

GLOBAL BEST PRACTICES:
A MODEL STATE OF THE JUDICIARY REPORT
*A Strategic Tool for Promoting, Monitoring and
Reporting on Judicial Integrity Reforms*

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Abstract: One of the best ways to promote the implementation of key, priority judicial reforms, particularly those that relate to transparency and accountability in the judiciary, is to democratize the judiciary by providing the public with quality information on the state of the judiciary through annual, systematic, prioritized monitoring and reporting tools. The IFES global research survey revealed that no country, judiciary or organization undertakes this kind of analysis or strategic approach to judicial reform.

Bearing this in mind, IFES has designed a set of eighteen, core Judicial Integrity Principles (JIP) and a model framework to regularly report on the State of the Judiciary and to monitor and compare progress on a set of prioritized principles on a country-by-country and a regional basis.

The JIP represent high priority consensus principles and emerging best practices found in virtually all global and regional governmental and non-governmental instruments and key international case law related to the independence and impartiality of the judiciary. They attempt to capture the current state-of-the-art meaning of the term “judicial independence” and to incorporate and build upon the information and monitoring tools developed by other organizations and individuals.

The State of the Judiciary Report framework revolves around the analysis of the level of compliance with each of the JIP within a specific country context. Among other things, this framework and the country and regional Reports should enable donors, jurists, experts and reformers to (i) identify and implement key reforms within a holistic framework; (ii) develop a short and long term strategy and comprehensive reform program; and (iii) measure reform progress on an on-going basis.

With regard to the latter, we hope that the framework and the corresponding indicators included in this paper will help countries demonstrate that concrete progress is being made to create and support the establishment of a viable, independent judiciary, which is essential to ruling justly, addressing corruption and creating a Rule of Law culture. We invite your comments.

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EXECUTIVE SUMMARY

Global Judicial Integrity Consensus Principles and Best Practices

Both the IFES Judicial Integrity Principles (JIP) and the IFES Model State of the Judiciary Report were prepared over the course of a two-year timeframe, during which IFES organized country and regional workshops and conferences in virtually all regions around the world. It was first presented formally during a Workshop on Judicial Integrity at the 11th Transparency International Global Conference held in Seoul, South Korea, May 25-28, 2003. Panelists and participants at these various workshops and conferences, including judges, international and national human rights monitoring groups, donors and the business community, all strongly endorsed the need for a systematic monitoring and reporting framework as an effective tool to promote judicial integrity, priority transparency and accountability reforms and more public confidence in the judiciary.¹

The JIP represent high priority consensus principles and emerging best practices found in virtually all global and regional governmental and non-governmental instruments and key international case law related to the independence and impartiality of the judiciary. They attempt to capture the current state-of-the-art meaning of the term “judicial independence,” since this fundamental principle is found in virtually all democratic constitutions and many international treaties, guidelines and documents. They also attempt to incorporate and build upon the principles and information contained in important monitoring tools and reports, such as the American Bar Association’s Judicial Reform Index; the Open Society Institute Judicial Independence Accession Reports; the International Commission of Jurists Reports; the US State Department’s Annual Human Rights Reports; the United Nations, OAS and Council of Europe human rights and anticorruption instruments; and the work of Amnesty International and Human Rights Watch.

More than anything else, however, the JIP global framework is geared towards prioritizing judicial reforms and democratizing judiciaries. Global lessons learned tell us that this is one of the key challenges confronting most established and emerging democratic countries over the next several decades and that this is the best way to establish broad-based support for more independent, accountable judiciaries worldwide. The JIP are intended as a global analytical tool designed to annually assess technical and actual compliance with core international and regional standards and to promote a regional and global strategic judicial reform agenda on a country- by-country basis.

The JIP promotes best practices, lessons learned and comparative, systematic research by focusing on and emphasizing a reform agenda aimed at fostering an enabling environment and legal culture necessary for the Rule of Law to take root. For purposes of this paper, “judicial integrity” covers a wide range of independence and accountability issues related to both the institution of the judiciary and judges as individual decision-makers. IFES believes that using the term “judicial integrity” to capture the contemporary, full meaning of judicial independence and then developing a strategic framework around that evolving definition, will help promote the concrete implementation of a fundamental constitutional principle. We believe it will also serve to emphasize how important it is to carefully balance independence and accountability issues and to simultaneously promote prioritized, inextricably linked reforms that also need to be undertaken.

1 These panelists and participants included judges; parliamentarians; representatives of civil society organizations, such as human rights groups and the media; representatives of international organizations, such as the World Bank, the Inter-American Development Bank

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IFES Rule of Law Toolkit

The JIP represent the core framework principles that should be included in any country State of the Judiciary Report. The JIP and this annotated outline for a State of the Judiciary Report are components of the IFES Rule of Law Toolkit, which has been designed to provide civil society, reformers and other stakeholders with standardized and flexible tools to promote and undertake reform. While well-conceived regional and global indexes and reports provide necessary guidance and support to those using them, the key to their proper interpretation is that they take into account the country context within which they are developed.

The guidance provided by the IFES tools is considered to be a work in progress. These tools are designed to integrate and promote evolving regional and international consensus principles. IFES has now formed a small, informal advisory group, the IFES Judicial Integrity Working Group, to refine these tools and methodology. Distinguished members of the working group include Judge Sandra Oxner of Canada, Judge Clifford Wallace of the United States, Chief Justice Hilario Davide, Jr. of the Philippines and Judge Luis Fernando Solano, President of the Constitutional Chamber of the Supreme Court of Costa Rica.

A Model State of the Judiciary Report: Multiple Purposes; Multiple Constituencies

After IFES reviewed a number of judicial reports from around the world, including those promulgated by various judiciaries or human rights groups, the need to design a standardized, structured framework for an annual report assessing the state of the judiciary became very clear. IFES found no model State of the Judiciary Report in any country in the world, including the United States. It also found minimal lessons learned, best practices or comparative information or research, including underdeveloped and non-prioritized judicial and legal reform measurements of progress, such as those under consideration by the new Millennium Challenge Account in the United States.

IFES believes the JIP may be used by civil society and judges to prepare an annual State of the Judiciary Report that could serve to promote high-priority reforms and as a baseline monitoring, reporting and implementation tool for establishing the enabling legal environment to globalize the Rule of Law. These country-specific reports should be written in a participatory process, including the input of civil society, judges and the legal profession. A country's annual report should be as "national" a product as possible, in order to be useful to the local judiciary and local civil society groups. It should also be understandable and accessible to all local stakeholders and include both a technical and applied analysis of the law and practice. At a minimum, IFES hopes the analysis and framework offered here will spark more debate and attention to what has been the most neglected and probably least appreciated institution in the democratizing world.

**IFES Rule of Law Tool:
Multiple Uses of the Annual State of the Judiciary Report**

- (i) Making judicial integrity and justice sector reforms, particularly those related to human rights, higher-priority reform issues across regions;
- (ii) Developing broad-based coalitions and judicial reform strategies around a common justice reform agenda within countries and across regions;
- (iii) Developing strategic concrete action plans designed to implement prioritized justice reforms based on global, regional and country best practices;
- (iv) Presenting prioritized recommendations for the development of strategies and policies and for a legal and judicial reform agenda;
- (v) Providing the public, the media and the broader indigenous and international legal communities with the essential information they need to promote justice reforms and develop public trust in the rule of law;
- (vi) Reporting on justice reform progress or regression through uniform but flexible indicators and monitoring standards that could be used to justify more resources domestically and increased donor and technical assistance;
- (vii) Promoting higher quality empirical research, monitoring and reporting as well as coordinated, strategic action among reformers and international organizations and donors and more peer pressure among all actors in the reform process;
- (viii) Enhancing the importance of the judiciary and the status of judges;
- (ix) Increasing the quality of information on the judiciary and key judicial integrity principles and access to that information;
- (x) Increasing the public understanding of and respect for the judiciary;
- (xi) Providing judges, the legal community, reformers and civil society with the tools and information necessary to advocate for reform and funding domestically and internationally; and
- (xii) Qualifying for donor assistance through the new Millennium Challenge Account and meeting terms of conditionality through the international financial institutions and development banks, such as the IMF, World Bank, IDB, ADB and EBRD, and free trade and anti-corruption conventions and protocols.

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**IFES Rule of Law Tool:
Judicial Integrity Principles, JIP²**

- JIP.1** Guarantee of judicial independence, the right to a fair trial, equality under the law and access to justice
- JIP.2** Institutional and personal/decisional independence of judges
- JIP.3** Clear and effective jurisdiction of ordinary courts and judicial review powers
- JIP.4** Adequate judicial resources and salaries
- JIP.5** Adequate training and continuing legal education
- JIP.6** Security of tenure
- JIP.7** Fair and effective enforcement of judgments
- JIP.8** Judicial freedom of expression and association
- JIP.9** Adequate qualification and objective and transparent selection and appointment process
- JIP.10** Objective and transparent processes of the judicial career (promotion and transfer processes)
- JIP.11** Objective, transparent, fair and effective disciplinary process
- JIP.12** Limited judicial immunity from civil and criminal suit
- JIP.13** Conflict of interest rules
- JIP.14** Income and asset disclosure
- JIP.15** High standards of judicial conduct and rules of judicial ethics
- JIP.16** Objective and transparent court administration and judicial processes
- JIP.17** Judicial access to legal and judicial information
- JIP.18** Public access to legal and judicial information

1. Country Background and Methodology

a. Country Background: Political, Legal and Socioeconomic Context

Assessing the country's political, legal and socioeconomic background is a necessary first step in the monitoring of the state of the judiciary. Pertinent and accurate information on country background will provide the context

2 For purposes of the State of the Judiciary Report, "judicial integrity" covers a wide range of issues related to the independence and accountability of the judiciary, both the institution and the judges as individual decision-makers. IFES has chosen this broad definition of the notion of "judicial integrity" to emphasize the importance of balancing independence and accountability issues and to identify in a systematic way related reforms that need to be undertaken.

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within which the JIP must be complied. Country background information should focus on 5 main areas:

- Political background;
- Legal background;
- Public perception and media coverage;
- Judicial policy; and
- Socioeconomic, cultural and traditional context.

Political Background: Indicators

- Key political developments relevant to the judiciary and judicial integrity;
- Assessment of the level of political commitment to judicial reform and the level of political support for judicial integrity.

Legal Background: Indicators

- Key constitutional and legal changes affecting the judiciary and judicial integrity, especially reforms related to the personal guarantees of independence and impartiality, compensation, liability and discipline;
- Key changes in institutional arrangements affecting the judiciary;
- New standards and international and regional obligations affecting the judiciary and judicial integrity;
- Evolution in judicial practice; and
- Intra-judicial and inter-institutional relations.

Public Perception and Media Coverage: Indicators

- What is the public perception of the judiciary? Of judicial integrity? Of judicial independence?
- Does the public respect the judiciary and judicial decisions?
- Media coverage of judicial issues and of issues affecting the structure and decision-making of the judiciary; and
- Reaction of the judiciary to public perception and media coverage.

Judicial Policy: Indicators

- New policies affecting the judiciary and judicial integrity;
- Responsibility for the development of judicial policies; and
- Responsibility for the implementation of judicial policies.

Socioeconomic, Cultural and Traditional Context: Indicators

- Key developments and context as they affect the perception of the judiciary, judicial independence and judicial integrity.

b. Scope of the Report: the IFES Judicial Integrity Principles, JIP

This report attempts to develop the IFES Judicial Integrity Principles [JIP] designed to serve as guideposts for the drafting of annual State of the Judiciary Reports which would monitor and report on compliance with key principles of judicial independence, judicial accountability, judicial transparency, judicial ethics and enforcement of judgments, and assist in building support for high-priority judicial reforms.

In designing the JIP, IFES relied on a number of international and regional governmental and non-governmental conventions, standards and guidelines, cited in Annex 3, to identify consensus principles and trends. IFES also examined a number of relevant documents and studies including the work of the Open Society Institute (OSI) in monitoring judicial independence, judicial capacity and anti-corruption policy in EU accession countries, the American Bar Association's Judicial Reform Index, the Millennium Challenge Account "Ruling Justly and Anti-Corruption Principles" and work by individuals such as Judge Sandra Oxner. In an effort to expand the analysis undertaken by these organizations and individuals, the JIP are intended as a tool not only to assess compliance with core, consensus judicial integrity principles, but also to identify priority judicial independence and accountability reforms and promote a strategic reform agenda.

IFES is also attempting to building on its own work on judicial independence and the enforcement of judgments, which includes two important groundbreaking comparative reports, entitled *Guidance for Promoting Judicial Independence and Impartiality* and *Barriers to the Fair and Effective Enforcement of Judgments and the Rule of Law*, and promoting the adoption of strategic declarations on judicial independence at conferences hosted regionally in Central America, Southern Africa, the Middle East and North Africa and Francophone West Africa.

c. Multifaceted Methodology

The methodology followed for reporting and monitoring on the State of the Judiciary attempts to incorporate data gathered through quantitative and qualitative indicators and to analyze the data within the broader legal, political, socioeconomic, cultural and traditional context. In gathering and analyzing the data, the methodology relies on a number of tools, including:

- Desk studies of the legal and institutional framework;
 - Review of existing international and regional standards, lessons learned, best practices and research;
 - Surveys of key stakeholders and participants, including judges, lawyers and other members of the legal profession, civil society and human rights groups, media, private sector, users of the courts, and any other stakeholder;
 - In-country interviews of experts and stakeholders;
 - Focus groups.
- **LEGAL ASSESSMENT** including general indicators, to be tailored for each principle monitored, as applicable:
 - Are the necessary laws and regulations in place?
 - Are they implemented and enforced in practice?
 - Are they fairly and effectively implemented and enforced?
 - Have there been legal (or constitutional) interferences with court decisions, judicial independence or judicial integrity?
 - **INSTITUTIONAL ASSESSMENT** including general indicators to be tailored for each principle monitored, as applicable:
 - Which are the relevant institutions?
 - Are they adequately staffed, trained and funded?
 - What initiatives have they taken in support of judicial independence and judicial integrity? Have they played a positive or negative role?
 - How is the requirement of competent, impartial and independent judges implemented?

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- **CIVIL SOCIETY AND MEDIA ASSESSMENT** including general indicators to be tailored for each principle monitored, as applicable:
 - Freedom of association? Freedom of expression? Free media?
 - What relationship does civil society have to the courts? What relationship do the media have to the courts?
 - What initiatives have they taken in support of judicial independence and judicial integrity? Have they played a positive or negative role?
 - What is their capacity to contribute to the promotion and strengthening of judicial independence and judicial integrity?
- **GENERAL CONTEXT AND TRADITIONS ASSESSMENT** including general indicators to be tailored for each principle monitored, as applicable:
 - Which aspects of the historical, socioeconomic and political context and of the legal culture and community/historical traditions are likely to affect, positively or negatively, judicial independence and judicial integrity?

2. Relevant International and Domestic Legal and Institutional Framework

IFES Judicial Independence Principles and Model State of the Judiciary Framework are grounded in:

- International and regional consensus principles and standards of judicial independence and accountability;
- Core international, regional and constitutional obligations;
- A general overview of the relevant country legal and institutional framework.

a. International and Regional Obligations

A list of the main international and regional governmental and non-governmental conventions, guidelines and standards relevant to, *inter alia*, the issues of judicial independence and judicial integrity is attached in Annex 2.³ The survey of relevant international and regional obligations should reflect the following existing instruments, when relevant:

- International and regional human rights treaties and jurisprudence of the international and regional human rights courts and commissions;
- UN Basic Principles for the Independence of the Judiciary (UNBP) and related documents; and
- Non-governmental guidelines, especially declarations adopted by judges as well as the declarations adopted at the IFES conferences on judicial independence in Honduras (April 2002), Malawi (January 2003), Egypt (February 2003) and Benin (January 2004).

b. Constitutional Principles

In presenting the relevant constitutional framework, each country State of the Judiciary Report should include

³ The IFES White Paper on International Judicial Integrity Standards provides an overview of the key international and regional obligations related to judicial independence and integrity which includes human rights treaties, international and regional judicial independence guidelines and principles and case law from human rights courts. This paper is available at IFES (IFES Rule of Law White Paper Series, White Paper # 1, International Judicial Integrity Principles, 2004).

constitutional principles related to the judiciary and judicial integrity principles, including:

- The guarantees of judicial independence, the right to a fair trial and other key principles;
- The recognition of the jurisdiction of ordinary courts and the prohibition of the establishment of parallel courts to strip ordinary courts of their competence; and
- The provision for impartial judicial career processes (appointment, promotion and discipline), including clear criteria.

c. Country Legal Framework

In presenting the relevant legal framework, each country State of the Judiciary Report should include legislation and regulations affecting the judiciary and judicial integrity principles, such as:

- The institutional structure of the judiciary;
- Judicial Council regulations;
- Judicial career processes regulations;
- Anticorruption legislation; and
- Access to information legislation.

d. Country Institutional Framework

In presenting the relevant institutional framework, each country State of the Judiciary Report should present:

- Intra-judicial structures: courts, support services, etc.;
- Extra-judicial structures and governmental relationships: Ministry of Justice, prosecution, ombudsman, lawyers, etc.;
- Judicial Council; and
- Oversight mechanisms.

3. Assessment of the Level of Compliance with the Judicial Integrity Principles

For each of the JIP, this Model State of the Judiciary Framework will present:

- Guidelines based on international and regional standards and best practices; and
- Indicators to monitor the level of compliance or non-compliance.⁴

JIP.1: Guarantee of Judicial Independence, the Right to a Fair Trial, Equality under the Law and Access to Justice

Right to a fair trial: The guarantee of trial by an independent, impartial and competent tribunal established by law is one of the components of the right to a fair trial affirmed in international and regional human rights instruments, both in civil and criminal cases. ICCPR 14; ECHR 6; IACHR 8; ACHPR 26

State guarantee of judicial independence: It is the duty of the State to guarantee judicial independence through constitutional or legal norms and to ensure that such norms are respected. UNBP 1; CoE I (2) (a); UCJ 2; ECSJ 1, 2

⁴ Detailed indicators to assess the level of compliance with each JIP are available at IFES upon request.

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International and regional human rights conventions recognize the right to a fair trial. A number of its components, including judicial independence and due process, as well as broader access to justice issues such as equality under the law, are also recognized under international and regional human rights conventions either explicitly or implicitly.

Guidelines developed to clarify international and regional human rights conventions, as well as the case law of international and regional human rights courts and commissions, show a consensus towards the obligation of State parties to guarantee the rights recognized in the conventions. There is therefore an obligation to guarantee judicial independence and other rights considered as components of the right to a fair trial. This obligation requires both formal guarantees (through constitutional provisions or legislation) and compliance in practice (implementation).

JIP.2: Institutional and Personal, Decisional Independence of Judges

Freedom from interference with the judicial process: There shall be no inappropriate interference with the judicial process, nor shall judicial decisions be subject to revision, except upon appellate review or mitigation or commutation by competent authorities. UNBP 4

Personal independence: Judges shall perform their duties on the basis of facts and in accordance with the law, free from improper influences and without undue delay. They shall ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected. UNBP 2

Perception of impartiality and independence: Judges must be impartial and independent, perceive themselves as impartial and independent and be perceived by the public as impartial and independent.

In terms of judicial independence, there appears to be an international consensus that a combination of the institutional independence of the judiciary as a whole and the personal independence of individual judges in their adjudicative decisional capacity is needed. In order to achieve this double level of independence, it is necessary to insulate the judiciary as an institution and judicial processes from outside and internal interferences. Moreover, judges must not only be impartial and independent in their decision-making, but must also appear as such. Finally, judges must be protected from threats against their physical, economic and career safety as well as that of their families and staff.

JIP.3: Clear and Effective Jurisdiction of Ordinary Courts and Judicial Review Powers

Jurisdiction of ordinary courts: Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction of the ordinary court, which have been granted exclusive authority to decide issues of a judicial nature, within their competence as defined by law. UNBP 3, 5; ICCPR 14; ECHR 6

While extraordinary courts do not constitute in and of themselves an encroachment on the independence of the judiciary, their creation and use should necessarily be limited in order not to abusively oust the jurisdiction of ordinary courts and subject litigants and defendants to unfair trials. Reliance on military and national security courts is of particular concern when used to try civilians, mainly due to the lack of effective due process guarantees provided to the accused in countries in which they are used.

Moreover, the creation of parallel courts or the assignment of jurisdiction of other tribunals such as military or national security tribunals in violation of constitutional or statutory provisions defining the jurisdiction of ordinary courts may constitute a violation of judicial independence, especially to the extent that these tribunals

may not respect legal procedures, statutory and constitutional rights and due process and fair trial principles.

JIP.4: Adequate Judicial Resources and Salaries

Adequate resources: It is the duty of the State to provide adequate resources to enable the judiciary to perform its functions properly. UNBP 7; UCJ 14; Beijing 37

Adequate salaries: UNBP 11; CoE III (1) (b); UCJ 13; Beijing 31

Adequate funding is often lacking for the judiciary, both in terms of the institutional resources and of the remuneration of judges and their staff. Proper funding is a necessary prerequisite of proper judicial conduct, independence and integrity.

JIP.5: Adequate Training and Continuing Legal Education

Training: Persons selected for judicial office shall be individuals of integrity and ability with appropriate training and qualifications in law. UNBP 10, 11 & 13; UCJ 9; CoE I(2)(c); ECSJ 4 & 5; Beijing 11-16

In conversations with judges from countries across the world, the need for adequate initial training and continuing legal education of judges has appeared as a crucial condition for the strengthening of judicial independence. While there is no consensus on the type or form of training, emerging trends seem to support targeted training on specific needs specifically identified by the judges themselves. Clearly, any reform affecting the judiciary should be accompanied by substantial training of the judges as well as other members of the judiciary and legal profession.

Training may be offered on a voluntary or mandatory basis and may extend to all judicial officers or be limited to judges. Training has often been provided through judicial training institutes, which are linked to the judiciary, the ministry of justice or the judicial council to varying degrees depending on the country. While each arrangement has its own advantages and disadvantages, some key principles can be advanced, including the need to involve judges in the training and in the design of curriculum and the importance of covering key topics of ethics and proper management.

JIP.6: Security of Tenure

Tenure: Judges shall have guaranteed tenure until retirement or the expiration of their term of office where such exists. UNBP 12; Beijing 18

Both life tenure and term tenure have their advantages and disadvantages. While there is no consensus as to which is preferable, there does seem to be consensus on the need for terms which are sufficiently long and secure to insulate judges from outside pressure. In a 1999 report on Guatemala, the UN Special Rapporteur on the Independence of Judges and Lawyers noted that five-year terms did not provide sufficient security of tenure to judges and recommended extending the terms to ten years.⁵

5 See, Report of the UN Special Rapporteur on the Independence of Judges and Lawyers, 1999 Visit to Guatemala

JIP.7: Fair and Effective Enforcement of Judgments

Fair and effective enforcement of judgments: Enforcement proceedings are an integral part of the trial for the assessment of the reasonableness of the length of proceedings but also in terms of access to justice, of the right to an effective remedy and of assessing the effectiveness of the fair trial guarantees of the European and Inter-American Conventions of Human Rights.⁶

The European Court of Human Rights has been the most active in defining the limits and contents of the right to a fair trial and judicial independence and has interpreted extensively the provisions of article 6(1). Its case law covers multiple issues affecting both criminal and civil or commercial trials, and while there is no mention of the enforcement of judgments in the ECHR, the European Court recent case law has linked the fair and effective enforcement of judgments to the right to a fair trial within a reasonable time and to the right of access to justice.⁷ In a recent case, the Inter-American Court of Human Rights has also ruled that the failure to enforce final court judgments violated the right to judicial protection and to an effective remedy for violations of rights protected by the Convention under article 25 of the Convention.⁸

JIP.8: Judicial Freedom of Expression and Association

Freedom of expression and association: Judges enjoy freedom of expression, belief, association and assembly, provided that in the exercise of such rights they conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary. UNBP 8 & 9; Beijing 8 & 9

Judges, like any other citizen, should enjoy the freedom of expression and association. Their rights may however be limited to the extent necessary to preserve the independence, impartiality and integrity of the judiciary.

JIP.9: Adequate Qualifications and Objective and Transparent Selection Process

Qualifications and selection: Persons selected for judicial office shall be individuals of integrity and ability with appropriate training and qualifications in law. Any method of judicial selection shall be based on objective factors defined by law, in particular ability, integrity and experience, and shall include safeguards against discrimination and improper influences. UNBP 10, 11 & 13; UCJ 9; CoE I(2)(c); ECSJ 4 & 5; Beijing 11-16

6 See, *inter alia*, *Silvia Pontes v. Portugal*, Judgment of March 23, 1994, Eur. Cour H.R., Series A no.286-A; *Zappia v. Italy*, Judgment of September 26, 1996, Eur. Cour H.R., Reports 1996-IV; *Di Pede v. Italy*, Judgment of September 26, 1996, Eur. Cour H.R., Reports 1996-IV; *Hornsby v. Greece*, Judgment of March 19, 1997, Eur. Cour H.R., Reports 1997-II; *Immobiliare Saffi v. Italy*, Judgment of July 19, 1999, Eur. Cour H.R., Reports 1999-V; and “*Cinco Pensionistas*” v. Perú, Judgment of February 28, 2003, Inter-Am. Ct. H.R., Series C No. 98 (2003)

7 *Hornsby v. Greece*, Judgment of March 19, 1997, Eur. Cour H.R., Reports 1997-II “Article 6(1) ... embodied the ‘right to a court’, of which the right to access, that is the right to institute proceedings before courts in civil matters, constituted one aspect. However, **this right would be illusory if a Contracting State’s domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party.** It would be inconceivable that article 6(1) should describe in detail procedural guarantees afforded to litigants ... without protecting the implementation of judicial decisions; to construe article 6 as being concerned exclusively with access to a court and the conduct of proceedings would be likely to lead to situations incompatible with the principle of the rule of law ... **Execution of a judgment given by any court therefore had to be regarded as an integral part of the “trial” for the purposes of article 6;** moreover, the Court had already accepted this principle in cases concerning the length of proceedings.” [Emphasis added].

8 “*Cinco Pensionistas*” v. Perú, Judgment of February 28, 2003, Inter-Am. Ct. H.R., Series C No. 98 (2003)

International and regional human rights conventions require competent, independent and impartial judges. Entry into the judiciary is controlled by the selection process. In order to guarantee a high degree of integrity and impartiality, judges should be selected according to a transparent, merit-based process which relies on a clear set of objective and subjective criteria and which requires adequate qualifications. There is an emerging consensus for more civil society participation in and monitoring of the judicial selection process, including broader participation from the legal community, in order to depoliticize and legitimize the process and to reinforce the checks and balances on the selecting and appointing entities.

JIP.10: Objective and Transparent Judicial Career Processes (Evaluation, Promotion and Transfer)

Promotion: Any method of judicial promotion shall be based on objective factors defined by law, in particular ability, integrity and experience, and shall include safeguards against discrimination and improper influences. UNBP 10, 11 & 13; UCJ 9; CoE I(2)(c); ECSJ 4 & 5; Beijing 11-16

Guaranteeing an objective and transparent judicial selection process will not protect judicial integrity and independent unless the other processes of the judicial career, especially the promotion and transfer processes, are equally regulated. In order to guarantee a high degree of integrity and impartiality, judges should be evaluated, promoted and transferred according to transparent, merit-based processes which rely on a clear set of objective and subjective criteria and which require adequate qualifications and experience.

There is an emerging consensus for more civil society participation in the general monitoring of the judicial career processes, especially broader participation from the legal community, in order to discourage politicization, to promote professionalism, civil service reform and career incentives and to reinforce the checks and balances on the evaluating and promoting entities.

JIP.11: Objective, Transparent, Fair and Effective Disciplinary Process

Discipline and removal: Judges shall be subject to suspension or removal only for reasons of incapacity or behavior that renders them unfit to discharge their duties. Judges have a right to a fair and expeditious hearing concerning complaints or charges against them as well as to an independent review of the proceedings. All disciplinary, suspension and removal proceedings shall be determined in accordance with established standards of judicial conduct. UNBP 17-20; CoE VI; UCJ 11; Beijing 17, 22-30

In order to guarantee a high degree of integrity and impartiality, the objectivity and transparency of judicial career processes must extend to the disciplinary process. Judges should be disciplined according to transparent processes which rely on a clear set of objective and subjective criteria and which require adequate competence and professional conduct. It is also important that disciplinary actions, offenses and sanctions be clearly defined and fairly implemented in processes respectful of the due process rights of judges.

The disciplinary process must not only be objective and transparent but also fair and effective. Indeed, judges against whom disciplinary charges are brought must be given an opportunity to defend themselves in a fair and speedy hearing in which their due process rights are respected. Disciplinary and other sanctions must be fairly and effectively applied once a breach of discipline has been proven.

JIP.12: Limited Judicial Immunity from Civil and Criminal Suit

Immunity: Judges shall enjoy personal immunity from civil suits for acts or omissions in the exercise of their judicial functions. UNBP 16

Judicial immunity is a very important component of judicial independence in that it protects individual judges from abusive civil, criminal and disciplinary actions. While some degree of immunity is necessary, it should not however be absolute. The scope and limits of judicial immunity must be clearly defined. Moreover, personal immunity does not interfere with the eventual liability of the judiciary as an institution. It is therefore also important to define the role of the State regarding the duty to compensate the victims of judicial errors.

JIP.13: Conflict of Interest Rules

Conflict of interest: The judge must not carry out any other function, whether public or private, paid or unpaid, that is not fully compatible with the duties and status of a judge. UCJ 7
Due to the likelihood of conflicts of interests, aspects of each of the activities listed below are prohibited under the Bangalore Principles and other documents⁹:

- Political party membership
- Position of authority within a political party
- Political office within the executive branch
- Administrative office within the executive branch
- Candidacy in a national, regional and/or local election
- Elected office in parliament
- Elected office in regional representative entities
- Elected office in local government
- Business activities
- Financial interests
- Private practice of law
- Prosecutorial and investigative functions.

Ethical rules and personal restrictions on conduct and activities acceptable from ordinary citizens are necessary to protect judicial independence and impartiality and should be accepted freely by judges. Clear judicial and professional ethical principles must be respected. They should be designed to include, *inter alia*, effective conflict of interest rules which warrant restrictions on the activities undertaken and the interests retained by judges and members of their family.

JIP.14: Income and Asset Disclosure

Asset disclosure: A judge shall make such financial disclosures and pay all such taxes as are required by law. Bangalore Principles, rule 1.23.

In the fight against corruption, financial transparency has become a central issue. Over the last decade, the disclosure of assets and incomes of public officers has become a core issue. This obligation was directed primarily to elected officials, as legislators, and to appointed officials, as well as those in central government. More recently, the issue of the disclosure of assets and income sources of judges has been raised in many countries.

⁹ The degrees to which these activities or only some aspect of them are prohibited vary from one document to the other and among countries. The most comprehensive and detailed effort regarding conflicts of interests and prohibited activities for judges is the Bangalore Principles of Judicial Conduct, which was finalized in 2002 by the United Nations Judicial Group on Strengthening Judicial Integrity following comprehensive consultation of judges around the world.

JIP.15: High Standards of Judicial Conduct and Rules of Judicial Ethics

Judicial conduct: Judges are required to exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the judiciary which is fundamental to the maintenance of judicial independence. Bangalore Principles, rule 1.6

“Many countries have adopted codes of ethics as part of a judicial reform process. Codes of ethics are valuable to the extent that they stimulate discussion and understanding among judges, as well as the general public, on what constitutes acceptable and unacceptable conduct. They may also inspire public confidence that concrete steps are being taken to improve the integrity of the judiciary.”¹⁰

JIP.16: Objective and Transparent Court Administration and Judicial Processes

Judicial administration: Judicial administration should be carried out by an independent body with substantial judicial representation unless another mechanism deeply rooted in tradition exists. The administration of the judiciary must be organized in an objective manner that does not interfere with judicial independence. Case assignment is a matter of internal administration. UCJ 11; UNBP 14.

While it is important to ensure that the judicial career processes are objective and transparent, it is equally important to promote objective and transparent court administration and judicial processes. Transparency in court management, court staff oversight, information management and case assignment will translate in more open judicial processes and judges who are more accountable to the public. In addition, publicity and transparency should be injected into judicial processes in order to increase the awareness of the public and to facilitate monitoring by civil society.

JIP.17: Judicial Access to Legal and Judicial Information

Access to information: In deciding cases, judges are subject only to the law. UCJ 3

Given that judges must decide cases in accordance with the law, they must have adequate and reliable access to legal and judicial information. Available information should include legal and judicial materials likely to affect judicial rulings, legal and judicial materials affecting the status and functions of judges, judicial vacancies, criteria applicable to judicial promotions and disciplinary processes, ethics rules, etc.

JIP.18: Public Access to Legal and Judicial Information

Publicity: Legislation, judicial information and court decisions shall be made available to the public.

The public must have adequate and reliable access to quality legal and judicial information. Available information should include laws, court and procedural information, court decisions, judicial vacancies, criteria applicable to judicial selections, promotions and disciplinary processes, etc.

10 IFES/USAID, *Guidance for Promoting Judicial Independence and Impartiality*, 2001, USAID Technical Publication, available at http://www.ifes.org/rule_of_law/description.html in English, Arabic, French and Spanish

4. Overview of Key Development and Characterized Violations and Abuses: Key Cases Affecting the Judiciary and Judicial Integrity

In the assessment of the level of compliance with the JIP, country State of the Judiciary Reports should include data and anecdotal information to highlight characterized violations and abuses of the JIP as well as possible improvements with respect to the JIP, both formally and in practice, including:

- A summary review of judicial appointments, disciplinary actions and removals of judges made over the course of the year;
- Key abuses and violations of judicial independence, including threats to judges and direct/indirect abuses and interferences as well as threats to journalists, human rights activists, lawyers, judicial personnel and the families of judges. For the purposes of highlighting key abuses and violations of judicial independence, special focus will be put on physical and career safety, judicial corruption, the adjudication and enforcement of judgments against the State, and freedom of speech and association rights;
- Specific cases that showcase impunity or effective redress for specific human rights violations; the lack of judicial independence or proven judicial independence of courts in high-profile cases; relevant cases before regional and international human rights courts and commissions; and
- In-depth analysis of a specific theme, varying yearly, related to judicial integrity or any other specific right under international and regional conventions.

5. Action Plan for Priority Judicial Independence and Accountability Reforms

The analysis of the level of compliance with each of the JIP should enable jurists, experts and reformers to (i) highlight the most important problems; (ii) identify priority judicial independence and accountability reforms and suggested remedies; and (iii) present prioritized targeted recommendations for short, medium and long-term reform.

It derives from our analysis of the various international and regional consensus principles and best practices that there are identifiable priority judicial reforms that should be emphasized in any comprehensive, long-term democratic reform agenda. These inter-related reforms are necessary in order to create the overall enabling environment conducive to judicial integrity, sustainable economic and political reform and greater societal respect for the Rule of Law.

A good example of a high-priority reform is the judicial selection and appointments process. One of the key lessons learned over the last twenty years or so of judicial reforms is that a judicial selection and appointment process which is objective, transparent and designed to recruit highly qualified, ethical jurists is probably the most fundamental reform, especially in countries in which the judiciary is plagued by incompetence, executive domination and systemic corruption. Without a proper selection process and adequately trained judges, reforms addressing court administration, judicial discipline or professional conduct will not likely have much impact on the independence, accountability or quality of the judiciary.

Even though one reality is that a comprehensive, prioritized reform agenda may not be possible due to the lack of political will or resources in some countries, a key lesson learned is that that this should not deter reformers and donors from developing priorities and short and long-term strategies that are ultimately geared towards implementing fundamental judicial integrity reforms. In some countries, the short-term strategy may have to begin with technical administrative reforms as an entry point to broader, more politicized reforms. In others, a more holistic, strategic approach may be possible. In any case, IFES hopes the country State of the Judiciary reports will help reformers develop the strategic agenda necessary to promote key reforms more effectively

and efficiently, since we now know that building political will and demand, in the long run, has been the missing link to sustainable judicial reform in many countries.

At the end of the day, we hope the human rights, business and anti-corruption communities in particular, as well as donors, will seize upon this or a similar framework, as a tool to protect all peoples' property rights and civil liberties and as an effective way to globalize the Rule of Law.

ANNEX 1 – LIST OF ACRONYMS

ACHPR – African Charter of Human and People’s Rights (1986)

Bangalore Principles – The Bangalore Principles of Judicial Conduct (2002)

Beijing – Statement of Principles of the Independence of the Judiciary in the LAWASIA Region, “Beijing Principles” (1995)

CoE – Council of Europe Recommendation on the Independence, Efficiency and Role of Judges (1993)

ECHR – European Convention for the Protection of Human Rights and Fundamental Freedoms (1950)

ECSJ – European Charter on the Status of Judges (1998)

IACHR – Inter-American Convention of Human Rights (1978)

ICCPR – International Covenant on Civil and Political Rights (1966)

UCJ – Universal Charter of the Judge (1999)

UNBP – UN Basic Principles on the Independence of the Judiciary (1985)

ANNEX 2 – JUDICIAL INTEGRITY ANALYTICAL EVALUATION

JIP	SCOPE OF THE JIP (NAME OF THE PRINCIPLE)	COMPLIANCE
1	Constitutional guarantee of judicial independence	
	Guarantee of the right to a fair trial	
	Guarantee of equality under the law	
	Guarantee of access to justice	
2	Institutional independence of the judiciary	
	Personal/decisional independence of judges	
3	Clear and effective jurisdiction of ordinary courts	
	Clear and effective judicial review powers	
4	Adequate judicial resources and salaries	
5	Adequate training and continuing legal education	
6	Security of tenure	
7	Fair and effective enforcement of court judgments	
8	Judicial freedom of expression and association	
9	Adequate qualification	
	Objective and transparent selection and appointment process	
10	Objective and transparent judicial career processes	
11	Objective, transparent, fair and effective disciplinary process	
12	Limited immunity from civil and criminal suit	
13	Conflict of interest rules	
14	Income and asset disclosure	
15	High standards of judicial conduct	
	Rules of judicial ethics	
16	Objective and transparent court administration	
	Objective and transparent judicial processes	
17	Judicial access to legal and judicial information	
18	Public access to legal and judicial information	

The level of compliance with each Judicial Integrity Principle (JIP) or each subcategory of a JIP is color-coded as follows: light gray corresponds to “satisfactory”; dark gray to “partially satisfactory”; black to “unsatisfactory”; and white to “not analyzed”. There is an additional nuance in the assessment of the level of compliance as arrows pointed upwards or downwards indicate, respectively, improvement or regression within one category.

ANNEX 3 – JUDICIAL INDEPENDENCE STANDARDS AND PRINCIPLES *

GOVERNMENTAL INSTRUMENTS

United Nations

- *Universal Declaration of Human Rights*, 12/10/1948, United Nations, GA resolution 217A (III)
- *International Covenant on Civil and Political Rights*, 12/16/1966, United Nations, GA resolution 2200A (XXI), 21 UN GAOR Supp. (No.16) at 52, UN Doc. A/6316 (1966), 999 UNTS 171, entered into force on March 23, 1976
- *UN Basic Principles on the Independence of the Judiciary*, 7th UN Congress on the Prevention of Crime and the Treatment of Offenders, Milan, Italy, 08/26-09/06/1985, GA resolutions 40/32 of 11/29/1985 and 40/146 of 12/13/1985, UN GAOR, 40th Session, Supp. no.53, UN Doc. A/40/53 (1985)
- *UN Basic Principles on the Role of Lawyers*, 8th UN Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 08/27-09/07/1990
- *UN Guidelines on the Role of Prosecutors*, 8th UN Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 08/27-09/07/1990

Council of Europe

- *European Convention on the Protection of Human Rights and Fundamental Freedoms*, 11/04/1950, Council of Europe, European Treaty Series no.5
- *Recommendation no.R(94)12 of the Committee of Ministers to Member States on the Independence, Efficiency and Role of Judges*, 10/13/1993, 518th Meeting of the Ministers' Deputies, Council of Europe
- *European Charter on the Status of Judges*, 07/08-10/1998, Council of Europe

Organization of American States

- *American Declaration of the Rights and Duties of Man*, 1948, OAS res. XXX, Ninth International Conference of American States, *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 17 (1992)
- *Inter-American Convention on Human Rights*, 11/22/1969, OAS Treaty Series No.36, 1144 UNTS 123, *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992), entered into force on July 18, 1978

Organization of African Unity

- *African Charter on Human and People's Rights*, 06/27/1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force on October 21, 1986

NON-GOVERNMENTAL AND INTER-JUDICIAL INSTRUMENTS

Judges' Associations and Bar Associations

- *Code of Minimum Standards of Judicial Independence, "New Delhi Standards"*, New Delhi, India, 1982
- *Judges' Charter in Europe*, 03/20/1993, European Association of Judges
- *Universal Charter of the Judge*, 11/17/1999, General Council of the International Association of Judges
- *The Bangalore Principles of Judicial Conduct*, adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Roundtable Meeting of Chief Justices held at the Peace Palace, The Hague, the Netherlands, 11/25-26/2002

IFES Rule of Law White Paper Series

White Paper #6, State of the Judiciary Report

International Commission of Jurists

- *Draft Principles on the Independence of the Judiciary, "Syracuse Principles", 1981* (in collaboration with the International Association of Penal Law)

1st World Conference on the Independence of Justice

- *Montreal Universal Declaration on the Independence of Justice, 1983*

LAWASIA Human Rights Standing Committee

- *Independence of the Judiciary in the LAWASIA Region: Principles and Conclusion, "Tokyo Principles", Tokyo, Japan, 1982*

Inter-Judicial Conferences

- *Statement of Principles of the Independence of the Judiciary in the LAWASIA Region, "Beijing Principles", 1995, 6th Conference of Chief Justices of Asia and the Pacific Region*
- *Caracas Declaration, 03/04-06/1998, Ibero-American Summit of Presidents of Supreme Justice Tribunals and Courts, Caracas, Venezuela*
- *Recommendations of the First Arab Conference on Justice, "Beirut Declaration", 06/14-16/1999, Conference on "The Judiciary in the Arab Region and the Challenges of the 21st Century", Beirut, Lebanon*

IFES Judicial Independence Conferences

- *Agreement of the Three Branches of Government of Honduras to Strengthen Judicial Independence and Impartiality, 04/10/2002, Regional Conference on "Promoting Judicial Independence and Impartiality", Tegucigalpa, Honduras*
- *Blantyre Rule of Law/Separation of Powers Communiqué, 01/31/2003, Rule of Law/Separation of Powers Conference, Blantyre, Malawi*
- *Cairo Declaration on Judicial Independence, 02/24/2003, The Second Arab Justice Conference "Supporting and Advancing Judicial Independence", Cairo, Egypt*
- *Cotonou Declaration on the Rule of Law and the Separation of Powers, 01/15/04, Conference on the Rule of Law and the Separation of Powers in Francophone West Africa, Cotonou, Benin*

* An IFES White Paper analyzing these conventions, standards and guidelines, as well as relevant case law of international and regional courts and commissions, is available at IFES upon request (IFES Rule of Law White Paper Series, White Paper # 1, International Judicial Integrity Standards).

ANNEX 4 – IFES RULE OF LAW TOOLKIT

IFES Rule of Law Checklists:

- Transparency Principles
- Accountability Principles
- Enabling Environment Principles
- Key Obstacles to Judicial Independence
- Anti-Discrimination Issues
- Barriers to Enforcement
- Judicial Independence Indicators

IFES White Papers:

- Conflict of Interest
- Income and Assets Disclosure
- Judicial Immunity
- Judicial Councils
- Enforcement Country Papers

Global Bibliographies:

- Lessons Learned
- Rule of Law Programs
- Web Resources – Judicial Independence, Rule of Law, Enforcement
- Global Enforcement Bibliography
- Legal and Judicial Reform and Small Business Bibliography

Other Background Information on Judicial Independence/Rule of Law

- International and Regional Standards – Judicial Independence, Criminal Justice
- Case Law from International and Regional Courts – Judicial Independence, Enforcement, Criminal Justice
- Human Rights and Anticorruption Obligations

Judicial Independence Data:

- Comparative Data from the Judicial Independence Guide
- Survey Results

IFES Projects/Reports: Executive Summaries:

- Rule of Law
- Judicial Independence
- Haiti Constituency Building Project
- Global Enforcement Project
- Legal Barriers to Small Business Development: Peru Case Study
- Criminal Justice Reform Strategies
- Rule of Law Toolkit Overview

Matrices:

- Judicial Independence Issues
- Enforcement against the State Issues
- Enforcement of Civil and Commercial Judgments Issues
- IFES Judicial Integrity Principles

Conferences/Surveys:

- Strategic Survey Instruments
- Models for Judicial Independence/Rule of Law Regional Conferences
- Conference Declarations (Cairo, Honduras and Malawi)

ANNEX 5 – IFES CONFERENCE DECLARATIONS *

IFES has held strategic regional conferences and workshops in Central America (Honduras, 2002), Southern Africa (Malawi, 2003), the Middle East (Egypt, 2003) and Francophone West Africa (Benin, 2004). The outcome of these conferences has been the adoption of Declarations highlighting priority issues and presenting key recommendations to consolidate democracy and the Rule of Law regionally by enshrining in a comprehensive, official document the commitment of the participants to the separation of powers, judicial independence and judicial accountability.

Agreement of the Three Branches of Government of Honduras to Strengthen Judicial Independence and Impartiality

April 10, 2002

Regional Conference on Promoting Judicial Independence and Impartiality in Central America
Tegucigalpa, Honduras

The Honduras Agreement was signed by the three branches of the State of Honduras and called for support for key priority issues including:

- Adequate budgetary resources;
- Recognizing the need for legal reform;
- Objective and transparent judicial evaluation; and
- Implementing a judicial independence strategy.

Blantyre Rule of Law/Separation of Powers Communiqué

January 31, 2003

Regional Conference on the Rule of Law and the Separation of Powers in Southern Africa
Blantyre, Malawi

The main conclusions and recommendations of the Malawi Communiqué, which was certified by the Hon. Leonard Unyollo, Chief Justice of the Supreme Court of Malawi, include:

- Building a coalition to promote and support judicial independence and the Rule of Law;
- Promoting a commitment by the three branches of the State;
- Ensuring participation of civil society and the media;
- Adopting country and regional monitoring and reporting mechanisms;
- Achieving an objective judicial selection process and security of tenure; and
- Guaranteeing the fair and effective enforcement of judgments.

Cairo Declaration on Judicial Independence

February 24, 2003

Second Arab Conference Supporting and Advancing Judicial Independence
Cairo, Egypt

The main conclusions and recommendations of the Cairo Declaration include:

- Building a coalition to promote and support judicial independence;
- Promoting a commitment by the three branches of the State;
- Ensuring participation of civil society;
- Adopting a code of conduct for judges;
- Increasing transparency in the judicial career and its rules;
- Promoting judicial training; and
- Guaranteeing the fair and effective enforcement of judgements.

**Declaration of Cotonou on the Separation of Powers and the Rule of Law in the AOA-
HJF [West African Association of Francophone Supreme Courts] Sub Region**

January 15, 2003

Regional Conference on the Rule of Law and Separation of Powers Conference
in Francophone West Africa
Cotonou, Benin

The main conclusions and recommendations of the Cotonou Declaration, which was certified by the Hon. Saliou Aboudou, Chief Justice of the Supreme Court of Benin, include:

- Increasing collaboration among the three branches of the State;
- Working on key areas to strengthen judicial independence and efficiency, such as: (i) prosecutorial independence; (ii) budgetary and administrative autonomy; (iii) independent Judicial Council; (iv) ethics rules for all stakeholders of the justice sector; (v) improvement and rationalization of legal education and training; (vi) information exchange networks; (vii) access to justice for citizens; and (viii) fair and effective enforcement of judgments;
- Strengthening the capacity of all Democratic and Rule of Law Institutions;
- Educating and training citizens and stakeholders of the justice sector;
- Establishing a monitoring and assessment mechanism for the implementation of the Declaration; and
- Entrusting the AOA-HJF with the implementation of the Declaration

* A Compendium of these Declarations in English as well as other languages relevant to the region concerned is available at IFES upon request (Committing to Change: Declarations from the IFES Rule of Law Judicial Independence Conferences).