examination of 50 files on the dismissal of judges of the National Council of the Judiciary from 2003 to 2005, it was found out that 6 files kept relation with the requested bribery by judges.

There are many motives of bribery to judges. For example, giving bribery in order to speed up the procedure, having a favor decision or simply because it is usual in courts. So bribery gives, directly or indirectly, an undue advantage over others, using the official position of judges. In light of these diverse motives, Table 4.13 is created which is about motives behind bribery to the judges.

Table 4.13 Motives for Bribing Judges

Motives	Agree (%)	Neutral (%)	Disagree (%)
There is no other way to get things done	46.4	40.7	12.9
To get preferential treatment/privileges and best results	72.1	21.4	6.4
To speed up the process/procedures	82.1	15.0	2.9
The practice of obligatory payments	54.3	30.7	15.0
TOTALN= 140			

Source: Survey 2017. Note: all the columns equal 100%, and N= 140

The results in Table 4.13 shows that 82.1% of the participants hold the view that speeding up the process/procedures is used as mean to bribe the judges. There are other means for giving for or agreeing on bribery such as getting preferential treatment/privileges and best results (72.1%).

4.6.3 Undue Political Influence and the Judges

While a judge is serving at the pleasure of political authorities, he is highly vulnerable to political interference. This political intervention affect the independence of judges and the justice system with consequences at the political level because, this might involve appointment procedures, budget allocations and oversight mechanisms (The International Bar Association Judicial Integrity Initiative, 2016), judicial leadership, terms and conditions of tenure for judges (Siri Gloppen, 2014). In effect, these improper influences undermine the result of a supposedly impartial decision.

Considering these facts, Table 4.14 is created in order to know two aspects: if judges are protected from any political interference and if their decisions have any political influences that undermines its impartiality and independence. Table 4.14 depicts that a greater percentage of respondents (72.9%) felt that decisions of judges run by a few big political interests compared to 7.1% who disagreed. On the other hand, around 33% of the sample argues that judges are not protected from interference by the executive and/or legislative branches, compared to 40.7% of the participants who believe that they are protected.

Table 4.14 Undue Political Influence in Judges

Circumstances	Agree (%)	Neutral (%)	Disagree (%)
Judges are protected from interference by the executive and/or legislative branches	40.7	26.4	32.9
Decisions of judges run by a few big political interests	72.9	20.0	7.1
TOTALN= 140			

Source: Survey 2017. Note: all the columns equal 100%, and N= 140

Likewise, it is interesting to know why there is this narrow difference between those who agree and disagree regarding to the statement "Judges are

protected from interference by the executive and/or legislative branches", that is why Table 4.15 is created, to see the crosstabulation of statement mentioned by each study groups. The results in the table below reveals that around 67% of the judge sample and 70% of the court clerk sample don't agree that judges are protected from interference by the executive and/ or legislative branches, compared to 50% of the lawyers participant who either strongly agree or agree that judges are protected from the executive and/ or legislative influences.

Table 4.15 Crosstab of Political Interferences in Judges

		Study Group							
		Judges		Clerks		Lawyers		Total	
		f	%	f	%	f	%	f	%
Judges are protected from interference by the executive and/ or legislative branches	Strongly Disagree	0	-	0	-	0	-		-
	Disagree	12	66.7	14	70.0	20	19.6	46	32.9
	Neutral	4	22.2	2	10.0	31	30.4	37	26.4
	Agree	2	11.1	4	20.0	32	31.4	38	27.1
	Strongly agree	0	-	0	-	19	18.6	19	13.6
	TOTAL	N=18		N=20		N=102		N=140	

Source: Survey, 2017. Note: N is the number of respondents in the respective group.

4.6.4 Corruption in Different Types of Court Proceedings and Levels within the Judiciary

Notwithstanding, the expansion of judicial corruption over the judicial system, with the purpose to know if corrupt acts by judges are found in all types of court proceedings and all level within Judiciary, Table 4.16 and 4.17 are created in order to know the perception of the respondents. This information is useful for reducing the opportunities of corruption depending of each type and level of Courts. Table 4.16 shows that 37.5% of the participants hold the view that the highest opportunity for committing corruption is presented in the first instance courts and followed of the Courts of peace (27.9%).(More than one answer was allowed for each participant).

Table 4.16 The Highest Corruption Regarding to the Levels within the Judiciary, at the Judges Level

Levels	f	%
Supreme Court	39	14.3
Superior Courts	54	19.9
First instance courts	102	37.5
Court of peace	76	27.9
There is no corruption in this system	1	0.4
TOTAL	272	

Source: Survey, 2017

Table 4.17 indicates that corruption spreads more in criminal courts according to 31.9% of participants, followed by the spread of corruption in civil courts with 17.2% and then commercial courts with 16% of votes. 7.8% of the participants opined for the spread of corruption in labor courts.(More than one answer was allowed for each participant).

Table 4.17 The Highest Corruption Regarding to Types of Court Proceedings, at the Judges Level

Types	f	%
Civil	57	17.2
Commercial	53	16.0
Administrative	50	15.1
Criminal	106	31.9
Constitutional	40	12.0
Labor	26	7.8
TOTAL	332	

Source: Survey, 2017

4.7 Provisional Judges

This section reviews in a comprehensive manner on provisional judge's issue, the importance of understanding the facts, the environment within which provisional judge works, conditions and factors relating

specifically his/her post will be the assessment tools for its incidence with corruption.

As has already been seen, provisional judge's term is understood for who doesn't enjoy of the security of tenure and can be freely removed or suspended, coupled with the fact that he is not appointed by an independent body to occupy his positions of provisional ones. Within this context and this research, provisional judge's term includes two concepts: a) judges by temporary capacity, who are also magistrates who will occupy higher positions by a time; b) Substitutes, lawyers who are called to fill vacancies of magistrates when there are no skilled judges available.

For this purpose, two sub sections are opened for this study, while the first sub section provides information from actors within of the judicial system related to their knowledge and direct experience of this system. On the other hand, the second sub section is addressed to lawyer who receives the judicial service and therefore he interacts with the judicial system and he will provide an opinion from his personal experience.

4.7.1 Provisional Judge's Perception from Judges and Court Clerks

Due to the significance of this subject, this part of the survey was addressed for knowing the perception of the nearby judicial officers to provisional judges, i.e. the judges themselves and the court clerks who have closer experiences to the judicial environment.

4.7.1.1 Reasons for Becoming Provisional Judges

The survey questions from 53 to 63 are about the reasons why the applicants are interested in becoming provisional judges, and the results are shown in Table 4.18. The survey data do show that almost 82% of the respondents agree with the statements that the applicants are interested in becoming provisional judges because of "Personal and professional

development " and "Career goal", while only 26.3% said for "Public service" and, other 32% of the sample mentioned that it is due to "Intellectual satisfaction".

On the other hand, some respondents also added that this is because of the flexible schedule including opening and closing or they are moving for private interests from power groups.

Table 4.18 Reasons for Becoming Provisional Judges

The applicants are interested in becoming provisional judges because of:	Agree (%)	Neutral (%)	Disagree (%)
Prestige of the office	65.8	31.6	2.6
Public service	26.3	50.0	23.7
Career goal	81.6	18.4	0.0
The role of the judge as decision-maker and problem-solver	42.1	34.2	23.7
Personal and professional development	81.6	7.9	10.5
Salary	68.4	13.2	18.4
Respect in the community	63.2	23.7	13.2
Pension	47.4	42.1	10.5
Sense of collegiality	36.8	26.3	36.8
Intellectual satisfaction	31.6	50.0	18.4
Others (Specify)			
TOTALN= 38			

Source: Survey 2017. Note: all the columns equal 100%, and N=38

4.7.1.2 Knowledge on Provisional Judges

Within this context, a significant feature of the provisional judge is the lack of security of tenure, Mary Noel Pepys (2007) mentions that "security of tenure is so important the process for removing judges must carry exacting standards, and a decision to remove a judge must be based on a rigorous and fair investigation". In this way, the security in the tenure has consequently become a key tool to guarantee to judges from internal and external pressures of the Judiciary, and thereby contribute to sustaining an independent judicial

system (J. van ZylSmit, 2015). So, in opinion of Jessica Walsh (2006) provisional judges constitute a "serious threat to the tenure" and clearly for independence of judges and to the own judicial system.

In this perspective, the fact that they are also appointed for a limited time in office is another of his main characteristics that in opinion of Jessica Walsh (2006) may be understood like a selection according to political interests and therefore could be quickly removed where their decisions are problematic for the ruling political party of the time. In this line of ideas, James Michel (2009) itemizes that "there is a strong correlation between judicial independence and the assured duration of judicial tenure". He claims that a judge with a brief term of his post is more highly vulnerable to political influence and also, Siri Gloppen (2014) shares the same opinion that "where judges are appointed for limited terms, and particularly where the terms of service are renewable and short, judges have an incentive to rule with an eye on the interests and preferences of those for whom they depend for reappointment (or new employment after they finish their judicial tenure). The same is true where judges' promotion/demotion depend on being favored by their superiors and where the security of tenure in practice is weak".

At the overarching insecurity, similar concerns have the lack of appointments by an independent body. The appointment process should be isolated from any undue influence and be legitimate in the eyes of the public through the demonstrable quality of those who are appointed and also who the decision-makers are, transparency of the selection process and the provision for the revision and scrutiny of each cases (J. van Zyl Smit, 2015), all of them will ensure the basic judicial independence in the justice system. In light of this necessity, the appointment of judges by an independent body according of International Transparency (2007) "ensures that only the highest quality candidates are selected and that they do not feel indebted to the particular politician or senior judge who appointed them".

It is useful to briefly mention that in Peru, the ordinary way or procedure to be appointed is through the National Council of Judiciary. According to the Law N. 26397 of its creation, it is an autonomous body independent of the other constitutional bodies and is responsible for selecting, appointing, confirming and removing judges and prosecutors at all levels. Nevertheless, contrary to the appointment of permanent judges by National Council of Judiciary in a regular process, that is in a national contest, the provisional judge who belongs to Supreme Court is appointed by the President of the Judiciary who is also of the Chairman of the Supreme Court, and this kind of "authority" is disposed in the Article 76 of the Organic Law of the Judiciary (as amended by Article 2 of Law No. 27465, published in the official gazette "El Peruano" on May 30, 2001). Likewise, provisional judges for Superior Courts are appointed by the chairman of each Superior Court. In this point, in opinion of the scholar Jan van Zyl Smit (2016) "provisional appointments engage both the principle and practice of tenure and judicial independence and there some evidence of such appointments being used systematically to shape and limit the power of the judiciary".

It was also found a difference of salary among provisional and permanent judges. Based on the literature, the difference of salary could influence in the commission of the judicial corruption. Cheryl W. Gray and Daniel Kaufmann (1998) argue that "motivation for income is extremely strong, exacerbated by poverty and low and decreasing salaries that lead our society sometimes to these corrupt acts". International Transparency (2007) sees salary as fundamental to be not manipulated by the Executive or by the Legislature, in this way independent judges are not punished and those ones who rule in favor of government are rewarded. It is said that a decent pay prevents judicial corruption, a salary that is commensurate with the role being played by each judge, in an egalitarian system where those who perform a certain function are earning the same as others. To this extent, in words of Petter Langseth (2001) "without fair remuneration, there is not much hope

that the traditional system of paying “tips” to court staff on the filing of documents can be abolished”.

Considering these facts, this study tried to know, in general, about of provisional judges. The survey questions from 64 to 70 are the questions that deal with to know provisional judges (see Annex 1, Section E). For other side, question 71 is also given in relation with the answer of question 66, when it is negative (NOT), regarding to know if there is "another criteria for appointing provisional judges when it is not based on merit-appointment". The results are shown in Table 4.19 and 4.20.

Table 4.19 shows that more than 70% of the participants voted that permanent and provisional judges have the same duties and the same responsibility and that they are not appropriately trained in order to carry out justice. Regarding to this last statement, there were some commentaries mentioning: "*It is logical that due to temporary position, provisional judges are not trained since the Judiciary only invest in permanent personnel and they will useful in the future*" (Court Clerk N° 4), "*provisional judges should not be hired because of the lack or undue motivation in their sentences*" (Court Clerk N° 6), "*due to their limited time in office, provisional judges try to comply with all their judicial cases before being dismissed from their position which implies that often the decisions are unduly motivated*" (Permanent Judges N° 3).

Table 4.19 Frequency Distribution on Perception of Provisional Judge’s Characteristics

Perception of provisional judge’s characteristics	Yes		No	
	f	%	f	%
Do permanent and provisional judges have the same duties and the same responsibility?	28	73.7	10	26.3
Are provisional judges appropriately trained in order to carry out justice in a fair and unbiased manner?	10	26.3	28	73.7
Are provisional judges appointed always on fair and merit based competitive scheme?	7	18.4	31	81.6
Does the system provide for security of tenure to prevent provisional judges being threatened with arbitrary termination of their contract?	9	23.7	29	76.3
Are there regulations protecting provisional judges from undue political influence?	5	13.2	33	86.8
Are provisional judges dismissed in a fair and unbiased manner?	6	15.8	32	84.2
Provisional judges’ salaries are sufficient without having to resort to other sources of income	7	18.4	31	81.6
Total	N= 38			

Source: Survey 2017. Note: all the columns equal 100%, and N= 38

More than 80% of the participants think that appointments of provisional judges are not always based on fair and merit system, so they were asked if there is another criteria for appointing provisional judges, this statement listed in Table 4.20.

Table 4.20 Other Criteria for Appointing Provisional Judges

Criteria	f	%
Personal relationships based on friendship and kinship	29	46.0
Political interference/ undue political influence	24	38.1
Sale of official positions	8	12.7
Others (Specify)	2	3.2
TOTAL	63	

Source: Survey, 2017

The Table 4.20 shows that a 46% of the participants believe that other criteria for appointing provisional judges is because of personal relationships based on friendship and kinship, followed of 38.1% that considered Political interference/ undue political influence like other factor for the appointing provisional ones. While that only 3.2% mentioned that this kind of appointing is due "to return favors".

4.7.2 Provisional Judge’s Perception from Lawyer

The survey questions from 72 to 74 are about the perception of provisional judge’s from lawyer, and the results are shown in Table 4.21. About 62.7% of the service receivers mentioned that the provisional judge decision did not satisfy the controversy of your case and other 53.9% considered that provisional judges are not appropriately trained in order to carry out justice and also go in line with the perception of 73.7% of judges and court clerk’s sample (see Table 4.19 second statement).

Regarding to the statement "The Judiciary should still work with provisional judges", 58.8% of lawyers sample are a favor of it and most of the reasons given were a lack of permanent judges and the heavy case-load that facing the justice sector nowadays, therefore it is preferable to have someone who can give solution to their demands quickly despite the result.

Table 4.21 Frequency Distribution on Perception of Provisional Judge’s from Lawyer

Statements	Yes		No	
	f	%	f	%
Are provisional judges appropriately trained in order to carry out justice in a fair and unbiased manner?	47	46.1	55	53.9
In case where you participate as a party to litigation, did the provisional judge decision satisfy the controversy of your case?	38	37.3	64	62.7
The Judiciary should still work with provisional judges	60	58.8	42	41.2
Total	N= 102			

Source: Survey 2017. Note: all the columns equal 100%, and N= 102

Finally, in this sequence of ideas, a study conducted by Institute of the Legal Defense (Justicia Viva) of the Catholic University of Peru (2008), corroborates the public impression regarding that provisional judges are recurrent actors of disciplinary infractions unlike of the permanent judges. In the examination of 31 files on the dismissal of judges of the National Council of the Judiciary from 2003 to 2007, it was found out that 8 files concerned about the dismissal of the permanent judges while 23 files were about the dismissal of provisional judges.

4.8 Corruption and Provisional Judges

The field of judicial corruption is wide and uncertain, many times it is unknown to simple glance if any facts or acts can be conditions for boosting corruption or others constitute corruption itself, within this context a significant aspect of judicial corruption in Peru- according to Marcelo M. Giugale (2006) - is the lack of adequate human resources management capacity; in this statement he gives an example related to provisional judges. He claims that "the provisional status of many Peruvian judges remains a major problem for the judicial sector, which leads to high turnover and unrealistic planning". So taking into account this fact, the survey questions from 75 to 83 explore the relation between judicial corruption and provisional judge, and the results are shown in Table 4.22. The Table below shows that almost 78% of the participants hold the view that provisional judges are more vulnerable to corruption than permanent judges and 66.4% of the sample participants reach a consensus that it is because of lack of security of tenure as well as 65.0% justified for the temporary position, whereas 57.1% mentioned it was not due to low salary.

Moreover, results from Table 4.22 show that more than 85% of the sample answered that they didn't know about provisional judges who threatened plaintiffs with any reason to collect bribes. On the subject, this result is online with the observation of the scholar Stratos Pahiis (2009) and

his study focused on judicial bribery; he claims that a judge would face a comparatively greater risk in offers to sell a favorable decision instead of that Litigant, Defendant and Lawyer offers to buy a favorable decision.

The following table reveals that around 57.9% of the participants answered that provisional judges are appointed in return for political favors, and 85% that they are transferred in return for political favors. On a negative side, a worrying percentage of 25% said that they had tried to bribe to a provisional judge.

Table 4.22 Frequency Distribution of Corruption and Provisional Judges

Statements	Yes		No	
	f	%	f	%
Are provisional judges more vulnerable to corruption than permanent judges?	109	77.9	31	22.1
Are provisional judges more vulnerable to corruption because of lack of security of tenure?	93	66.4	47	33.6
Are provisional judges more vulnerable to corruption because of low salaries?	60	42.9	80	57.1
Are provisional judges more vulnerable to corruption because of temporary position?	91	65.0	49	35.0
Do you know if there are provisional judges threaten plaintiffs with any reason to collect bribes?	53	37.9	87	62.1
Have you tried to bribe to provisional judge?	35	25.0	105	75.0
Are provisional judges appointed in return for political favors?	81	57.9	59	42.1
Are provisional judges promoted in return for political favors?	64	45.7	76	54.3
Are provisional judges transferred in return for political favors?	85	60.7	55	39.3
Total	N= 140			

Source: Survey 2017. Note: all the columns equal 100%, and N= 140

On the other hand, it is interesting to know the opinion of each study group for this part. That is why; Table 4.23 is created, to see the cross tabulation of each statement mentioned in the previous Table.

The results in Table 4.23 show that there are differences in the view of points of judges, court clerk and lawyers regarding to salary, when it is asked to participants their opinion about if the corrupt acts by provisional judges are committed because of low salary, while 77.8% of judges sample and 80% of clerks sample mentioned that this factor is important however almost 71% of lawyers samples believe it is not main factor for a corrupt behavior of provisional judges.

The low salary can also be one factor for committing of corruption because it could be not enough to satisfy his needs(Provisional Judges. Respondent N° 6).

Table 4.23 Crosstab of Corruption and Provisional Judges

		Study Group							
		Judges		Clerks		Lawyers		Total	
		f	%	f	%	F	%	f	%
Are provisional judges more vulnerable to corruption than permanent judges?	Yes	10	55.6	18	90.0	81	79.4	109	77.9
	No	8	44.4	2	10.0	21	20.6	31	22.1
	TOTAL	N=18		N=20		N=102		N=140	
Are provisional judges more vulnerable to corruption because of lack of security of tenure?	Yes	13	72.2	17	85.0	63	61.8	93	66.4
	No	5	27.8	3	15.0	39	38.2	47	33.6
	TOTAL	N=18		N=20		N=102		N=140	
Are provisional judges more vulnerable to corruption because of low salaries?	Yes	14	77.8	16	80.0	30	29.4	60	42.9
	No	4	22.2	4	20.0	72	70.6	80	57.1
	TOTAL	N=18		N=20		N=102		N=140	

Are provisional judges more vulnerable to corruption because of temporary position?	Yes	12	66.7	19	95.0	60	58.8	91	65.0
	No	6	33.3	1	5.0	42	41.2	49	35.0
	TOTAL	N=18		N=20		N=102		N=140	
Do you know if there are provisional judges threaten plaintiffs with any reason to collect bribes?	Yes	6	33.3	6	30.0	41	40.2	53	37.9
	No	12	66.7	14	70.0	61	59.8	87	62.1
	TOTAL	N=18		N=20		N=102		N=140	
Have you tried to bribe to provisional judge?	Yes	0	0	0	0.0	35	34.3	35	25.0
	No	18	100	20	100.0	67	65.7	105	75.0
	TOTAL	N=18		N=20		N=102		N=140	
Are provisional judges appointed in return for political favors?	Yes	10	55.6	14	70.0	57	55.9	81	57.9
	No	8	44.4	6	30.0	45	44.1	59	42.1
	TOTAL	N=18		N=20		N=102		N=140	
Are provisional judges promoted in return for political favors?	Yes	7	38.9	10	50.0	47	46.1	64	45.7
	No	11	61.1	10	50.0	55	53.9	76	54.3
	TOTAL	N=18		N=20		N=102		N=140	
Are provisional judges transferred in return for political favors?	Yes	13	72.2	12	60.0	60	58.8	85	60.7
	No	5	27.8	8	40.0	42	41.2	55	39.3
	TOTAL	N=18		N=20		N=102		N=140	

Source: Survey, 2017. Note: N is the number of respondents in the respective group.

Within of context of corrupt acts committed by provisional judges, one question was asked to the nine judges interviewed (provisional and permanent judges) and it was: Have you ever heard of any cases of corruption, close to you, committed by provisional judges? And the following responses were:

-Permanent Judge. Respondent N° 1: *"I have heard some cases of corruption, close to my experience like judge. But they were isolated corruption cases; they were for bribes, for few amounts of money as 400 or 500 soles."*

-Permanent Judge. Respondent N° 2: *"Yes, the closest case was more than 6 years ago with a Supreme Court Judge, Palacios Villar".*

-Permanent Judge. Respondent N° 3: *"Not directly, but if it is evident that in the resolutions issued by the provisional judges, they do not conform to minimum legal standard so probably it is due to acts of corruption. There are cases where it is evident that the judge is deciding in favor of one of the parties without any legal reason. More than 80% of cases of corruption are related to criminal prosecutions".*

-Provisional Judge. Respondent N° 4: *"Not personally, but I know of a case 15 years ago when a judge specialized in criminal cases was found asking for money in a restaurant.*

-Permanent Judge. Respondent N° 5: *"Yes. In different cases related to economic (bribery) and political factors."*

-Provisional Judge. Respondent N° 6: *"I know. Yes. Of course what has been public knowledge, yes."*

-Provisional Judge. Respondent N° 7: *"I know. It was provisional judge belonged to the Supreme Court, and who was caught red-handed taking a 300 dollar bribe."*

-Provisional Judge. Respondent N° 8: *"I know. Yes. A friend, a provisional judge from the Lima Court, was found with four thousand dollars."*

-Provisional Judge. Respondent N° 9: *"No, I don't know."*

4.9 Number of Provisional Judges from 2001 to 2016

This section will provide information on the trend of working with provisional judges from 2001 to 2016 as well it will be showed if it has any relation to the percentage of perception of corruption of the judicial system for each year, in order to provide better recommendations for this study.

On the other hand, it was not possible to obtain information on the number of provisional judges before the year 2001, despite the request for information, so the next tables are created with only information from 2001 to 2016. However, in order to have some idea about what happened before of that year, the Inter-American Commission of Human Right of Organization of American State (2000) mentioned that "even though as of 1997 only 27.12% of the positions were covered by permanent judge, and 72.88% by provisional and alternate judges; there were only 392 permanent judges, and 1,053 provisional and alternate judges", and about that the scholar Cesar Landa (2001) said that "this means that approximately 75 percent of Peru's judges are insecure in the exercise of their positions and thus susceptible to political intervention and active or passive jurisdictional dependence. As a rule, this holds true at all levels of the justice administration, from the highest to the lowest courts".

In this line of sequences, the high number of provisional appointments was increased by the Judicial Power Executive Commission, a commission created by the Fujimori Government. It exercised authority to appoint and dismiss provisional judges and assumed the role of the National Council of Judiciary, an autonomous body appointed to safeguard the independence of courts and judges; until that, in January 2001, the Judicial Power Executive Commission was deactivated as referred Cesar Martinez (2010) and therefore the Judiciary concluded with a 15% of permanent judges and 85% of provisional judges.

4.9.1 Total Number of Judges Between Provisional and Permanent from 2001 to 2016

Table 4.24 was created for showing the trend of working with provisional judges of the Peruvian Judiciary from 2001 to 2016. Taking into account that for provisional judge will involve judge by temporary capacity and substitutes (see Annex 3), like it was explained in Section 4.7.

Table 4.24 Total Number of Judges Between Provisional and Permanent from 2001 to 2016

YEAR	PERMANENT		PROVISIONAL		TOTAL JUDGES
	f	%	f	%	
2001	271	21.2	1005	78.8	1276
2002	606	36.2	1068	63.8	1674
2003	903	54.5	754	45.5	1657
2004	953	57.4	707	42.6	1660
2005	1158	63.0	681	37.0	1839
2006	1070	50.4	1051	49.6	2121
2007	1007	46.6	1155	53.4	2162
2008	989	42.0	1363	58.0	2352
2009	1081	44.1	1372	55.9	2453
2010	1066	40.5	1563	59.5	2629
2011	1074	40.4	1585	59.6	2659
2012	1228	43.9	1568	56.1	2796
2013	1320	46.8	1499	53.2	2819
2014	1349	46.7	1539	53.3	2888
2015	1702	57.2	1272	42.8	2974
2016	1879	61.8	1161	38.2	3040

Source: General Management of the Peruvian Judiciary

The results from Table 4.24 show that, first at all, there is a tendency to increase the number of judges each year and the median of total number for the hiring provisional ones is 52.3%. This means that the Judiciary has been working with more than half of its judges on temporary charges. Likewise, the highest hiring of provisional judges were in 2001 (78.8%) and 2002 (63.8%) while the lowest were in 2005 (37.0%) and 2016 (38.2%); besides it is noted

that there is a tendency to increase the number of judges each year and the median of percentages for the hiring provisional ones is 53.35%. So far, compared with the percentage of judicial corruption perception made by Proetica, Table 4.25 was created in order to find a trend between these variables. This table reveals that there is not a uniform trend among the increase or decrease in the percentage of judicial corruption and number of provisional judge.

Table 4.25 Comparison Between the Percentage of Judicial Corruption and the Hiring of Provisional Judges

	2002	2003	2004	2006	2008	2010	2012	2013	2015
Judicial corruption perception	73.0	74.0	70.0	66.0	61.0	38.0	56.0	49.0	47.0
Provisional judge	63.8	45.5	42.6	49.6	58.0	59.5	56.1	53.2	42.8

Source: General Management of the Peruvian Judiciary and pollster PROETICA

4.9.2 Total Number of the Supreme Court Judges Between Provisional and Permanent from 2001 to 2016

Table 4.26 was created for showing the trend of working with provisional judges of the Supreme Court of the Peruvian Judiciary from 2001 to 2016. The below Table reveals that the highest hires of provisional judges in the Supreme Court were in 2006 (73.3%) and 2005 (73.2%) whereas in 2011 and 2012 were the lowest hires (53.8%). Likewise, if one compares year by year, the hiring of provisional judges is always greater than the permanent judges. Besides, there is not a tendency to decrease the number of provisional judges in this Court.

Table 4.26 Total Number of the Supreme Court Judges Between Provisional and Permanent from 2001 to 2016

YEAR	SUPREME COURT				TOTAL JUDGES
	PERMANENT		PROVISIONAL		
	f	%	f	%	
2001	12	34.3	23	65.7	35
2002	13	36.1	23	63.9	36
2003	12	32.4	25	67.6	37
2004	14	37.8	23	62.2	37
2005	11	26.8	30	73.2	41
2006	12	26.7	33	73.3	45
2007	17	34.0	33	66.0	50
2008	17	32.7	35	67.3	52
2009	15	34.9	28	65.1	43
2010	15	41.7	21	58.3	36
2011	18	46.2	21	53.8	39
2012	18	46.2	21	53.8	39
2013	19	44.2	24	55.8	43
2014	19	44.2	24	55.8	43
2015	17	40.5	25	59.5	42
2016	19	45.2	23	54.8	42

Source: General Management of the Peruvian Judiciary

On the other hand, the next Table is created to find a trend between the variables percentage of judicial corruption and provisional judges. Table 4.27 shows that in comparing, the percentage of judicial corruption perception and provisional judges cannot be seen a pattern between these two variables.

Table 4.27 Comparison Between the Percentage of Judicial Corruption and the Hiring of Provisional Judges of Supreme Court

	2002	2003	2004	2006	2008	2010	2012	2013	2015
Judicial corruption perception	73.0	74.0	70.0	66.0	61.0	38.0	56.0	49.0	47.0
Provisional judge from Supreme Court	63.9	67.6	62.2	73.3	67.3	58.3	53.8	55.8	59.5

Source: General Management of the Peruvian Judiciary and pollster PROETICA

4.9.3 Total Number of the Superior Court Judges Between Provisional and Permanent from 2001 to 2016

Table 4.28 was created for showing the trend of working with provisional judges of the Superior Court of the Peruvian Judiciary from 2001 to 2016. The below Table reveals that the highest hires of provisional judges in the Superior Court were in 2002 (57.3%) and 2001 (54.2%) while in these last years, by 2016 (27.6%) and 2015 (33.3%) were the lowest hires (53.8%). To difference with the high hires of provisional judges for Supreme Court, the Superior Court from 2003 works with a low number of provisional judges however there is not a trend that this will go on decrease. In addition, the media of the total number of provisional judge (40.4%) is lower than of the permanent judges (59.6%).

Table 4.28 Comparison Between the Percentage of Judicial Corruption and the Hiring of Provisional Judges of Superior Court

YEAR	SUPERIOR COURTS				TOTAL JUDGES
	PERMANENT		PROVISIONAL		
	f	%	f	%	
2001	214	45.8	253	54.2	467
2002	191	42.7	256	57.3	447
2003	279	64.9	151	35.1	430
2004	282	64.2	157	35.8	439
2005	321	66.0	165	34.0	486
2006	330	53.7	285	46.3	615
2007	341	54.6	284	45.4	625
2008	367	56.6	281	43.4	648
2009	432	65.0	233	35.0	665
2010	441	62.4	266	37.6	707
2011	442	62.4	266	37.6	708
2012	409	55.8	324	44.2	733
2013	439	58.5	311	41.5	750
2014	418	54.2	353	45.8	771
2015	514	66.7	257	33.3	771
2016	553	72.4	211	27.6	764

Source: General Management of the Peruvian Judiciary

Likewise, Table 4.29 is created to compare the percentage of judicial corruption and the provisional judges from Superior Court and is seen that there is no correlation between them.

Table 4.29 Comparison Between the Percentage of Judicial Corruption and the Hiring of Provisional Judges of Superior Court

	2002	2003	2004	2006	2008	2010	2012	2013	2015
Judicial corruption perception	73.0	74.0	70.0	66.0	61.0	38.0	56.0	49.0	47.0
Provisional judge from Superior Courts	57.3	35.1	35.8	46.3	43.4	37.6	44.2	41.5	33.3

Source: General Management of the Peruvian Judiciary and pollster PROETICA

4.9.4 Total Number of the First Instance Court Judges Between Provisional and Permanent from 2001 to 2016

Table 4.30 was created for showing the trend of working with provisional judges from the First Instance Courts of the Peruvian Judiciary from 2001 to 2016. The below Table reveals that the highest hires of provisional judges in the First Instance Courts were in 2001 (92.6%) and 2002 (69.5%) while in 2005 (33.1%) was the lowest one. Just for the years 2003 (48.1%), 2004 (43.5%), 2005 (33.1%), 2006 (46.7%) and 2016 (39.8%) the percentage of number of provisional judges was not greater than permanent ones. Likewise, the median of the total number of provisional judges (54.2%) is higher than permanent judges (45.8%).

Table 4.30 Comparison Between the Percentage of Judicial Corruption and the Hiring of Provisional Judges of First Instance Courts

YEAR	FIRST INSTANCE COURTS				TOTAL JUDGES
	PERMANENT		PROVISIONAL		
	f	%	F	%	
2001	40	7.4	503	92.6	543
2002	247	30.5	564	69.5	811
2003	422	51.9	391	48.1	813
2004	456	56.5	351	43.5	807
2005	585	66.9	290	33.1	875
2006	522	53.3	458	46.7	980
2007	483	47.8	527	52.2	1010
2008	467	40.5	685	59.5	1152
2009	498	40.3	737	59.7	1235
2010	491	37.6	814	62.4	1305
2011	452	34.3	867	65.7	1319
2012	575	41.2	820	58.8	1395
2013	650	46.5	749	53.5	1399
2014	658	45.3	793	54.7	1451
2015	825	54.3	693	45.7	1518
2016	959	60.2	635	39.8	1594

Source: General Management of the Peruvian Judiciary

On the other hand, Table 4.31 is created to compare the percentage of judicial corruption and provisional judges from First Instance Courts. The finding for this Table is that there is no correlation between these variables.

Table 4.31 Comparison Between the Percentage of Judicial Corruption and the Hiring of Provisional Judges from the First Instance Courts

	2002	2003	2004	2006	2008	2010	2012	2013	2015
Judicial corruption perception	73.0	74.0	70.0	66.0	61.0	38.0	56.0	49.0	47.0
Provisional judge from First Instance Courts	69.5	48.1	43.5	46.7	59.5	62.4	58.8	53.5	45.7

Source: General Management of the Peruvian Judiciary and pollster PROETICA

4.9.5 Total number of the Court of Peace Judges Between Provisional and Permanent from 2001 to 2016

Table 4.32 was created for showing the trend of working with provisional judges from the Court of peace of the Peruvian Judiciary from 2001 to 2016. The below Table reveals that the highest hires of provisional judges in the Court of peace were in 2001 (97.8%) and 2011 (72.7%) while in 2005 (33.1%) was the lowest one. Just for the years 2003 (48.1%), 2004 (43.5%), 2005 (33.1%), 2006 (46.7%) and 2016 (39.8%) the percentage of number of provisional judges was not greater than permanent ones. Besides, the median of the total number of provisional judges (61.7%) is higher than permanent judges (38.3%).

Table 4.32 Comparison Between the Percentage of Judicial Corruption and the Hiring of Provisional Judges of Court of Peace

YEAR	COURTS OF PEACE				TOTAL JUDGES
	PERMANENT		PROVISIONAL		
	f	%	f	%	
2001	5	2.2	226	97.8	231
2002	155	40.8	225	59.2	380
2003	190	50.4	187	49.6	377
2004	201	53.3	176	46.7	377
2005	241	55.1	196	44.9	437
2006	206	42.8	275	57.2	481
2007	166	34.8	311	65.2	477
2008	138	27.6	362	72.4	500
2009	136	26.7	374	73.3	510
2010	119	20.5	462	79.5	581
2011	162	27.3	431	72.7	593
2012	226	35.9	403	64.1	629
2013	212	33.8	415	66.2	627
2014	254	40.8	369	59.2	623
2015	346	53.8	297	46.2	643
2016	348	54.4	292	45.6	640

Source: General Management of the Peruvian Judiciary

Table 4.33 is created to compare the percentage of judicial corruption and provisional judges from Court of Peace which reveals that there is no correlation between these two variables.

Table 4.33 Comparison Between the Percentage of Judicial Corruption and the Hiring of Provisional Judges from the Courts of Peace

	2002	2003	2004	2006	2008	2010	2012	2013	2015
Judicial corruption perception	73.0	74.0	70.0	66.0	61.0	38.0	56.0	49.0	47.0
Provisional judge from Court of Peace	59.2	49.6	46.7	57.2	72.4	79.5	64.1	66.2	46.2

Source: General Management of the Peruvian Judiciary and pollster PROETICA

CHAPTER 5: SUMMARY, IMPLICATIONS AND POLICY RECOMMENDATIONS

5.1 Introduction

This chapter will discuss and summarize the different findings from questionnaire and interviews referring to the study frame of adopted in this study. Also, it deals with the policy implications drawn from the research on the corruption in the judicial system, particularly with the corrupt practices committed by the provisional judges and the recommendations.

Indeed, this chapter involves the policy implications, under the comments of the researcher regarding the different findings of the study compared to the initial hypothesis and objectives of the research. And the recommendations are policy suggestions for the parties involved in the development of the justice system.

5.2 Summary of the Findings

This research that aimed at analyzing to the figure of provisional judges and its relation to corruption in the Peruvian judicial system which has come up with major findings ranging from highlights of the key concepts of judicial corruption and provisional judges, their relationships, factors that increase corrupt practices by judges, especially by provisional judges. It has also led to the clarification of the delicate situation of the provisional judge in the judicial field and allowed identifying various factors that make them vulnerable to corruption in courts.

In relation to with the different perceptions regarding the implications of corruption in the justice system, as this has been seen there were some

points in which the parties did not coincide above all from the point of those who receive the service of justice and those who provide it, especially with regard to low salaries and the protection of undue political influences.

So far, corruption within the judicial system is still latent and high until these days (83.6%), according to the results obtained from agencies Transparency International and the national agency Proetica by which the Judiciary is among public institutions perceived to be most corrupt and being considered a serious problem by the participants. However in a positive perspective, they also mentioned that corruption has been reduced in comparison of previous years.

After determining the existence of corruption in the courts, the research tried to find out the different factors that are contributing to corrupt practices. In this way, some main causes have been identified as the deficiency in selection and promotion system as well as undue political influences, and influence peddling whereas the low salary, in general, does not have much influence. Nevertheless, when comparing the three groups is observed that both judges (83.3%) and court clerks (65.0%) think that the low salary do highly influence corrupt practices, unlike lawyers (almost 30.0%) who in their opinion that is not necessary, hence the trend of the overall result.

From another perspective, several indicators have been identified as highly contributing to corruption in judicial system between them, the appointments perceived as resulting from political patronage as well as one of the main findings of the research is that the undue political interference is considered to be most prevalent in Peruvian judicial system with 76.4% of the respondents believing there is a high incidence of cases of corruption under this modality occurring within the judicial system and later, bribery (69.3%).

In this context, why our judges become corrupt can be explained by diverse factors. However, the research targeted a certain number of aspects including, for instance, the ambition of becoming in rich as quickly as

possible (81.4%) as the main cause. With respect to this, it not only implies the payment of low salary but a more subjective aspect of the judge, the ambition and his lack of values, that's why the next main reason of becoming corrupt one is the enjoyment of his/her absolute power, taking advantages of his/her position as well as the lack of ethic and moral. This is summed up in the adage "absolute power corrupts absolutely".

Cases involving bribery very often also involve to the judges. Thus, addressing the motives behind bribery a high number of participants mentioned that they prefer to pay to get an accelerated process/ procedures (82.1%) as well as to get preferential treatment/privileges and best result (72.1%). Likewise, different actors from within and outside judicial systems can seek to undue interference such as political intervention in the judicial process, so it look like decisions of judges run by a few big political interest (72.9%). While on the other hand, in opinion of lawyers (50.0%) agree that judges are protected from interference by the executive and legislative branches, in contrast with the judges (66.7%) and the court clerk (70.0%) who mentioned that judge is not fully protected.

In fact, talking about of types of judges in our judicial system, certainly provisional and permanent judges have the same duties and responsibilities. Nevertheless, provisional judge is not appropriately trained in order to carry out justice in a fair and unbiased manner which makes us consider, in the opinion of one of the interviewees, that it is not logical that the judiciary invest in a staff that is only temporary and will not be useful in the future because of his instability in the charge. It goes in line with the dissatisfaction of the lawyers for the cases resolved by the provisional judges.

Additionally, there is nothing wrong with appointment based on merit which means the best person for any given job, however 81.6% participants believe that provisional judges are not appointed on the basis of their merits, but yes because of personal relationship based on friendship and kinship

(46.0%) and undue political interference (38.1%) from a total of 63 respondents. Another feature that involves the provisional judges is the insecurity of the tenure (76.3%) by which judges are threatened with arbitrary termination of their contracts and to be dismissed in a fair and unbiased manner (84.2%); in addition, the salary that they gain is not the same as a permanent judge that's why they look for other sources of income (81.6%) according this last one with the opinion of judges and court clerk.

And the most worrying thing is that they can be influenced from undue political interferences. With regard to this last extreme, a large opinion of all of the groups mentions that provisional judges are more vulnerable to corruption than permanent ones and it is because of the lack of security of tenure (66.4%), temporary position (65.0%) and because they are appointed, in many of their cases, by political interests or favors (57.9%) and transferred (60.7%). However, it is striking that the salary is not a predominant factor for the provisional judges in the commission of acts of corruption. This last result was compared between the three groups, in which both the judges (77.8%) and the court clerks (80%) thought that if it was an important factor, in contrast to the opinion of the lawyers (57.1%), by which this majority tendency was obtained.

Likewise, according to information given by the General Management of the Peruvian Judiciary from 2001 to 2006, of the total of judges working in the judicial system, there is a high percentage of provisional judges (52.3%) working in the Courts, which have a higher incidence in the Supreme Courts (62.4%), followed by the Court of Peace (61.7%) and the First Instance Courts (54.2%), whereas in the Superior Court the situation is different, with a percentage of provisional judges (40.4%) lowest than permanent ones (59.6%). Besides, it should be taken into account that in the opinion of participants the highest level of corruption can be found in the First Instance Courts (37.5%) followed by the Court of Peace (27.9%)

from a total of 272 participants as well as in criminal courts (31.9%) and civil courts (17.2%) from a total of 332 respondents.

Finally, the most delicate part is on one side where almost 38% of provisional judges are bribing those who seek justice in their courts, while at the same time they are bribed by lawyers (25%).

5.3 Implications

After presenting, analyzing and interpreting the results collected from the survey and the interviews, the initial assumptions made in the beginning of this paper are in line with the major findings of the research. Those assumptions implied there are factors that make the provisional judges more vulnerable front of acts of corruption.

Diverse factors were discussed in the fourth chapter and asked participants to explain the reasons why corruption is still in the judicial system. Among those factors, those related to the mechanical aspect or material resources (appointments, judicial actors, equipment, group of power and others) seem to be easier to manage compared to those related to social perspectives (ethics, moral, values, etc) are obviously more complex to deal with. As a result, those aspects will take a big effort and compromise from judges, court clerks, and lawyers in order to tackle corruption in Peruvian courts.

There is broad consensus that corruption in the court system is pernicious and should be reconsidered because even though there are anti-corruption policies does not guarantee the reduction or elimination of judicial corruption. From a point of material resources, the results of the study shows that corruption in court is latent, is a serious issue since there is an excessive workload due to insufficient personal and inadequate and/or antiquated equipment coupled with a slow judicial process, a low budget allocations and other which promote corruption in courts. Consequently, one of its implications entails the hiring of provisional judges in order to reduce the

judicial backlog at a low cost (low salaries), risking independence and impartiality of the judicial system.

Similarly, from a point of social or behavioral perspective, the results of this paper shows that reason why judges commit acts of corruption are because of the ambition to become in rich as quickly as possible and the absolute power that they enjoy for taking the final decision. So, since that provisional judges are not enjoying security of tenure and they are in a temporal position beside of a low salary in comparison of titular judges, is tentative to say that they can take advantages of this conditions to commit corrupt acts.

Another important issue to address is the appointment and recruitment of provisional judges. Since they are not appointed by the National Council of the Judiciary under a national contest, and being hired by the president (s) of the Supreme Court and Superior Courts, therefore that cannot be guaranteed that only the highest quality of applicants are selected, with the commitment to solve the problems of society in a fair and clear process and not only because of "career goal" and "personal and professional development" according to findings in Table 4.18 related to the interest of candidate to become in a provisional judge. In addition, this prevents judges from feeling indebted to those who appointed them, either from internal influences (from the Judicial Branch) or external (executive or legislative).

Taking into account the above mentioned, the provisional judges are more likely to be influenced by political groups as well as to be bribed or ask for bribes, according to the results obtained in Table 4.22, which implies maintaining or increasing the level of corruption in the justice system.

In short, there are several issues to address in the Peruvian judicial system in order to better the independence and impartiality of the Courts and restore the confidence of citizens by this institution. Therefore, different

recommendations are given in order to solve the present problems and fill the gaps presented by the justice system.

5.4 Recommendations

Based on the findings of this paper, one of the principal recommendations of the researcher is taken from this idea: "the exception must not become a rule". The recruitment of provisional judges is given only for exceptional cases such as illness, maternity or other circumstances that are not related mainly to the reduction of the excessive workload otherwise, the misuse of this figure puts at risk the independence of the system of Justice.

And while it is well known that the hiring of provisional judges will not be reduced in the short term as it is expected however, temporary measures may be taken so that their final decisions are not influenced because of bribery or undue political interference which undermines in wide range our justice system. Therefore the next recommendations are provided to be taken them in a general and specific perspective.

In a General Perspective

- Provide sufficient financial resources, which should be aimed primarily at solving the shortage of personnel and material resources.
- Improve planning and monitoring of the financial resources, in order to avoid the deviation of public funds, under a monthly evaluation.
- To improve and strengthen the internal control organs in order to detect cases of corruption committed especially by judges; these control bodies must also be composed of persons outside the judiciary in order to avoid "cronyism" between the parties.

- Increased transparency and accountability.
- Increase training of jurisdictional staff.
- Avoid personal interviews between judges and litigants or lawyers, being the only option when scheduling a single date between parties which has the character of public.
- The increase of the appointments by the National Council of the Magistracy, particularly by the diverse specialties and sub specialties existing in the justice system.
- Greater cooperation and strengthening among the parties involved in judicial cases, judges, prosecutors, lawyers, litigants and others in order to avoid the promotion of corruption.
- The strengthening of the disciplinary framework against the judges as well as its rigorous application.
- Strengthen public ethics and promotion of ethical standards.
- Strengthen the complaints process in cases of judicial corruption and to avoid their cumbersome and bureaucratic rules and procedures.
- Separation immediately of judicial officials who commit acts of corruption from judicial system
- Greater participation of the bar associations, to permanently suspend the lawyers who in their performance as a judge commit acts of corruption.
- Education on corruption issues especially judicial corruption.
- Greater participation of the media to foment cases of corruption in the Judiciary.
- Promote the signing of inter-institutional agreements for access and exchange of information with other public entities.
- Increased police protection for judges in controversial cases, especially in the criminal area.
- Consolidation of citizen participation.

- Develop projects for control, monitoring and evaluation related to anti-corruption measures with international judicial cooperation.
- Create working tables with citizens who were coerced by judges, especially provisional ones, to perform corrupt practices.
- Publish a list of corrupt officials in the various public institutions, especially judges, and all those who have promoted corruption.
- Develop institutional mechanisms to prevent intimidation of judicial officials, in particular judges.
- Create anti-corruption modules in all judicial places.

In a Specific Perspective

- Progressive reduction in the recruitment of provisional judges, especially in First Instance Court and Court of peace judges as well as of the criminal specialty.
- They are appointed in a public contest of the jurisdiction in which they participate, having as main requirements, that they are not related with any members from Judiciary, Executive and Legislative Branch, based in the meritocracy as well as faultless conduct.
- The appointment of the provisional judges not only be in responsibility of the heads of the Judiciary, but also with the participation of the bar association of the jurisdiction or a representative of the oldest university of the place or the society represented by The Ombudsman's Office.
- Permanent training to provisional judges, because even though they are temporary, they perform the same tasks as a permanent judge.

- Elaboration of an especial monitoring and evaluation system for provisional judges.
- Constant monitoring of the work performance, by the internal control organs as well as the society.
- A measurement of the performance of the provisional judges, through regular surveys in all judicial places.

CHAPTER 6: LIMITATIONS AND CONCLUSION

6.1 Introduction

This chapter is the last part of the current research that includes the limitations and obstacles that were appearing in the elaboration of this project from the beginning to the end. Likewise this paper gives a briefly conclusion of the study because during the development of the paper were given some conclusion and implications which are joined in this part.

6.2 Research Boundaries and Limitations

Several limitations were found during the development of this thesis. First of all, the particular nature of corruption, especially judicial corruption is a limitation in itself because most of the corrupt practices are hidden from the viewer and therefore a small portion are just exposed, making vary the opinion of the interviewees. This limitation has often led researchers to rely on survey data of public perceptions, therefore this study try to use questionnaires and interviews face to face in order to identify the prevailing context in where the corruption is given in the Judiciary and particularly, those corrupt practices committed by provisional judges.

On the other hand, judges and court clerk were particularly difficult to interview and ask for filling the questionnaires, one-on-one, on account of their busy schedules. Besides, some of the surveys were left to them however these were not returned or partially completed, so they were discarded.

Lawyers were not easily accessible since that some demanded money before answering questions while others expressed apathy in supporting this research.

Likewise, the survey contained many questions some of which needed explanations for rational answers to be given to them however a few of the participants misunderstood the purport of the questions and therefore those questionnaires also were discarded.

6.3 Conclusion

The judge is the focal point for reducing corruption within the justice system. The responsibility of the Judges is not only confined within the application and interpretation of the law, but likewise they are expected to rule against corruption as the citizens are expecting for a clean and fair judicial system. Judges are expected to be fair at all times, and they should be working under an independent judicial system, free from all undue outside pressures and influence. So, it is the duty from government and any institutions to respect the independence of the Judiciary, focused on the figure of the judge which, without any influences or pressures, threats or undue interference will decide every judicial decision impartially

This research conducted on the corrupt practices in the Peruvian judicial system by judges, particularly the provisional judges has let to better understanding the actual situation of corruption in courts and provisional judges and some other of their implications. Those theoretical highlights and the responses of the different groups (judges, court clerk and lawyers who had interacted with the judicial system have allowed us come up with the conclusion that the provisional judges are more likely to commit corrupt practices because of the lack of security in the tenure and temporary position as well as they are appointed in an irregular process which could motivate them to "owe favors" to those who selected them, and the low salaries, although the opinion about that is divided because a good percentage of the lawyers believe that this would not be an important factor to consider for the commission of illegal practices.

Finally, adding to the academic works on the issue of public administration in Peru, this study notes the importance of periodic evaluations to identify factors of corruption in the judicial system in order to improve the public administration mechanisms. It also draws attention to the necessity of close collaboration between the society and the other public's institutions in order to strengthen the Peruvian justice system.

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APPENDIX I

SURVEY

Good morning/ afternoon, Sir or Madam. I am Carolina Lui Lam a MPA student of the Graduate School of Public Administration, Seoul National University. Republic of Korea. The purpose of this study is to assess the provisional judge relation with the corruption in the Peruvian Judiciary. These questions are to ensure that we have representative sample, but they will not be used to identify you. I would like to assure you that all the information we collect will be kept in the strictest confidence, and used for research purposes only. The information you have provided can help in making stronger our Peruvian Judiciary and improve our justice system. I would like to thank you so much for your cooperation, time and help in advance.

SECTION A: RESPONDENTS INFORMATION

Generic questions to categorize respondents:

- 1. Social classification:** () Judge () court clerk ()lawyers
- 2. Gender:** () Female () Male
- 3. In which age group are you?** (18–24/25–34/35–44/45–54/55–64/65 and above)
- 4. For how many years have you been practicing?**(1–4/5–9/10–14/15 and above)

SECTION B: CORRUPTION IN JUDICIARY

Please indicate whether you agree or disagree with the following statements about the corruption in the Judiciary. (Mark one response per statement for each case)

Statements: Perception of corruption in the judicial system		Strongly agree	Agree	Neither Agree Nor Disagree	Disagree	Strongly Disagree
		5	4	3	2	1
5.	Corruption exists in the judicial system					
6.	Corruption in the judicial system has been reduced compared to previous years					
7.	Corruption is a serious issue in judicial system					

SECTION C: CAUSES, INDICATORS AND TYPOLOGY OF CORRUPTION IN JUDICIARY

Please indicate whether you agree or disagree with the following statements. (Mark one response per statement for each case)

Statements: The following factors are important in spreading corruption in the Judiciary		Strongly agree	Agree	Neither Agree Nor Disagree	Disagree	Strongly Disagree
		5	4	3	2	1
8.	Slow judicial processes					
9.	Excessive workload due to insufficient personnel and inadequate and/or antiquated equipment					
10.	Influence peddling					
11.	Undue political influence					
12.	Low salary					
13.	Deficiencies in selection and promotion system					
14.	An increase in collusive behavior among the parties demanding a legal or illegal					

	service from a judicial actor					
15.	Lack of personal values of judges or misconduct of judges					
16.	Inadequate penalties for corruption					
17.	Poor professional competence					
18.	Cultural environments that approve corruption					
19.	Lack of transparency in the court administration and court procedures					
20.	Sensationalist/exaggerated media reports					
21.	Lack of moral criteria in appointments					
22.	Lack of a good Budget allocation					
23.	Few mechanisms for internal and external control					
24.	The absence or malfunction of monitoring body					
Statements: The following corruption indicators are appearing often in the Judiciary		Strongly agree	Agree	Neither Agree Nor Disagree	Disagree	Strongly Disagree
		5	4	3	2	1
25.	Delay in the execution of court orders					
26.	Prisoners not being brought to court					
27.	Lack of public access to records of court proceedings					
28.	Disappearance of files					
29.	Unusual variations in sentencing					
30.	Delay in delivery of judgments					
31.	Prejudices for or against a party witness, or lawyer (individually or as member					

	of a particular group)					
32.	Appointments perceived as resulting from political patronage					
33.	Frequent socializing with particular members of the legal profession					
Statements: The following types of corrupt conduct are occurring frequently in the judiciary either directly or through an intermediary		Strongly agree	Agree	Neither Agree Nor Disagree	Disagree	Strongly Disagree
		5	4	3	2	1
34.	Bribery (request)					
35.	Bribery (offers)					
36.	Political interference/ undue political influence					
37.	Extortion of judicial professions					
38.	Misuse of funds					

SECTION D: CORRUPTION AND JUDGES

There are good judges out there, but sadly there are quite a few bad ones as well. This section will help us to know your perception on judicial corruption and judges. Please indicate whether you agree or disagree with the following statements. (Mark one response per statement for each case)

Statements: Reasons why judges commit acts of corruption	Strongly agree	Agree	Neither Agree Nor Disagree	Disagree	Strongly Disagree
	5	4	3	2	1
39.	Low salaries				
40.	The ambition to become in rich as quickly as possible				
41.	No ethics or moral				
42.	Enjoy absolute power because of his/her position				
43.	Unclear laws which create gaps to take advantage of and commit acts of corruption				

44.	The lack of proper training which leading a poor legal reasoning					
Statements: The following ones are the motives behind bribery to the judges		Strongly agree	Agree	Neither Agree Nor Disagree	Disagree	Strongly Disagree
		5	4	3	2	1
45.	There is no other way to get things done					
46.	To get preferential treatment/privileges and best results					
47.	To speed up the judicial process					
48.	The practice of obligatory payments to the judges					

Statements: Undue political influence and judges		Strongly agree	Agree	Neither Agree Nor Disagree	Disagree	Strongly Disagree
		5	4	3	2	1
49.	Judges are protected from interference by the executive and/or legislative branches					
50.	Decisions of judges run by a few big political interests					

51. In your opinion, where do you think is the highest level of corruption in the judiciary? (At the level of judges)(Mark one or more response)

LEVELS		
Supreme Court	5	
Superior Courts	4	
First instance courts	3	
Court of peace	2	
There is no corruption in this system	1	

52. In your opinion, in which specialized courts of the Judiciary do you think is the highest level of corruption? (At the level of judges)(Mark one or more response)

TYPES		
Civil	6	
Commercial	5	
Administrative	4	
Criminal	3	
Constitutional	2	
Labor	1	

SECTION E: PROVISIONAL JUDGES

This section will help us to know your perception on provisional judges. The definition of provisional judge for this survey is: *“Provisional” judges are those who do not enjoy of the security of tenure in their positions and can be freely removed or suspended, coupled with the fact that they are not appointed by an independent body to occupy their positions of provisional ones.* Please indicate whether you agree or disagree with the following statements. (Mark one response per statement for each case)

SUB SECTION E 1: FOR JUDGES AND COURT CLERKS

Statements: The applicants are interested in becoming provisional judges because of:		Strongly agree	Agree	Neither Agree Nor Disagree	Disagree	Strongly Disagree
		5	4	3	2	1
53.	Prestige of the office					
54.	Public service					
55.	Career goal					
56.	The role of the judge as decision-maker and problem-solver					
57.	Personal and professional development					
58.	Salary					
59.	Respect in the community					
60.	Pension					
61.	Sense of collegiality					
62.	Intellectual satisfaction					
63.	Others (Specify)					

QUESTIONS		Option	Response
64.	Do permanent and provisional judges have the same duties and the same responsibility?	YES	1
		NO	2
65.	Are provisional judges appropriately trained in order to carry out justice in a fair and unbiased manner?	YES	1
		NO	2
66.	Are provisional judges appointed based always on fair and merit based competitive scheme?	YES	1
		NO	2
67.	Does the system provide for security of tenure to prevent provisional judges being threatened with arbitrary termination of their contract?	YES	1
		NO	2
68.	Are there regulations protecting provisional judges from undue political influence?	YES	1
		NO	2
69.	Are provisional judges dismissed in a fair and unbiased manner?	YES	1
		NO	2
70.	Provisional judges' salaries are sufficient without having to resort to other sources of income	YES	1
		NO	2

71. If your answer is NO in the question 66, which are the other criteria for appointing provisional judges? (Mark one or more response)

Personal relationships based on friendship and kinship	4	
Political interference/ undue political influence	3	
Sale of official positions	2	
Others (Specify)	1	

SUB SECTION E2: LAWYERS

QUESTIONS		Option	Response
72.	Are provisional judges appropriately trained in order to carry out justice in a fair and unbiased manner?	YES	1
		NO	2
73.	In case where you participate as a party to litigation, did the provisional judge decision satisfy the controversy of your case? (*)	YES	1
		NO	2
74.	The Judiciary should still work with provisional judges (*)	YES	1
		NO	2

(*)Briefly explain your reasons:.....

SECTION F: CORRUPTION AND PROVISIONAL JUDGES

This section will help us to know your perception on corruption and any relation with provisional judges.

QUESTIONS		Option	Response
75.	Are provisional judges more vulnerable to corruption than permanent judges?	YES	1
		NO	2
76.	Are provisional judges more vulnerable to corruption because of lack of security of tenure?	YES	1
		NO	2
77.	Are provisional judges more vulnerable to corruption because of low salaries?	YES	1
		NO	2
78.	Are provisional judges more vulnerable to corruption because of temporary position?	YES	1
		NO	2
79.	Do you know if there are provisional judges threaten plaintiffs with any reason to collect bribes?	YES	1
		NO	2
80.	Have you tried to bribe to provisional judge?	YES	1
		NO	2
81.	Are provisional judges appointed in return for political favors?	YES	1
		NO	2
82.	Are provisional judges promoted in return for political favors?	YES	1
		NO	2
83.	Are provisional judges transferred in return for political favors?	YES	1
		NO	2

84. Please include any additional comments or concerns

.....

Thank you for participating in this survey!

APPENDIX II

INTERVIEWED 1⁴¹

1. What are the most urgent problems to solve in the Peruvian Judiciary?

There are 2 kinds of problems:

1. Logistics management and
2. Jurisdictional

Regarding to the first one, a comfortable work environment in which you do not have to worry about the lack of office supplies and others, this is in a few words deplorable. There should be a step forward in the management of material resources to provide better customer service.

With respect to the Jurisdictional problems, each year a production standard is set for judges. This standard is often fixed with the index of heavy case-load which does not consider the time factor and that each year increases the number of judicial cases, in this context it is unviable to meet the set goals.

Also, if more courtrooms are created in order to solve the heavy case-load is impossible due to the low budget allocation. The centralization of judicial processes in the capital of the country, as well.

2. How do you assess Management's Effectiveness in the Peruvian Judiciary?

It is very bad. The authorities are not sufficiently trained to handle the issue of Management in the Judiciary. These authorities are not manager if not only lawyers.

The main management problems are the low hiring of judicial staff and greater training for staff and judges. The issue of scholarships must not be addressed for just "friends" if not for all personnel. In other hand, about the lack of office supplies, old computers, for example, monthly we need to ask for more white papers in order to print out our judicial sentences because the allocated one is not enough.

⁴¹Interview with a permanent judge.

3. Do you think there is corruption in the Peruvian Judiciary? If so, what are possible causes or factors that promote corruption?

Yes, but in a minimum level. We see a judicial scene, where there are two parties in the process and in which the judge will have to issue a fair sentence. Obviously, one party will be given the reason and the other not. It is then where the lawyer of the losing party, in order not to accept that he did a bad job, will say that the Judge is a corrupt.

You might also think that, because of the slowness of the processes, the poor management of the Judiciary, lack of personal values of judges as well.

4. To what extent do you think corruption in the Peruvian Judiciary is linked to judges?

Judges occupy a position of power relative to other actors, so a judge should not abuse his or her positions in order to commit corruptions acts. Likewise, in the handling of the immediate information, not only linked with the judge, but also with the staff who works for him or her. To the extent that, they can provide information on court cases to parties.

5. Do you think there are differences between permanent and provisional judges?

Yes, there are differences between a provisional and a permanent judge. Apart from the difference in salaries, the provisional judges often have "voice but not vote". For example, in the election of some representative of the Judiciary.

In addition, depending on the position, permanent or provisional, permanent judge's work with a full number of staff assigned or more; however, provisional judges work with an incomplete number of judicial staffs.

The training of judges, permanent judges are trained in most of the time unlike the provisional judges.

Therefore, there should be no difference between the provisional and permanent judges, when performing the same jurisdictional functions.

6. Do you think provisional judges are more vulnerable to corruption than permanent judges? If so, to what extent are they more vulnerable to corruption?

No, corruption makes no difference between work statuses; however, certain conditions could facilitate it.

Provisionality could facilitate but it is not decisive factor. A corrupt judge is not a provisional or permanent judge, is the person itself who, in the absence of values, becomes corrupt.

7. Have you ever heard of any cases of corruption, close to you, committed by provisional judges?

Previously, it is necessary to mention that every day acts of corruption are increasingly difficult to verify. And yes, I have heard some cases of corruption, close to my experience like judge. But they were isolated corruption cases; they were for bribes, for few amounts of money as 400 or 500 soles.

8. What would be your suggestions about provisionality in the Peruvian Judiciary?

Provisional judges perform the same functions as a permanent judge, but receive a low salary. The remuneration serves to satisfy the basic needs of people, health and food.

Likewise, in order to appoint provisional judges should be based on meritocracy and not on cronyism or political influences.

Finally, what is needed is to close the gap of the number of provisional judges. The National Council of the Judiciary is annually calling a national contest to close the gap of provisionality, however it is not enough in this last years.

INTERVIEWED 2⁴²

1. What are the most urgent problems to solve in the Peruvian Judiciary?

- Low Budget allocation
- Lack of Training of judges
- The lack of specialization of courts and judges
- High number of provisional judges
- Corruption

2. How do you assess Management's Effectiveness in the Peruvian Judiciary?

It is very bad management, is not being very effective. The people who lead the Judiciary are not qualified for it and when they reached the power obey political criteria.

3. Do you think there is corruption in the Peruvian Judiciary? If so, what are possible causes or factors that promote corruption?

Yes, there are people who have been accused and have become the leaders of the Judiciary.

And about causes or factor: Impunity, Political support and under political pressure groups.

4. To what extent do you think corruption in the Peruvian Judiciary is linked to judges?

The judges take advantage of their position in order to perform improper acts.

5. Do you think there are differences between permanent and provisional judges?

Yes, there is a stress difference between them:

- Hierarchy
- Salary
- Consider officials under Judiciary interests.

6. Do you think provisional judges are more vulnerable to corruption than permanent judges? If so, what extent are they more vulnerable to corruption?

⁴²Interview with a permanent judge.

No, the inclination of corruption is more depending on the judges themselves. However, it could be the lack of independence of the provisional judges to make them more susceptible to corruption than permanent ones.

7. Have you ever heard of any cases of corruption, close to you, committed by provisional judges?

Yes, the closest case was more than 6 years ago with a Supreme Court Judge, Palacios Villar.

8. What would be your suggestions about provisionality in the Peruvian Judiciary?

The provisional judges must be appointed taking into account:

- Morality
- Specialization
- Academic training
- Promoting more the participation of the provisional judges in contests, in order to reach the permanence.

INTERVIEWED 3⁴³

1. What are the most urgent problems to solve in the Peruvian Judiciary?

1.1- Low Budget allocation: Due to the low budget allocated to the Judiciary, this must rent offices in order to place its courtrooms instead of having its own offices. And the lack of office supplies as well. Therefore the judiciary should manage its own budget.

1.2- Lack of legitimacy in the Judiciary by civil society: Mass media affects public opinion, and often considerably magnify the effects of particular corruption cases over all the Judiciary and therefore, the bad image of this institution.

1.3- Low number of judges per population.

1.4- There is not an economic incentive for judicial staff because of their productivity: It is known that the workers' pay is not enough and their efforts are not always recognized by the judicial authorities and therefore, abusive migration of public officials to the private sector is given nowadays, and it is uncontrollable.

2. How do you assess Management's Effectiveness in the Peruvian Judiciary?

It is not good. Who manage the Judiciary are not managers if not simply jurisdictional judges, so, in this logic, they don't know how give solution to administrative trouble in an effective way. In this way, in order to be a Judiciary more efficient, it will be necessary to invest a lot of effort and substantial resources in the implementation of a modern management and so, maintain continuity of the leadership of the court.

3. Do you think there is corruption in the Peruvian Judiciary? If so, what are possible causes or factors that promote corruption?

Yes, but it is not only in the Judiciary if not in all the State. In all the institutions, there are people who are prone to corruption; and with the strong influence of the media on the behaviour and opinions of the civil society make that the impact of corruption on the Judiciary will be all judges are considered corrupts.

⁴³Interview with a permanent judge.

And about of causes or factors that promote corruption are: Excessive workload, strong influence of the media and slowness of the processes.

4. To what extent do you think corruption in the Peruvian Judiciary is linked to judges?

To the extent that judges resolve conflicts, there is always a winner and a loser, and therefore, the loser will claim that the judge is corrupt in order to justify their poor performance during the judicial process.

5. Do you think there are differences between permanent and provisional judges?

Provisional judges are more prone to corruption because they do not have economic stability. They can be bribed. They take advantages of their positions because this last one momentarily gives you different benefits.

6. Do you think provisional judges are more vulnerable to corruption than permanent judges? If so, what extent are they more vulnerable to corruption?

Yes, Insofar as the provisional ones do not have much to lose because they are temporarily in the charge.

They can also be dismissed at any time.

Taking the position of a permanent judge is different from that of a provisional one because the first one is getting in by public contest and the second one, not.

Provisional judges are not trained to take the job.

They don't give serious consideration to follow a judicial career.

7. Have you ever heard of any cases of corruption, close to you, committed by provisional judges?

Not directly, but if it is evident that in the resolutions issued by the provisional judges, they do not conform to minimum legal standard so probably it is due to acts of corruption.

There are cases where it is evident that the judge is deciding in favor of one of the parties without any legal reason. More than 80% of cases of corruption are related to criminal prosecutions.

8. What would be your suggestions about provisionality in the Peruvian Judiciary?

The presidents of each court should not have absolute power to appoint the provisional judges. But at least in each court, provisional ones should be chosen by meritocracy and not by friendship.

The government is not interested in the decadent situation of the Judiciary. The Executive and the Congress keep a weak Judiciary, without budget, submitted to the interests of the executive orders. The State itself harms the Judiciary. So, Laws should be amended to change the status of the Judiciary.

INTERVIEWED 4⁴⁴

1. What are the most urgent problems to solve in the Peruvian Judiciary?

- 1.1 Inadequate budgets for the judiciary
- 1.2 Lack of proper appointment of judges by the National Council of Judiciary.
- 1.3 Lack of human resource development
- 1.4 Lack of an adequate remuneration to the judicial staff.

2. How do you assess Management's Effectiveness in the Peruvian Judiciary?

It is good.

3. Do you think there is corruption in the Peruvian Judiciary? If so, what are possible causes or factors that promote corruption?

I think so but not in all the Judiciary if not in certain sectors. The media magnify some cases of corruption, besides that people do not understand how the justice system works so they think Judiciary is corrupt institution.

One of the causes could be in how the judges are appointed, because not only the academic merits are enough, but their trajectory as a moral person should be considered.

4. To what extent do you think corruption in the Peruvian Judiciary is linked to judges?

Judges give favors to the people who appointed them. Likewise, judges are sentencing in favor of one of the parties under own interests.

5. Do you think there are differences between permanent and provisional judges?

Yes. The provisional judges do not participate much in the decisions of the Judiciary like the Court Plenary and they receive a low remuneration compared to the permanent judges.

6. Do you think provisional judges are more vulnerable to corruption than permanent judges? If so, what extent are they more vulnerable to corruption?

⁴⁴Interview with a provisional judge.

No, it depends on the person and the role in moral values formation.

7. Have you ever heard of any cases of corruption, close to you, committed by provisional judges?

Not personally, but I know of a case 15 years ago when a judge specialized in criminal cases was found asking for money in a restaurant.

8. What would be your suggestions about provisionality in the Peruvian Judiciary?

In order to give a solution to the Supreme Court's heavy caseload, the Judiciary created new courtrooms which have the characteristic of being temporaries or transitory and in where most of the judges are provisional.

These provisional judges have been working for more than 10 years in the Court, so the Supreme Court should be expanded and created more vacancies for judges in the Supreme Court.

INTERVIEWED 5⁴⁵

1. What are the most urgent problems to solve in the Peruvian Judiciary?

- a. Inadequate budgets for the judiciary
- b. Heavy caseload
- c. Insufficient number of courtrooms.
- d. Poor training of judges and judicial staff.
- e. Corruption

2. How do you assess Management's Effectiveness in the Peruvian Judiciary?

It is not so good. The highest management body of the Judiciary is not putting enough effort on the main problems facing this power of the State. The Congress and the Executive should begin by allocating an adequate and sufficient budget.

3. Do you think there is corruption in the Peruvian Judiciary? If so, what are possible causes or factors that promote corruption?

I think so; I would like to say that corruption involves not only the economic but also the political aspect in the Judiciary. And, the other hand, the causes or factors that promote corruption in the Judiciary would be:

- Deficient academic training
- Low salaries
- Political factor (political affiliations or cronyism)

4. To what extent do you think corruption in the Peruvian Judiciary is linked to judges?

The work of judges may be influenced negatively by certain circumstances or factors of political or economic character.

5. Do you think there are differences between permanent and provisional judges?

Yes. The tenure in the position and dramatic salary differences between them.

⁴⁵Interview with a permanent judge.

6. Do you think provisional judges are more vulnerable to corruption than permanent judges? If so, what extent are they more vulnerable to corruption?

Not necessarily, because it will depend on the ethical training of each judge. Provisionality will not necessarily imply vulnerability with a risk of corruption. The security of tenure will also not guarantee the non-commission of acts of corruption.

The possible factors could be: 1. the insecurity in the tenure of the position, and 2. Low remunerations.

7. Have you ever heard of any cases of corruption, close to you, committed by provisional judges?

Yes. In different cases related to economic (bribery) and political factors.

8. What would be your suggestions about provisionality in the Peruvian Judiciary?

In order to select the provisional judges, an adequate and rigorous evaluation, which includes ethics training and legal knowledge, must be carried out.

INTERVIEWED 6⁴⁶

1. What are the most urgent problems to solve in the Peruvian Judiciary?

1. Low Budget allocation
2. Low number of courtrooms
3. Heavy judicial case loads
4. Low number of judges

2. How do you assess Management's Effectiveness in the Peruvian Judiciary?

It's somewhere between the worst and best. Because the management of the judiciary is complex and disorganized; with short and long term solutions that in many cases cause more problems in the Justice Administration itself.

3. Do you think there is corruption in the Peruvian Judiciary? If so, what are possible causes or factors that promote corruption?

Yes, in general corruption is in the eyes of everyone, the act of doing anything in face to corruption.

4. To what extent do you think corruption in the Peruvian Judiciary is linked to judges?

Corruption is typical of people, their uses and customs. It is the person who performs acts of corruption, regardless of their position. The low salary can also be one factor for committing of corruption because it could be not enough to satisfy his needs.

5. Do you think there are differences between permanent and provisional judges?

Yes. Differences remunerative, even though provisional and permanent judges doing same functions, tasks and having same responsibilities in consequences, there should be no difference between them.

6. Do you think provisional judges are more vulnerable to corruption than permanent judges? If so, what extent are they more vulnerable to corruption?

⁴⁶Interview with a provisional judge.

I don't think so, performing acts of corruption is independent of whether a judge is provisional or permanent. Committing acts of corruption lies in the person himself, in his weakness to resist and reject corruption.

7. Have you ever heard of any cases of corruption, close to you, committed by provisional judges?

I know. Yes. Of course what has been public knowledge, yes.

8. What would be your suggestions about provisionality in the Peruvian Judiciary?

Provisional judges should earn the same remuneration when they perform the same duties and have the same responsibilities as a permanent judge.

INTERVIEWED 7⁴⁷

1. What are the most urgent problems to solve in the Peruvian Judiciary?

Low Budget allocation and most entry-level workers are not sufficiently trained for the Judiciary labor.

2. How do you assess Management's Effectiveness in the Peruvian Judiciary?

It is not so good because the Judiciary cannot do anything without a good budget allocation.

3. Do you think there is corruption in the Peruvian Judiciary? If so, what are possible causes or factors that promote corruption?

Yes, because of the low budget for judges and judicial staff besides that litigants are promoting corruption.

4. To what extent do you think corruption in the Peruvian Judiciary is linked to judges?

To the extent that, the decisions of the judicial cases are under the criteria of each judge.

5. Do you think there are differences between permanent and provisional judges?

I think so. Remuneration and security of tenure.

6. Do you think provisional judges are more vulnerable to corruption than permanent judges? If so, what extent are they more vulnerable to corruption?

I think so, because the provisional judges are subject to the order of who appointed them; in this way, if a president, either of the Supreme or Superior Court, gives you his confidence, you are subject to the decisions of that president.

⁴⁷ Interview with a provisional judge.

7. Have you ever heard of any cases of corruption, close to you, committed by provisional judges?

I know. It was provisional judge belonged to the Supreme Court, and who was caught red-handed taking a 300 dollar bribe.

8. What would be your suggestions about provisionality in the Peruvian Judiciary?

Equal pay between a provisional and permanent judge.

INTERVIEWED 8⁴⁸

1. What are the most urgent problems to solve in the Peruvian Judiciary?

1. Low number of judicial staff
2. Training
3. Lack of good management

2. How do you assess Management's Effectiveness in the Peruvian Judiciary?

It is so bad. One can pay attention in the litigant dissatisfaction.

3. Do you think there is corruption in the Peruvian Judiciary? If so, what are possible causes or factors that promote corruption?

I think so, it is through influence peddling

4. To what extent do you think corruption in the Peruvian Judiciary is linked to judges?

Through influence peddling, so why a judge from a superior courtroom has too much interest in a case of another judge who belongs a courtroom of low level?

5. Do you think there are differences between permanent and provisional judges?

Yes. Differences remunerative and specially, provisional judges are more responsible that permanent ones because in the fear of losing their positions, they will try to accomplish the goals set.

6. Do you think provisional judges are more vulnerable to corruption than permanent judges? If so, what extent are they more vulnerable to corruption?

Yes, in the influence peddling.

⁴⁸Interview with a provisional judge.

7. Have you ever heard of any cases of corruption, close to you, committed by provisional judges?

I know. Yes. A friend, a provisional judge, from the Lima Court was found with four thousand dollars.

8. What would be your suggestions about provisionality in the Peruvian Judiciary?

The courts do not need more provisional judges, they need permanent ones and with specialization in the different branches of Law.

INTERVIEWED 9⁴⁹

1. What are the most urgent problems to solve in the Peruvian Judiciary?

1. Lack of training of the judicial staff: Jurisdictional staff does not have a sufficient training in order to keep on updating with the new changes in doctrine and jurisprudence.
2. Low number of courtrooms and/or inadequate resources to execute the job effectively.
3. Lack of adequate employee's workplace environment: Work environment entails its furniture and physical condition under which judicial staff operates. In the Judiciary environment the situation for the staff is complicated because of poor lighting, poor ventilation, poor temperature control or inadequate sanitary facilities are most of the causes for stressful working conditions.
4. The lack of office supplies

2. How do you assess Management's Effectiveness in the Peruvian Judiciary?

It is really poor, not so good. The managers of the Judiciary Management don't coordinate with each other in order to improve the functioning of the courts. Both, the motivation to the personnel as a suitable environment and the respective logistical material help to a better performance of the employees. Management that is not optimal in the administration of justice.

3. Do you think there is corruption in the Peruvian Judiciary? If so, what are possible causes or factors that promote corruption?

I think so, but it is not an only problem of the Judiciary if not also of other public entities or private companies. Corruption is primarily on people and their values.

4. To what extent do you think corruption in the Peruvian Judiciary is linked to judges?

It is reflected in the lack of independence and impartiality in the work of the judges, in the lack of the rule of law, and the prevalence of a clear abuse of right.

⁴⁹Interview with a provisional judge.

5. Do you think there are differences between permanent and provisional judges?

Yes, I think so.

-A permanent Judge is elected through a public contest by the National Council of the Judiciary and his appointment lasts for a period of seven years. After that period he will be subject to an evaluation process for ratification; while a provisional judge is appointed by The President of each Court who takes a list of possible candidates for becoming a judge. Such lists are drawn up by the Executive Council of the Judiciary.

- A permanent judge receives a higher remuneration than the provisional judges.

- A permanent Judge must attend compulsorily the Plenary Chamber convened by the Dean Judge, while the provisional judges don't participate in it.

6. Do you think provisional judges are more vulnerable to corruption than permanent judges? If so, what extent are they more vulnerable to corruption?

I don't think so, because it is dependent on the person and its values.

7. Have you ever heard of any cases of corruption, close to you, committed by provisional judges?

No, I don't know.

8. What would be your suggestions about provisionality in the Peruvian Judiciary?

There must be more public contest in order to have more permanent judges and qualified personnel.

APPENDIX III

TABLES OF TOTAL NUMBER OF JUDGES FROM 2001-2016

LEVELS	To December -2016			
	Types of judges			TOTAL
	Permanent	Provisional		
		Temporary	Substitute	
Supreme Court	19	23	0	42
Superior Courts	553	168	43	764
First instance courts	959	168	467	1594
Court of peace	348	6	286	640
TOTAL	1879	365	796	3040
		1161		

LEVELS	To December -2015			
	Types of judges			TOTAL
	Permanent	Provisional		
		Temporary	Substitute	
Supreme Court	17	25	0	42
Superior Courts	514	190	67	771
First instance courts	825	184	509	1518
Court of peace	346	2	295	643
TOTAL	1702	401	871	2974
		1272		

LEVELS	To December -2014			
	Types of judges			TOTAL
	Permanent	Provisional		
		Temporary	Substitute	
Supreme Court	19	23	1	43
Superior Courts	418	239	114	771
First instance courts	658	182	611	1451
Court of peace	254	3	366	623
TOTAL	1349	447	1092	2888

LEVELS	To December -2013			
	Types of judges			TOTAL
	Permanent	Provisional		
		Temporary	Substitute	
Supreme Court	19	23	1	43
Superior Courts	439	243	68	750
First instance courts	650	182	567	1399
Court of peace	212	3	412	627
TOTAL	1320	451	1048	2819
		1499		

LEVELS	To December -2012			
	Types of judges			TOTAL
	Permanent	Provisional		
Temporary		Substitute		
Supreme Court	18	20	1	39
Superior Courts	409	251	73	733
First instance courts	575	210	610	1395
Court of peace	226	4	399	629
TOTAL	1228	485	1083	2796
		1568		

LEVELS	To December -2011			
	Types of judges			TOTAL
	Permanent	Provisional		
Temporary		Substitute		
Supreme Court	18	20	1	39
Superior Courts	442	219	47	708
First instance courts	452	276	591	1319
Court of peace	162	8	423	593
TOTAL	1074	523	1062	2659
		1585		

LEVELS	To December -2010			
	Types of judges			TOTAL
	Permanent	Provisional		
		Temporary	Substitute	
Supreme Court	15	21	0	36
Superior Courts	441	216	50	707
First instance courts	491	252	562	1305
Court of peace	119	7	455	581
TOTAL	1066	496	1067	2629
		1563		

LEVELS	To December -2009			
	Types of judges			TOTAL
	Permanent	Provisional		
		Temporary	Substitute	
Supreme Court	15	27	1	43
Superior Courts	432	184	49	665
First instance courts	498	273	464	1235
Court of peace	136	5	369	510
TOTAL	1081	489	883	2453
		1372		

LEVELS	To December -2008			
	Types of judges			TOTAL
	Permanent	Provisional		
		Temporary	Substitute	
Supreme Court	17	33	2	52
Superior Courts	367	245	36	648
First instance courts	467	282	403	1152
Court of peace	138	7	355	500
TOTAL	989	567	796	2352
		1363		

LEVELS	To December -2007			
	Types of judges			TOTAL
	Permanent	Provisional		
		Temporary	Substitute	
Supreme Court	17	28	5	50
Superior Courts	341	225	59	625
First instance courts	483	240	287	1010
Court of peace	166	5	306	477
TOTAL	1007	498	657	2162
		1155		

LEVELS	To December -2006			
	Types of judges			TOTAL
	Permanent	Provisional		
		Temporary	Substitute	
Supreme Court	12	29	4	45
Superior Courts	330	214	71	615
First instance courts	522	201	257	980
Court of peace	206	9	266	481
TOTAL	1070	453	598	2121
		1051		

LEVELS	To December -2005			
	Types of judges			TOTAL
	Permanent	Provisional		
		Temporary	Substitute	
Supreme Court	11	29	1	41
Superior Courts	321	125	40	486
First instance courts	585	144	146	875
Court of peace	241	8	188	437
TOTAL	1158	306	375	1839
		681		

LEVELS	To December -2004			
	Types of judges			TOTAL
	Permanent	Provisional		
		Temporary	Substitute	
Supreme Court	14	22	1	37
Superior Courts	282	115	42	439
First instance courts	456	92	259	807
Court of peace	201	3	173	377
TOTAL	953	232	475	1660
		707		

LEVELS	To December -2003			
	Types of judges			TOTAL
	Permanent	Provisional		
		Temporary	Substitute	
Supreme Court	12	25	0	37
Superior Courts	279	116	35	430
First instance courts	422	87	304	813
Court of peace	190	4	183	377
TOTAL	903	232	522	1657
		754		

LEVELS	To December -2002			
	Types of judges			TOTAL
	Permanent	Provisional		
		Temporary	Substitute	
Supreme Court	13	22	1	36
Superior Courts	191	148	108	447
First instance courts	247	109	455	811
Court of peace	155	1	224	380
TOTAL	606	280	788	1674
		1068		

LEVELS	To December -2001			
	Types of judges			TOTAL
	Permanent	Provisional		
		Temporary	Substitute	
Supreme Court	12	22	1	35
Superior Courts	214	155	98	467
First instance courts	40	30	473	543
Court of peace	5	0	226	231
TOTAL	271	207	798	1276
		1005		

국문초록

페루 사법체계의 부패:

임시재판관을 중심으로

Carolina Lui Lam Postigo

행정대학원 글로벌행정전공

서울대학교

사법제도의 부패는 법치를 약화시킬 뿐 아니라, 법의 개인권리보호 기능을 약화시킨다. 그러나 부패척결은 쉽고 빠르게 해결하기 어려운 과업이기에, 적절한 절차에 따라 사법체계가 작동할 수 있도록 사법제도를 관리하는 것은 판사들의 몫이라 할 수 있다. 문제는 페루의 사법제도에서 판사들이 위임 받은 권한을 적절하게 행사하고 있지 않다는데 있다. 본 논문은 페루의 사법체계 안에서 이루어지고 있는 부패 중 임시 재판관들의 부패에 집중하여, 임시 재판관들이 부패행위에 더 취약한지 여부를 연구하였다. 특별히 본 논문은 부패가 페루의 임시 재판관들에게 미치는 영향을 분석하고, 임시 재판관들의 공정성과 사법체계의 독립성을 위협하는 요인들을 살펴보았다.

이러한 연구목적을 달성하기 위해 본 논문은 사법부패 및 임시 재판관에 대한 이론적 배경을 설명하고 관련 개념들을 정의한 뒤, 뇌물과 부당한 정치적 개입이 가장 중대한 사법부패 행위라는 가정

하에 연구를 진행하였다. 가설을 증명하기 위해 본 논문은 재판관, 법원서기, 변호사 등 사법체계와 관련된 사람들을 대상으로 설문조사를 진행하는 한편, 임시 및 정규 재판관들과의 면담을 통해 수집한 자료를 토대로 정성적 분석과 정량적 분석을 진행하였다.

수집된 자료를 분석한 결과, 본 논문은 임시 재판관들이 부패에 더 취약하다는 가설을 입증하였고, 사법부패에 영향을 미치는 내부 및 외부 요인들을 식별하여 사법부패 근절을 위한 제안과 함께 정책적 함의를 제시하였다. 마지막으로 본 논문은 연구목적과 분석의 한계를 간략하게 설명한 뒤, 향후 연구를 위한 새로운 관점을 제시하였다.

키워드: 사법제도, 부패, 임시 재판관, 정규 재판관, 페루

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