

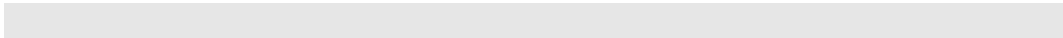


WHITE PAPER

PRATIQUES MODELES MONDIALES: CONSEILS DE LA MAGISTRATURE LECONS TIREES DES EXPERIENCES EUROPEENNES ET AMERICAINES

Extrait : Le Conseil de la magistrature, tout comme la magistrature elle-même, est une institution importante qui doit être structurée et opérer de manière transparente et responsable. Cette conclusion est l'un des éléments centraux de ce rapport ainsi qu'une importante leçon tirée des efforts de réforme passés de par le monde. Les réformateurs et les bailleurs de fonds ont fréquemment présenté les Conseils comme des institutions susceptibles de contribuer au renforcement de l'indépendance judiciaire. Toutefois, nos recherches nous permettent de conclure que les Conseils peuvent constituer un obstacle à l'indépendance et la responsabilité judiciaires plus qu'un véhicule à cet effet, tout particulièrement dans les pays frappés de corruption systémique ou lorsque le pouvoir judiciaire est asservi à l'exécutif.

Ce rapport étudie la création et le fonctionnement des Conseils de la magistrature au regard des normes internationales, régionales et nationales reconnaissant les principes d'indépendance et d'intégrité judiciaire ainsi que de l'objectif de promotion de l'Etat de droit de par le monde. Afin de peindre un portrait complet des Conseils, ce rapport aborde une série de thèmes variés, dont (i) les raisons de leur création; (ii) les différents modèles et leur adaptabilité aux besoins nationaux; (iii) leur composition variable; et (iv) leur attributions et responsabilités clés. Ce rapport soulève également la question de la légitimité et du rôle des Conseils dans le cadre de la balance des pouvoirs dans un Etat démocratique gouverné par l'Etat de droit. Des réflexions sur l'éducation juridique, les fonctions de politique judiciaire et les relations entre le Conseil et les tribunaux closent le rapport.



Outil d'IFES pour l'Etat de droit :
Sept pratiques modèles internationales relatives aux Conseils de la magistrature, un outil pour renforcer l'indépendance et l'intégrité judiciaires

- 1. Indépendance, transparence et responsabilité** – Le Conseil de la magistrature est un organe indépendant et fonctionne de manière transparente et responsable.
- 2. Structure** – La structure, les pouvoirs et les procédures d'un Conseil de la magistrature sont conçues pour sauvegarder et promouvoir l'indépendance judiciaire. Si les contrôles et contrepoids nécessaires ne sont pas en place, le Conseil devient un pion entre les mains de l'exécutif, du parlement et/ou de ceux qui détiennent le pouvoir économique ou politique, affaiblissant ainsi l'indépendance judiciaire.
- 3. Ressources adéquates** – Le Conseil de la magistrature dispose de ressources humaines et financières adéquates.
- 4. Composition** – Bien que la composition du Conseil de la magistrature varie selon le pays et dépende des obstacles locaux à l'indépendance judiciaire, la tendance mondiale parmi les juges, universitaires et professionnels du droit soutient que les Conseils devraient être composés en majorité de juges et qu'une diversité de membres permettrait un fonctionnement plus équitable et indépendant.
- 5. Les juges membres du Conseil** – Les juges membres du Conseils de la magistrature sont élus par leurs pairs plutôt que nommés par le parlement ou l'exécutif. Cette procédure de sélection est transparente et permet une participation et une surveillance exercée par la société civile.
- 6. Pouvoirs** – Les Conseils de la magistrature de par le monde ont des pouvoirs variés qui peuvent aller de l'administration des tribunaux à la gestion de la carrière judiciaire. Toutefois, la tendance mondiale soutient le transfert des pouvoirs de sélection des juges au Conseil ainsi que sa participation à la promotion, discipline et formation des juges.
- 7. Surveillance et évaluation** – Les procédures de décision du Conseil de la magistrature sont transparentes et permettent une participation et une surveillance exercée par la société civile. Des mécanismes de surveillance des opérations du Conseil sont prévues et effectivement mises en oeuvre.

**GLOBAL BEST PRACTICES:
JUDICIAL COUNCILS
LESSONS LEARNED FROM EUROPE AND LATIN AMERICA**

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PRATIQUES MODELES GLOBALES : CONSEILS DE LA MAGISTRATURES LECONS TIREES DES EXPERIENCES EUROPEENNES ET AMERICAINES

“In many countries, judicial councils or commissions have been established to improve the process of judicial selection. Although judicial councils exist in both civil and common law countries, they are a particularly prominent feature of legal cultures with a civil law tradition. The specific role that judicial councils play varies from one country to the next. In many, it goes beyond the selection process; in others, it may not include it.”¹

“The only clearly stated objective behind the Latin American councils was that of augmenting judicial independence. Accompanying discussions and the functions assigned to the councils suggest two secondary goals: improving judicial performance and administrative management. One enormous initial problem is the lack of clarity as to how the councils were supposed to achieve any of this. As we will see, that problem has continued to obstruct the delivery of the desired results.”²

“In various European countries [judicial councils] ... function as intermediaries between Government and the judiciary in order to guarantee the independence of the judiciary in some way or in some respect. These Court Administration Authorities have different competences in different EU countries. Some of them act as boards for the appointment of judges and disciplinary action against judges (e.g. France and Italy), other administration authorities play an active role in the budgeting and general (financial and administrative) management of Courts, as well as housing, education, computerization etc. (e.g. Sweden and Denmark).”³

1. Introduction

Après plusieurs décennies de réformes politiques, économiques et juridiques dans les pays en transition et en développement, il est désormais reconnu que les réformes en soutien de l’Etat de droit sont nécessaires à la construction d’un environnement favorable à l’émergence d’une démocratie durable, d’un développement socioéconomique et de la lutte contre la corruption. Il existe également un consensus croissant selon lequel un pouvoir judiciaire indépendant et responsable, des médias indépendants et une société civile informée et engagée sont essentiels pour la réalisation de l’Etat de droit.

En vue de renforcer l’indépendance et la responsabilité judiciaires, une nouvelle institution, le Conseil de la magistrature, a été créée dans de nombreux pays. Ces Conseils sont susceptibles de jouer un rôle capital dans le renforcement de l’indépendance judiciaire et la création de mécanismes de responsabilité, mais ils ne constituent qu’un élément de toute stratégie de réforme judiciaire. En effet, les stratégies

¹ IFES/USAID. 2001. *Guidance for Promoting Judicial Independence and Impartiality*. USAID Technical Publication. USAID: Washington, DC. Hereinafter the “[Judicial Independence Guide](http://www.ifes.org/rule_of_law/description.html)”; available at http://www.ifes.org/rule_of_law/description.html in Arabic, English, French and Spanish

² HAMMERGREN, Linn. 2002. *Do Judicial Councils Further Judicial Reform? Lessons from Latin America*. Working Paper No.28. Rule of Law Series. Carnegie Endowment for International Peace: Washington, DC

³ VOERMANS, Dr. Wim. 1999. *Councils for the Judiciary in EU Countries*. European Commission/TAIEX [http://cadmos.carlbro.be/Library/Councils/Councils.html#_Toc459267097]

de réforme judiciaire se doivent d'inclure un spectre thématique allant de l'accès à la justice aux voies d'exécution à la lutte contre la corruption.

Le premier Conseil fut créé en France au début du 19^e siècle et a subi depuis de nombreuses réformes. Des réformes supplémentaires, suggérées en vue de renforcer l'indépendance et la responsabilité du Conseil et du pouvoir judiciaire français, font l'objet d'un débat animé. Au cours de la seconde moitié du 20^e siècle, la plupart des pays de tradition juridique de Code civil en Europe, ainsi que ceux d'Amérique latine, d'Afrique, d'Asie et du Moyen-Orient, ont créé des Conseils de la magistrature. Bien que les soucis d'indépendance judiciaire et d'administration des tribunaux aient poussé ces pays à créer des Conseils, leurs pouvoirs et composition varient selon le pays.

a. Justification de la création de Conseils

Principes d'indépendance judiciaire internationaux et régionaux

Les traités internationaux et régionaux consacrant les droits humains reconnaissent le droit à un tribunal indépendant et impartial comme élément à part entière de la garantie du droit à un procès équitable.⁴ De nombreuses directives et principes ont depuis été adoptées pour définir le sens et le champ d'application de la notion d'indépendance judiciaire et ont été complétées par la jurisprudence des cours régionales des droits humains.⁵ L'indépendance judiciaire a également été consacrée en droit interne au moyen de normes constitutionnelle et statutaires et de jurisprudence.

Des raisons multiples et souvent complémentaires ont été avancées pour justifier la création de Conseils de la magistrature. La plupart de ces raisons consacrent une tentative de renforcer l'indépendance du pouvoir judiciaire en protégeant les processus de la carrière judiciaire des interférences externes. Certains pays d'Europe du nord et d'Amérique latine se sont également préoccupés de renforcer l'administration des tribunaux et leur efficacité.

i. Renforcement de l'indépendance judiciaire

Un souci de renforcer l'indépendance judiciaire a présidé à la création de Conseils de la magistrature, d'abord en France et en Europe du sud-ouest puis de par le monde dans le cadre de réformes destinées à renforcer l'indépendance judiciaire et le fonctionnement des tribunaux. Le Guide de l'indépendance judiciaire précise que :

⁴ See, *inter alia*, the International Covenant on Civil and Political Rights (1966) (ICCPR) art.14, the European Convention on Human Rights and Fundamental Freedoms (1951) (ECHR) art.6, the Inter-American Convention on Human Rights (1978) (ACHR) art.8 and the African Charter of Human and People's Rights (1981) (ACHPR) art.7

⁵ See, *inter alia*, the UN Basic Principles on the Independence of the Judiciary (1985) (UNBP), the Universal Charter of the Judge (1998) (the Universal Charter), the European Charter on the Statute of the Judges (1999) (the European Charter) and the case law of the European Court of Human Rights, the Inter-American Court of Human Rights and the African Commission of Human Rights.

“Although protection of judicial independence is a common goal for most judicial councils, the specific problems councils are designed to address are often quite different. In many countries, the problem is executive, legislative, or political party domination of the judiciary. In others, the Supreme Court is perceived to have excessive control over lower court judges. Some countries are primarily concerned with the amount of time judges spend on administrative matters and want to improve the effectiveness and efficiency of the courts by transferring the managerial function to another body.”⁶

La justification principale de la création de Conseils de la Magistrature dans des pays tels que la France, l’Italie, le Portugal et l’Espagne a été le désir de protéger le pouvoir judiciaire de l’exécutif. De vastes pouvoirs en matière de carrière judiciaire, notamment de sélection, promotion et discipline, ont été attribués aux Conseils en vue de limiter l’influence de l’exécutif. Le renforcement de l’indépendance judiciaire et la promotion d’une gouvernance judiciaire par la création d’un organe indépendant chargé des décisions clés de la carrière judiciaire a également permis de justifier la création de Conseils dans de nombreux pays d’Amérique latine, d’Europe centrale et orientale et de l’ex-Union soviétique.

ii. Amélioration de l’administration des tribunaux et de leur efficacité

Les raisons liées à l’amélioration de l’administration des tribunaux et à leur efficacité peuvent être dans une large mesure rattachées aux exigences principales du renforcement de l’indépendance judiciaire. Lorsque des responsabilités administratives sont transférées de l’exécutif au Conseil de la magistrature, comme c’est le cas en Hongrie ou au Costa Rica, ce transfert peut permettre de limiter les interférences externes dans les affaires judiciaires. Lorsque des responsabilités administratives sont transférées du pouvoir judiciaire au Conseil de la magistrature, comme c’est le cas en Bolivie, ce transfert peut permettre aux juges de se concentrer plus efficacement sur leurs fonctions adjudicatives, ce qui élimine en théorie les interférences et peut permettre d’améliorer les processus administratifs et la gestion budgétaire.

Europe – Dans de nombreux pays européens et notamment dans ceux qui ont les premiers créés des Conseils de la magistrature, l’amélioration de l’administration des tribunaux n’a jamais été une justification de cette création. En effet, en France, en Italie, au Portugal et en Espagne, ces pouvoirs demeurent entre les mains du Ministère de la Justice. Dans ces pays, il n’y a pas eu de demande importante d’un transfert de ces pouvoirs vers le pouvoir judiciaire ou le Conseil de la magistrature. En revanche, les Conseils de la magistrature d’Europe du nord, tout particulièrement du Danemark ou de Suède, ont été exclusivement créés en vue d’améliorer l’administration des tribunaux et le contrôle du budget et du personnel judiciaires.

Amérique latine – Il est intéressant de noter que le transfert de pouvoirs administratifs a été beaucoup plus fréquent en Amérique latine, où les juges ont traditionnellement détenu ces pouvoirs, qu’en Europe, où le Ministère de la Justice conserve fréquemment le contrôle de l’administration des tribunaux et de la gestion budgétaire. Cette réalité vient

⁶ See, the [Judicial Independence Guide](#)

renforcer la position selon laquelle ces transferts de pouvoirs administratifs n'auraient pas contribué à l'indépendance judiciaire mais auraient été une tentative d'interférence avec l'indépendance judiciaire. Au Mexique, par exemple, la création du Conseil de la magistrature et le transfert des pouvoirs administratifs précédemment détenus par les tribunaux ont été critiqués par certains comme constituant une attaque envers l'indépendance des tribunaux.

b. Contexte

Bien que les Conseils de la magistrature aient été créés afin de protéger le pouvoir judiciaire et les processus de la carrière judiciaire des pressions politiques externes, ils ne garantissent pas la disparition de ce type de problèmes. En effet, dans certains pays, les interférences ont pu devenir plus diffuses et pernicieuses. Les différences de structure, composition et responsabilités des Conseils ont pu avoir des conséquences importantes quant à leur capacité de promouvoir l'indépendance judiciaire.

La composition et la structure d'un Conseil devraient permettre la promotion de contre-poids au sein du pouvoir judiciaire et entre les divers pouvoirs étatiques mais, en pratique, la composition et la structure institutionnelle font souvent l'objet de distorsions intentionnelles ou de défauts motivés politiquement. Dans ce cas, la création d'un Conseil ne saurait accomplir les objectifs visés et le Conseil peut tout simplement perpétuer le statu quo. En effet, certains analystes affirment que ces Conseils sont volontairement défectueux. De nombreux Conseils en Amérique latine et Europe de l'est demeurent des institutions embryonnaires qui ont besoin d'être réformées et renforcées ou de devenir plus responsables. La société civile a un rôle important à jouer dans ce processus.

The Contribution of Judicial Councils to Judicial Independence: Expectations versus Reality in Central America⁷

In a survey of five Central American countries conducted in April 2002, there were striking differences between the expected role and the actual role of Councils in promoting and strengthening judicial independence. On the one hand, in those Central American countries where Councils exist, a majority of the respondents noted that the Council had had a negative impact on the promotion of judicial independence. On the other hand, in countries where Councils do not exist, an overwhelming majority of respondents (over 80%) noted that creating a Council could have a positive impact on judicial independence.⁸ While these evaluations appear to be at odds, they generally support the important proposition that Councils, if structured properly and depoliticized in practice, have the institutional potential to promote judicial independence. Exactly how this can best be done in a given country will depend largely on the political context in which the legal system operates.

⁷ Honduras Conference on Judicial Independence in Central America, April 2002. Data collected through a survey of the participants, the "IFES 2002 Central American Survey".

⁸ Data collected through the IFES 2002 Central American Survey. Among the Central American countries surveyed, only El Salvador and Guatemala reported the existence of a Judicial Council.

2. International and Regional Principles and Trends

a. Judicial Councils and International and Regional Principles

United Nations Basic Principles on the Independence of the Judiciary [UNBP] – The UNBP calls for the guarantee of judicial independence by the State, freedom from undue influence in the judicial decision-making process and objective judicial career processes. It does not, however, explicitly mention the creation and role of judicial councils. The *Universal Charter* refers to judicial councils in broad terms and recommends that the selection of judges as well court administration and the judicial disciplinary process “be carried out by an independent body that includes substantial judicial representation”.⁹

Beijing Principles and Latimer House Guidelines – Similarly, there have been some mentions of judicial councils, their membership and their potential role in regional instruments. For example, in the **Beijing Principles**, the Chief Justices of Asia and the Pacific recognized the use of judicial councils in the appointment of judges and called for membership by “representatives of the higher judiciary and the independent legal profession”.¹⁰ In the Commonwealth, the **Latimer House Guidelines** suggested that appointments should be made at least on the advice of a judicial council, “established by the Constitution or by statute, with a majority of members drawn from the senior judiciary.”¹¹

Council of Europe – The most comprehensive efforts to draft minimum standards regarding the creation, membership and role of judicial councils have been undertaken in Europe, under the direct or indirect supervision of the Council of Europe. In its **Recommendation on Judicial Independence** of 1994, the Council of Europe recommends that the responsibility for the selection and career of judges be entrusted to an authority independent from the government and the administration and whose members are selected by the judiciary.¹²

European Charters – Efforts to design regional judicial independence guidelines that would supplement the **Council of Europe Recommendation** culminated with the 1998 adoption of the **European Charter on the Status of the Judge**, which provides that:

“In respect of every decision affecting the selection, recruitment, appointment, career progress or termination of office of a judge, the statute envisages the intervention of an authority independent from the executive and legislative powers within which at least one half of those who sit are judges elected by their peers following methods guaranteeing the widest representation of the judiciary.”¹³

⁹ Universal Charter of the Judge, 1999, International Association of Judges, art.9 and 11

¹⁰ Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA Region, 1995, 6th Conference of Chief Justices of Asia and the Pacific, Beijing, China, art.15

¹¹ Latimer House Guidelines for the Commonwealth, Preserving Judicial Independence, 1998, #1

¹² Recommendation No.R (94) 12 of the Committee of Ministers to Member States on the Independence, Efficiency and Role of Judges (1994) (Council of Europe Recommendation), art.I.2.c

¹³ European Charter on the Status of the Judge, 1998, Council of Europe, art.1.3

Other important efforts to promote judicial independence have been undertaken by regional judges' associations. The European Association of Judges adopted a document that calls for the creation of an "independent body which represents judges" to carry out judicial selection and promotion as well as court administration responsibilities.¹⁴ The MEDEL¹⁵ also adopted the **Palermo Declaration**, which aims at drafting an additional protocol to the European Convention of Human Rights. The **Palermo Declaration** advocates the creation of a Higher Judicial Council to "guarantee the independence of the judiciary". Recommended membership includes a majority of judges elected by their peers but also "prominent figures designated by parliament". The **Palermo Declaration** recognizes broad powers to the Judicial Council, including the supervision of the selection process, the responsibility of the appointment and disciplinary processes, court administration and judicial training, the determination of the judicial budget and recommendations on judicial policy.¹⁶

It is worth noting that most of the thinking on the appropriate role and composition of Judicial Councils has flowed from the European experience. While European standard-setting efforts on Rule of Law and judicial independence issues have potential application in other regions, the lack of a set of consensus guidelines outside of Europe is a void that needs to be filled. Towards this end, it may be worth adding that European guidelines have consistently advocated the recognition of increasingly broader powers for Judicial Councils.

b. Models

Even though documents such as the **UNBP** or the **Council of Europe Recommendation** do not directly advocate the creation of independent Judicial Councils, such Councils have been created throughout the world as a means to ensure the objectivity and independence of the processes of the judicial career and to improve the quality of the administration of justice.

Countries have followed two main trends in creating judicial councils, depending on whether the responsibilities of the council are primarily focused on the judicial career or on the management of court operations. A report commissioned by the Dutch government in the late 1990s on the position and functioning of different European Councils for the Judiciary documents this distinction between what the author calls the *Southern European model* and the *Northern European model*.¹⁷

¹⁴ Judges' Charter in Europe, 1993, European Association of Judges, art.4, 5 and 6

¹⁵ The Association of European Magistrates for Democracy and Freedoms (MEDEL) is a network of national judges' association in Eastern and Western Europe.

¹⁶ Draft Additional Protocol to the ECHR "Palermo Declaration", Association of European Magistrates for Democracy and Freedoms (MEDEL), Palermo, Italy, 1993

¹⁷ VOERMANS, Dr. Wim. 1999. *Councils for the Judiciary in EU Countries*. European Commission/TAIEX [http://cadmos.carlbro.be/Library/Councils/Councils.html#_Toc459267097]. The author discusses the distinction between the "*Southern European model*" and the "*Northern European model*".

While countries in Western Europe follow this distinction fairly closely, other countries have tended to borrow aspects from both models in designing their own Judicial Councils. Variations of these models can be found throughout the world, including in Eastern and Central Europe and Latin America. The array of powers and responsibilities granted to the Judicial Council has become highly country-specific and often constitute variations of these two models.

The Main Models for Judicial Councils in Europe	
<p style="text-align: center;">Northern European Model</p> <ul style="list-style-type: none"> • Primary function is to facilitate the effective and efficient management of the judiciary. • Competences are related to court administration, management and budgeting. • Court administration functions include the supervision of judicial administrations, caseload management, strategic planning and flow rates. • Court management functions include facilities, automation, recruitment and training. 	<p style="text-align: center;">Southern European Model</p> <ul style="list-style-type: none"> • A constitutional provision creates the Judicial Councils. • Primary function is to protect and strengthen judicial independence. • All responsibilities and competences are related to judicial career decisions (advice or power to select and promote judges; discipline judges; training; etc.).

Global experience to date illustrates that the creation of a Judicial Council can have a significant positive or negative impact on judicial independence depending on the model chosen and the variations in its implementation. In some Latin American countries, such as Mexico or Peru, the creation of Judicial Councils does not appear to have led to substantial improvements in the insulation of the judiciary from political control and interferences. Our research reveals evidence that some Councils in Latin America may be insufficiently accountable and become an additional source of interference with judicial independence.

c. Relationship between Councils and the Courts

Model Relationships to the Courts
<ol style="list-style-type: none"> 1. Judicial Councils are subordinate organs of the Supreme Court or entirely dependent on the Supreme Court or Courts – for example, Brazil, Costa Rica, Austria and Cyprus. 2. Judicial Councils have powers over lower-level judges but no power over Supreme Court judges – for example, Argentina, Guatemala.

3. Judicial Councils have powers over all judges, including Supreme Court judges – for example, Peru.

In practice, the powers of Judicial Councils will have a varying effect depending on whether these powers extend to the Supreme Court as well as the lower courts and, if they do, the binding effects of these powers. The extent of control exercised over the Supreme Court varies from country to country. This relationship may be important if the Council's powers affect the judicial career, such as powers to select or discipline judges. For purposes of assessing the relationship between Judicial Councils and the courts, Judicial Councils can be divided into three categories, as presented in the box above.

d. Effects of Judicial Council Decisions

The real powers of a Judicial Council may be limited by the legal weight accorded to its decisions. If it renders only advisory opinions, it may become powerless, and the deciding authority may choose to disregard its opinion. The responsibilities undertaken by the Council with regard to the appointment process may vary from an advisory opinion or the elaboration of a list of potential candidates to a mandatory consultation or legally binding decisions.

Powers of Judicial Councils: Models of Involvement in Judicial Appointments

In the appointment of judges, Judicial Councils may have varying powers, ranging from no role at all to actual appointment powers:

- 1. No role** – Canada, Denmark
- 2. Purely advisory** – Panama, Poland, Slovakia
- 3. Proposal of candidates for selection (non-binding)** – Guatemala (lower court)
- 4. Proposal of candidates for selection (binding)** – France (higher courts)
- 5. Proposal of candidates for ratification** – El Salvador
- 6. Actual appointment** – Bulgaria, Dominican Republic (Supreme Court)

3. Establishment and Composition of Judicial Councils

a. Creation of Judicial Councils

Once the decision has been taken to create a Judicial Council, the question arises as to the means of creation – namely, should there be a constitutional basis for the creation of the

Council or will a statute suffice.¹⁸ Establishing the Council through a constitutional provision may help emphasize its importance as a guarantor of judicial independence. Judicial Councils were created by a constitutional provision in countries such as France, Italy and Peru whereas they were created by legislation in countries such as Hungary and Denmark.

Although the legitimacy of Judicial Councils is not necessarily at risk when they are created by statute, in countries that are in the process of consolidating democratic institutions, the constitutional creation of Judicial Councils may help strengthen their legitimacy within the legal and judicial framework. Indeed, a constitutional provision will grant the newly-created institution the legitimacy of constitutional recognition and may help insulate it from interferences from the executive, legislative or judiciary through legislation, decrees or rulings. The transfer of powers from the executive or the Supreme Court to the Judicial Council may also reduce dependency upon the will of the other institutions and strengthen the legitimacy of the Council.

b. Membership

The membership of the Judicial Council varies greatly from country to country and depends on the political reasons which motivated its creation. There is an emerging international consensus that Judicial Councils should have a broad-based membership, which includes a majority of judges. The most successful models appear to be those with representation from a combination of State and civil society actors and with broad powers sufficient to promote both judicial independence and accountability.

Emerging Consensus Principles on Judicial Council Membership

1. Protecting judicial independence calls for judges to represent the majority of the Council membership;
2. Promoting judicial accountability requires broad membership in order to ensure checks and balances and address judicial corruption.

i. Judicial Representation

One of the main reasons for creating Judicial Councils has often been related to the need to insulate the judiciary – and especially the appointment process – from external political pressure. In order to achieve this objective, there is a general consensus that judges should represent a majority of the Council’s membership. International and regional instruments refer to the membership of judicial councils as including “substantial judicial representation”¹⁹, “representatives of the higher judiciary and the

¹⁸ Latimer House Guidelines for the Commonwealth, Preserving Judicial Independence, 1998, #1 calls for a judicial council, “established by the Constitution or by statute”. It is the only documents of all the international and regional instruments surveyed with addresses the constitutional or legal basis for the creation of the council; it does not however express any preference.

¹⁹ Universal Charter of the Judge, 1999, International Association of Judges, art.9 and 11

independent legal profession”²⁰, “a majority of members drawn from the senior judiciary”²¹, “members ... selected by the judiciary”²² or “judges elected by their peers”²³.

**The Salvadoran and Macedonian Exceptions:
Judicial Councils without Judges**

El Salvador – a 1999 reform of the Judicial Council limited membership to legal professionals and scholars, excluding judges and all other State actors. At the time, this composition was perceived as contributing to the strengthening of the independence of both the Council and the judiciary from both political branches of government (Executive and Legislative) and the higher ranks of the judiciary. Judicial representation was reintroduced in 2002, and the Council is now composed of six legal professionals and a lower court judge.

Macedonia – the Judicial Council is composed of seven respected legal professionals elected by Parliament based on nominations by the President and a parliamentary commission. The Constitutional Court struck down a proposition establishing that the Judicial Council should be composed of four judges and three representatives of the other branches of government.²⁴

Most countries have adopted this position and created Judicial Councils with at least some representation of the judiciary. There is no consensus however as to which levels of the judiciary should be represented on the Judicial Council. Some international and regional instruments call for a majority of members selected from the higher ranks of the judiciary while others advocate a broad representation of all levels of the judiciary.²⁵ However, a cursory survey reveals that in most countries, high-level judges are members of the Judicial Council. About half also include lower-level judges.

High-Level v. Lower-Level Council Membership Models

- 1. Only lower-level judges** – El Salvador
- 2. Only high-level judges** – Canada, Dominican Republic, Georgia, the Netherlands, Peru and Turkey

²⁰ Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA Region, 1995, 6th Conference of Chief Justices of Asia and the Pacific, Beijing, China, art.15

²¹ Latimer House Guidelines for the Commonwealth, Preserving Judicial Independence, 1998, #1

²² Recommendation No.R (94) 12 of the Committee of Ministers to Member States on the Independence, Efficiency and Role of Judges (1994) (Council of Europe Recommendation), art.I.2.c

²³ European Charter on the Status of the Judge, 1998, Council of Europe, art.1.3

²⁴ Reports and commentaries on the Constitutional Court decisions of July and October 2003 can be found on the website of the Macedonian Helsinki Committee for Human Rights, at <http://www.mhc.org.mk/>.

²⁵ See, *inter alia*, the Latimer House Guidelines for the Commonwealth, Preserving Judicial Independence, 1998, #1 “a majority of members drawn from the senior judiciary” and the European Charter on the Statute of the Judge, 1998, Council of Europe, art.1.3 “authority independent from the executive and legislative powers within which at least on half of those who sit are judges elected by their peers following methods guaranteeing the widest representation of the judiciary”.

3. Judges of all levels – Argentina, Colombia, Portugal and Slovakia.

ii. Broadening or Limiting Council Membership

Apart from the judiciary, three other categories of members may be represented on the Judicial Council:

- Members of the political branches of government (Executive and Legislative);
- Members of the legal community, often bar association representatives, legal scholars or eminent lawyers; and/or
- Members of civil society and eminent public figures.

Some international and regional instruments call for a diversified membership which relies on judges as well as members of other sectors, including “prominent figures designated by parliament”²⁶ or “representatives of ... the independent legal profession”²⁷. In a number of countries, the executive branch has a representative sitting on the Council, often the Minister of Justice.²⁸

Increasingly, non-governmental members are appointed to the council, thus enabling external monitoring of the judiciary and limiting opportunities for executive or legislative interference. Such external members may be members of the legal profession and jurists or lay members of civil society. For example, it is common to have representatives of the Bar Association or of the Law School appointed to the Judicial Council.²⁹

Non-Judicial Members of Judicial Councils

The Head of the Executive – Dominican Republic, France, Italy

The Minister of Justice – France, Lithuania, Poland, Ukraine

The Heads of Parliament – Dominican Republic

Parliamentarians – Argentina, Estonia

Lawyers/Jurists – Argentina, El Salvador, Macedonia, Spain

General Prosecutor/Prosecutors – Belgium, Bulgaria, Greece

²⁶ Draft Additional Protocol to the ECHR “Palermo Declaration”, Association of European Magistrates for Democracy and Freedoms (MEDEL), Palermo, Italy, 1993

²⁷ Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA Region, 1995, 6th Conference of Chief Justices of Asia and the Pacific, Beijing, China, art.15

²⁸ See, for example, in France, the Minister of Justice and the President are *ex officio* members, in Poland and Argentina, one representative of the executive is appointed to the Council

²⁹ See, for example, in Argentina (4 lawyers and one member of the academic community), El Salvador (4 lawyers and 2 law school professors), Nigeria (5 members of the Bar Association) and Spain (8 jurists).

Law Professors – Belgium, El Salvador, Italy, Macedonia

Some believe the number of members may also affect the independence of the Judicial Council and its ability to promote judicial independence. The overall number, as well as the number of representatives from each group, varies greatly from country to country. For example, the Italian Council has 33 members, the Bulgarian and Polish Councils have 25 and the Bolivian and Dutch Councils have only five.

c. Appointment of Council Members

Not unlike the judiciary itself, the members of the Judicial Council should be selected according to an objective and transparent process. Only a few of the international and regional instruments address the issue of the selection process for Judicial Council membership. The **European Charter** suggests that judicial representatives should be “elected by their peers”³⁰ and the **Palermo Declaration** advocates a mixed membership with a majority of judges elected by their peers but also “prominent figures designated by parliament”.³¹ As noted in the Judicial Independence Guide:

“The power to appoint council members is often shared, further increasing the checks built into the system. In many cases, at least the legislature and the executive participate. In some countries, professional bodies ... nominate their own members to serve on the council.”³²

In order to avoid politicization and encroachments on the independence of the Council, the selection process for members of the Judicial Council should be objective and transparent. This includes the practice of election by judicial peers.³³ However, neither election by peers nor appointment by the executive and/or Parliament is likely to entirely insulate the council from external interference, politicization and undue pressures. There are additional ways of building checks into the system such as ensuring that the power to appoint is shared between several authorities who either concur in the appointment of all members or each appoint certain members.

Selection of Judicial Council Members: Checks and Balances Models

1. Several authorities participate in the appointment:

El Salvador – the legislature appoints the members from slates of three candidates nominated by the professional group they represent (judges, lawyers, law professors);

Romania – judges and prosecutors sitting on the Council are appointed by Parliament upon proposal by the general assemblies of judges and prosecutors.

³⁰ European Charter on the Status of the Judge, 1998, Council of Europe, art.1.3

³¹ Draft Additional Protocol to the ECHR “Palermo Declaration”, Association of European Magistrates for Democracy and Freedoms (MEDEL), Palermo, Italy, 1993

³² See, the Judicial Independence Guide

³³ See, for example, France, Italy, Argentina, Guatemala, Bulgaria and Poland

2. Each authority appoints a certain set of members:

Portugal – Seven judges are elected by their peers and one is appointed by the President as well as seven members from outside the judiciary appointed by Parliament and one by the President

Some Judicial Councils also include *ex officio* members, such as the Minister of Justice or the Chief Justice of the Supreme Court. While there is no fundamental reason their membership should be excluded *per se*, many believe it is advisable to limit the number of *ex officio* members and show preference for representatives chosen through a transparent process.

The length of tenure of members is an equally important issue. Traditionally, it seems that members are appointed for a rather short period of time, ranging from three years in the Netherlands or El Salvador to six years in Macedonia. Some countries, however, provide for life terms, such as in Cyprus and Canada, while others limit the term of a Judicial Council member to the length of term of his/her primary office, such as in the Dominican Republic and Panama.

In any case, there is a consensus that the length of tenure should be sufficient to guarantee the independence of the Council and short enough to ensure periodic renewal and accountability of the members. Moreover, the term should not coincide with that of the appointing authority. Staggered terms may also help provide continuity while periodically renewing the composition of the council.

4. Duties and Responsibilities of Judicial Councils

Specific duties and responsibilities have been delegated to Judicial Councils, especially in the appointment and disciplinary processes, but their powers vary from country to country in terms of both scope and effects. In some cases, the lack of clarity of the scope and effect of Council functions, at times combined with a failure to fully transfer powers to newly created Councils, has led to disappointing Council performance.

a. Selection and Appointment of Judges

The most widely recognized power of a Judicial Council is its role in the appointment of judges. The **Universal Charter of the Judge** calls for the involvement of “an independent body, that includes substantial judicial representation” in the selection, appointment and promotion processes.³⁴ The **Council of Europe Recommendation** recognizes that “[the] authority taking the decision on the selection and career of judges should be independent of the government and the administration” or in the event of appointments by the government calls for guarantees of transparency and independence including, *inter alia*, “a special independent and competent body to give the government

³⁴ Universal Charter of the Judge, 1999, International Association of Judges, art.9

advice which it follows in practice”.³⁵ The **European Charter on the Status of the Judge** recommends that all decisions affecting the judicial career – including the selection, appointment and promotion of judges – should involve a judicial council, defined as an authority independent of the executive and legislative and composed of a majority of judges.³⁶

In cases in which Judicial Councils are competent to select judges, it is important to have clearly defined objective criteria applied in a transparent manner. If there are no objective criteria, transferring selection powers to the Judicial Council may only reproduce, or worsen, discretionary and politicized judicial appointments. For example, in Peru, the selection criteria are highly subjective due, in part, to the lack of indicators and guidance for Judicial Council decisions. The Peruvian Council is attempting to develop clear indicators in this area through a reform program recommended by IFES.

Most countries have granted their Judicial Councils some powers in the judicial selection process, though only a few of them have the final word in the appointment process.³⁷ In many Latin American and Eastern European countries, the Council participates in the selection process of Supreme Court and lower courts by reviewing the merits of candidates and proposing candidates to the appointing authority. In other countries, the Council participates only in the selection of some judges, either lower court judges or Supreme Court judges, or has no role at all in the process.

Hungary: Checks and Balances in Judicial Selection

The structure, powers and operations of the Council and the procedures for appointments and promotions should be properly insulated from political considerations. A good example of a country model that achieves these objectives is that of Hungary. The selection and appointment process of judicial candidates in Hungary incorporates a number of institutional and political checks and balances. Candidates are selected by the Presidents of the Supreme, Appeals and Regional Courts based on an interview and on non-binding opinions by the relevant Judicial Council. Then, these Court Presidents send their selection to the National Judicial Council which forwards its nomination to the President. Consequently, judges are initially appointed by the President for a probationary term of three years, after which the President may reappoint them for an “indefinite term”. Certain judicial bodies are entitled to express opinions on appointments but these opinions are non-binding. Court Presidents and the National Judicial Council enjoy a high degree of discretion under this system.³⁸

b. Judicial Career

³⁵ Recommendation No.R (94) 12 of the Committee of Ministers to Member States on the Independence, Efficiency and Role of Judges (1994) (Council of Europe Recommendation), art.I.2.c

³⁶ European Charter on the Status of the Judge, 1998, Council of Europe, art. 1.3

³⁷ For the varying powers of Judicial Councils in the judicial selection process, see, box under section 2d.

³⁸ See, *Judicial Independence in Hungary*, in *Monitoring the EU Accession Process: Judicial Independence*, Open Society Institute (2001) (<http://www.eumap.org/reports/content/20/348/html>)

Judicial education, training and evaluation – In some countries, the Judicial Council has been entrusted with oversight of judicial education and training. Less frequently, it also plays a role in the evaluation of judges. For example, in El Salvador, the Judicial Council “carries out regular evaluations of judges and runs the Judicial Training School”.³⁹

Judicial promotion – In some countries, such as Costa Rica, El Salvador, Guatemala, and Hungary, the Judicial Council is involved only in the selection of judges. In others, such as France, Italy, Bulgaria and Romania, it also participates in the promotion process.

c. Discipline and Ethics

Disciplinary process – Another area in which many Judicial Councils have been granted powers is the disciplinary process. The **Universal Charter** recommends that disciplinary action should be carried out by independent bodies that include substantial judicial representation”.⁴⁰ The idea is to insulate disciplinary proceedings from both external interference – for example, from the executive or political parties – and internal interference – mainly from the judicial hierarchy. The **Council of Europe Recommendation** calls upon member states to “consider setting up, by law, a special competent body which has as its task to apply any disciplinary sanctions and measures”.⁴¹

Accordingly, many Judicial Councils have at least some disciplinary powers. This is also explained at least in part by the fact that many Councils were created to strengthen judicial independence and balance judicial independence with judicial accountability.

USA: Judicial Councils and Discipline

According to the 1789 Constitution of the United States, a federal judge may be impeached only by the US House of the Representatives for “treason, bribery or other crimes and misdemeanors.” This is the sole and seldom used method of removal of federal judges.

However, in 1939, a more effective disciplinary mechanism with formal and informal features was developed for less serious misconduct. The United States Congress created the Judicial Councils of the Circuits, which are decentralized administrative structures in the eleven circuits throughout the country and in the District of Columbia circuit. A Judicial Council consists of an equal number of trial and appellate judges and is chaired by the relevant circuit chief judge. Initially, these Councils had the power to formally investigate judges.

³⁹ *Efforts to Enhance Judicial Independence in Latin America: A Comparative Perspective* in Guidance for Promoting Judicial Independence and Impartiality, 2001, USAID Technical Publication

⁴⁰ Universal Charter of the Judge, 1999, International Association of Judges, art.11

⁴¹ Recommendation No.R (94) 12 of the Committee of Ministers to Member States on the Independence, Efficiency and Role of Judges (1994) (Council of Europe Recommendation), art.VI.3

However, because Judicial Councils as a body rarely disciplined judges, Congress revised the system of judicial accountability. Under the new system, the circuit Chief Justices themselves were given the power to screen frivolous or irrelevant complaints and take informal action. If the complaint is not deemed to be frivolous, the Chief Justice appoints a committee of circuit and district judges to investigate and provide a report to the Circuit Council.

Granting disciplinary powers to Judicial Councils raises questions about its membership. Indeed, in order to safeguard the independence of judges and depending on country context, it can be questionable to entrust members of the other branches of government with powers to investigate and sanction judges. However, there are ways to limit participation in the judicial disciplinary process, such as excluding non-judicial members from disciplinary proceedings. This issue needs to be given serious consideration on a country-by-country basis.

Another important issue is the right for judges to challenge disciplinary sanctions. More generally, judges faced with disciplinary proceedings are entitled to the same rights and fair trial guarantees as any defendant. In Peru, Judicial Council decisions in disciplinary proceedings against judges have been perceived as highly discretionary and are not open to appeals. Many believe this non-transparent, unaccountable process led to a number of abuses and violations.

The Judicial Council in France: Membership and Disciplinary Proceedings

1. Membership

- Judges;
- Prosecutors;
- Non-judicial personalities appointed by the President and heads of the Assembly and Senate; and
- Two *ex officio* members: the President and Minister of Justice.

2. Disciplinary Proceedings

The Council has jurisdiction over all disciplinary proceedings concerning judges. In an attempt to safeguard judicial independence, the President and Minister of Justice, *ex officio* members of the Council, are excluded from participating in judicial disciplinary proceedings.⁴²

d. Court Administration and Budgetary Control

⁴² O.58-1270 of 12/22/1958 on the Statute of the Magistracy, art.48 and L.O.94-100 of 02/05/1994 on the Conseil Supérieur de la Magistrature, art.18

Some countries have chosen to transfer court administration and budgetary responsibilities to a Judicial Council, either from the Ministry of Justice or from the Supreme Court. In countries in which court administration and the judicial budget were the responsibility of the Ministry of Justice, this transfer aimed at reducing external interference, especially from the executive, in the affairs of the judiciary. In countries in which these functions were the responsibility of the Supreme Court, the objective has been to separate administrative and jurisdictional functions so that the judiciary may concentrate fully on the latter.

Court Management Models

1. Transfer from the Ministry of Justice to the Judicial Council

Eastern European Judicial Councils have been granted judicial administration powers in an attempt to insulate the judiciary from the Executive. In many, the Executive interference with the courts has been traditionally high. Shifting responsibilities for court administration and the judicial budget to an independent entity has been one of the components of broader judicial reform strategies. For example, in Hungary, the Reform Laws on Courts (1997) established a National Judicial Council which exercises the power of court administration and drafts and supervises the judicial budget for court administration.

2. Transfer from the Supreme Court to the Judicial Council

Latin American Judicial Councils have been granted judicial administration powers in an attempt to refocus the courts on their adjudicative functions. This shift may have had the unintended consequence of making the courts less independent and accountable in the Latin American context. For example, in Argentina, court administration has been transferred from the Supreme Court to the Judicial Council, but it is unclear whether this has improved the efficiency or the independence of the courts.

3. Judicial Councils only responsible for Court Management

Some countries, such as Denmark and Sweden, have created Judicial Councils which are exclusively responsible for judicial administrative and budgetary matters. In these countries, the shift may have had a significant impact on the improvement of judicial efficiency.

e. Policy Functions and Access to Information

Some Judicial Councils have been granted some responsibility to formulate policies and to advise the Ministry of Justice on matters regarding the judiciary and judicial independence. Advisory policy functions may play an important role in that they guarantee some involvement of the judiciary in the design of policies which are likely to

affect it. For example, in Panama, the Judicial Council has the authority to recommend judicial policies and propose legislative changes.

One of the means to promote Judicial Council participation in the strengthening of the judiciary and of its independence is to grant the Council some degree of responsibility in the institutional planning and in the definition of judicial policies. To that end, the Judicial Council could be entrusted with elaborating periodic plans for judicial system development, such as drafting reports on the State of the Judiciary or supervising the implementation of judicial policies.

Judicial Councils can also play a significant role in increasing public access to information related to the judiciary either by directly releasing information through publications or diffusion to the media or by responding to public requests for information.

Information Held by Judicial Councils

Judicial Councils may have a variety of information that should be made available to the public:

1. Information related to all judicial career processes, especially to the selection and disciplinary processes;
2. Information related to specific cases, judicial policies and legislative initiatives; and
3. Information on judicial governance, especially on the proper management of the courts and judicial budget.

5. Accountability, the Role of Civil Society and Public Trust

As noted above, Judicial Councils should be encouraged to interface with the public, through avenues for public requests of information as well as for public participation in the Council's activities. Increasing the transparency of Council activities and promoting public participation in their most important activities, particularly in the judicial selection process or in judicial policy formulation, may help increase public trust in the judiciary.

Argentina: A Model for Civil Society Monitoring and Reporting

Poder Ciudadano, an Argentine NGO and Transparency International chapter, has been involved in monitoring the Council since 1999. The program, called Civic Monitoring of the Judicial Council, appears to have achieved some progress in improving the transparency and openness of the Council and in increasing public access to judicial information and processes. Specific achievements include civil society participation in the drafting of the judicial council law and in its internal regulations; periodic reporting of the Council's activities; and concrete changes in the internal mechanisms of the institution to make the Council's

decision-making processes more open to the public. *Poder Ciudadano* has also contributed to the launching of similar programs in Bolivia and Peru.⁴³

As a justice institution, the Judicial Council should be held to high standards of ethics. Thus, the laws and regulations governing the functioning of the Judicial Council should therefore establish clear accountability mechanisms. One of the main complaints against many Judicial Councils, especially in Latin America, has been the lack of accountability of Council members. For example, in Peru, Council decisions related to the selection of judges have been perceived as arbitrary, but there are no clear policies and procedures to ensure that the Council is accountable for its decisions.

Accountability mechanisms for the members of Judicial Councils should include a certain degree of public participation in Council activities and oversight of the conduct and behavior of members. Civil society monitoring and reporting on the activities of the Council is an excellent tool to improve the quality and transparency of its decisions. Most Councils in developing and transition countries have failed to create effective means of civil society oversight and participation. The lack of avenues for participation and control has contributed to further public mistrust in the judiciary and related institutions. This has happened in some Latin American countries, such as Bolivia and Colombia, where the creation of Judicial Councils has generally failed to promote increased participation of civil society in the management of the judiciary, leading to social discontent.

6. Recommendations

While some recommendations have global application, others require some level of identification of the country-specific problems and needs before targeted reforms can be implemented or even fully designed. Solutions, and therefore the composition and role of Judicial Councils, may vary from country to country as sources of interference, loopholes and misadministration are identified.

IFES has identified seven broad, international best practices for Judicial Councils as a tool to strengthen judicial independence and integrity. These best practices address the themes of (1) independence, transparency and accountability; (2) a structure designed around checks and balances; (3) adequate resources; (4) a broad-based composition; (5) judicial membership on the Council; (6) adequate powers; and (7) monitoring and reporting mechanisms.⁴⁴

The following recommendations and guidelines are suggestions that may improve the independence, accountability and efficiency of a Judicial Council. These recommendations and guidelines do not purport to be an exhaustive list of programming

⁴³ PEREZ TORT, Maria Julia, *Iniciativa de la Sociedad Civil para la Transparencia del Consejo de la Magistratura – Programa Ciudadanos por la Justicia (Argentina) [Initiative of Civil Society for Transparency in the Judicial Council – Citizens for Justice Program (Argentina)]*, 2002 (http://www.dplf.org/frameset_pub_eng.htm)

⁴⁴ For a more detailed presentation of these best practices, see the table attached to the Executive Summary.

activities, but rather they could assist reformers as they implement reforms to achieve the abovementioned best practices:

- **Institutional strengthening** – In order to make Judicial Councils efficient and adequate public institutions, support and technical assistance geared towards strengthening the capacity of the Council to undertake its functions are necessary. The redefinition of the relationships between public institutions and among the three branches of government might also be necessary.
- **Developing accountability mechanisms** – In many Judicial Councils the legal and the institutional framework regarding accountability of their members is insufficient. Also, it is advisable to consider, within the mechanisms of accountability, those that include public participation.
- **Adequate training of Council members** – Council members should receive adequate and periodic training as needed to perform their functions fairly and effectively and to reduce their vulnerability to pressure and to encroachments by the institutions previously entrusted with these powers. For example, in Councils responsible for the selection of judges, Council members and staff should receive training designed to provide them with the tools and techniques to improve their capacity to carry out an impartial and objective selection.
- **Transparent Council procedures** – It is important to increase the transparency of Council procedures, especially in the judicial career processes, as well as the public availability of information related to Council decisions and activities. Increased transparency and information will open avenues for more public oversight, thereby increasing the accountability of Council members and promoting the integrity of the judiciary.
- **Cooperation between the Council and the Judiciary** – Increasing the level of cooperation and creating avenues for effective inter-institutional cooperation will help develop improved judicial policies and facilitate the management of the judiciary by improving communication and coordination between the institutions involved. For example, in countries in which the Council proposes or comments on the judicial budget which is then approved by Parliament, improving coordinated action between the Council and Judiciary and between the Council and Parliament, will help ensure that an adequate budget is adopted and might also speed up the process.
- **Insulating the Council from interferences** – Insulating Judicial Councils from political interferences with its activities (or with its membership) is a key to building the independence of the institution as well as public trust and legitimacy. The sources of interference and the activities most vulnerable to these interferences must be identified before programs to insulate the Council from these pressures can be fully designed.
- **Civil society participation** – Creating effective channels for civil society participation and engagement in judicial management, judicial policy design, and monitoring should be explored. A Judicial Council should also strive to improve its public image and develop public campaigns and informative mechanisms to

present the Council as an indispensable public institution supportive of judicial independence.

ANNEX I: JUDICIAL COUNCIL CHECKLIST

IFES Rule of Law Tool: Judicial Council Checklist

- Is there a Judicial Council?
- If yes, has it played a role in the strengthening of judicial independence?
- If no, would the creation of a Judicial Council help promote judicial independence?
- Was the Council created by a constitutional or statutory provision?
- Who are the members of the Judicial Council?
 - High level judges
 - Low level judges
 - Prosecutors
 - Members of the executive
 - Members of the legislative
 - Members of academia
 - Members of the legal profession
 - Other members of civil society
- Is the total number of members and the number of members of each category sufficient to promote institutional independence?
- Are representatives of the judiciary a majority of Council members?
- Is the length of tenure of Judicial Council members sufficient to promote institutional independence?
- Who appoints Judicial Council members?
- Are there sufficient checks and balances in the appointment process?
- What are the powers and responsibilities of the Judicial Council?
 - Selection and appointment of judges
 - Promotion of judges
 - Discipline of judges
 - Evaluation of judges
 - Training/education
 - Court administration
 - Determination of the judicial budget
 - Control of the judicial budget
 - Advice on judicial policy
 - Judicial ethics
- Does the Council have jurisdiction over the Supreme Court?
- If yes, does this jurisdiction include appointment? Does it include discipline?
- Are the Council's decisions legally binding or purely advisory?

ANNEX II: SELECTED BIBLIOGRAPHY

International and Regional Standards and Principles

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

Universal Charter of the Judge, 1999, International Association of Judges

Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA Region, 08/19/1995, Beijing, China, 6th Conference of the Chief Justices of Asia and the Pacific

Recommendation no.R(94)12 of the Committee of Ministers to Member States on the Independence, Efficiency and Role of Judges, 1993, 518th Meeting of the Ministers' Deputies, Council of Europe, Strasbourg, France

European Charter on the Status of Judges, 07/08-10/1998, Council of Europe, Strasbourg, France

Global Framework Action Plan for Judges in Europe, 2001, Appendix 11, 740th Meeting of the Ministers' Deputies, Council of Europe, Strasbourg, France

Articles, Books and Background Papers

First Study Commission of the International Association of Judges. 2002. *The Role and Function of the High Council of Justice or Analogous Bodies in the Organization and Management of the National Justice System*.

See, <http://www.iaj-uim.org>

HAMMERGREN, Linn. 2002. *Do Judicial Councils Further Judicial Reform? Lessons from Latin America*. Working Paper No.28. Rule of Law Series. Carnegie Endowment for International Peace: Washington, DC

IFES/USAID. 2001. Guidance for Promoting Judicial Independence and Impartiality. USAID Technical Publication. USAID: Washington, DC.

See, http://www.ifes.org/rule_of_law/description.html in Arabic, English, French and Spanish.

PEREZ TORT, Maria Julia. 2002. *Iniciativa de la Sociedad Civil para la Transparencia del Consejo de la Magistratura – Programa Ciudadanos por la Justicia (Argentina) [Initiative of Civil Society for Transparency in the Judicial Council – Citizens for Justice Program (Argentina)]*. Poder Ciudadano: Buenos Aires, Argentina.

See, http://www.dplf.org/frameset_pub_eng.htm

VOERMANS, Dr. Wim. 1999. *Councils for the Judiciary in EU Countries*. European Commission/TAIEX

See, http://cadmos.carlbro.be/Library/Councils/Councils.html#_Toc459267097

**APPENDICE III : TABLEAUX SUR LES CONSEILS DE LA MAGISTRATURE
 AMERIQUES ET EUROPE**

[Note : Les couleurs utilisées dans les tableaux correspondent à la légende suivante, “oui” est représenté en noir et “non” en blanc.]

Tableau 1 : Pays n’ayant pas de Conseil de la magistrature

PAYS	Un Conseil a-t-il été créé?	La création d’un Conseil est-elle envisagée?
EUROPE		
Allemagne	NON	OUI (Association allemande des juges)
République Tchèque	NON	OUI
Royaume Uni	NON	
AMERIQUE LATINE		
Chili	NON	
Nicaragua	NON	
Uruguay	OUI (dissoud en 1989)	NON
Venezuela	OUI (dissoud en 2000)	NON

Tableau 2 : Pays ayant un Conseil de la magistrature dépendant de la Cour suprême

PAYS	COMMENTAIRES
EUROPE	
Autriche	Organe de 5 juges dans chaque tribunal, pouvoirs consultatifs en matière de nomination
Chypre	Le Conseil correspond à la Cour suprême en formation plénière
AMERIQUE LATINE	
Brésil	Organe consultatif au sein du pouvoir judiciaire, fonctions limitées
Costa Rica	Deux petits Conseils internes : le Conseil supérieur et le Conseil de la magistrature
Guatemala	Organe consultatif au sein du pouvoir judiciaire, fonctions limitées
Honduras	

Tableau 3 : Composition des Conseils de la magistrature en Amérique du nord et latine

Pays	Juges des tribunaux inférieurs	Juges des tribunaux supérieurs	Procureurs	Représentant du pouvoir exécutif	Représentant du pouvoir législatif	Universitaires (droit)	Professionnels du droit	Employés des tribunaux	Société civile	Nombre total de membres
Argentine										19
Bolivie										5
Canada										Varie
Colombie										13
El Salvador										7
Equateur										8
Mexique										7
Panama										8
Paraguay										8
Péru										7
Rep. Dom.										7
USA										27

Tableau 5 : Composition des Conseils de la magistrature en Europe de l'ouest et de l'est

Pays	Juges des tribunaux inférieurs	Juges des tribunaux supérieurs	Procureurs	Représentant du pouvoir exécutif	Représentant du pouvoir législatif	Universitaires (droit)	Professionnels du droit	Employés des tribunaux	Société civile	Nombre total de membres
Belgique										44
Bulgarie										25
Danemark										13
Espagne										21
Estonie										11
France										12
Georgie										12
Grèce										15
Hongrie										15
Irlande										17
Islande										5
Italie										33
Lituanie										24
Macédoine										7
Norvège										7
Pays Bas										5
Pologne										25
Portugal										17
Roumanie										15
Slovaquie										18
Suède										10
Turquie										7
Ukraine										20

Tableau 5 : Nomination et terme des membres des Conseils de la magistrature en Amérique du nord et latine

Pays	Exécutif	Législatif	Judiciaire	Société civile	Membres d'office	Terme (en nombre d'années)
Argentine						4
Bolivie					Président de la Cour suprême	10
Canada					Président de la Cour suprême ; Présidents des tribunaux supérieurs ; premiers Vice-présidents et Vice-présidents ; doyens des Cours suprêmes du Yukon, des Territoires du nord-ouest et de Nunavut ; Président de la Cour martiale d'appel du Canada ; Président et Vice-président du Tribunal Fiscal du Canada	A vie, jusqu'à 75 an
Colombie						8
El Salvador						3
Equateur					Président de la Cour suprême	6
Mexique						5
Panama					Président de la Cour suprême ; Présidents des chambres de la Cour Suprême ; Procureur général ; Procureur administratif général ; Président du barreau national	Durée du terme du poste principal
Paraguay						3
Pérou						5
Rép. Dom.					Président de la République ; Président du Sénat ; Président de la Chambre des députés ; Président de la Cour suprême	Durée du terme du poste principal
USA						Variable

Tableau 6 : Nomination et terme des membres des Conseils de la magistrature Europe de l'ouest et de l'est

Pays	Exécutif	Législatif	Judiciaire	Société civile	Membres d'office	Terme (en nombre d'années)
Belgique						4
Bulgarie					Président de la Cour de cassation ; Président de la Cour administrative suprême ; Procureur général	5
Danemark						N/A
Espagne					Président de la Cour suprême	N/A
Estonie					Président de la Cour suprême ; Ministre de la Justice	3
France					Président de la République ; Ministre de la Justice	4
Georgie						N/A
Grèce	Sélection au hasard				Président de la Cour de cassation ; Procureur général	1
Hongrie					Président de la Cour suprême ; Procureur général ; Ministre de la Justice ; Président du Barreau	6
Irlande					Président de la Cour suprême ; Présidents de Hautes Cours et Tribunaux de District	N/A
Islande						5
Italie					Président de la République ; Président de la Cour suprême ; Procureur général de la Cour suprême	4
Lituanie					Président de la Cour Suprême ; Président de la Cour d'appel ; Président de la Cour suprême administrative ; Ministre de la Justice ; Ministre des Finances ; représentant du Président ; représentant du Président du Parlement (Seimas) ; Président de la Commission parlementaire des affaires juridiques ; Président de la Commission parlementaire du budget	4
Macédoine						6
Norvège						4
Pays Bas						3
Pologne					Présidents des Cour suprême et Cour suprême administrative ; Ministre de la Justice	4
Portugal					Président de la Cour suprême	3
Roumanie						4
Slovaquie					Président de la Cour suprême	5
Suède						N/A
Turquie					Ministre de la Justice ; Secrétaire d'Etat auprès du Ministre de la Justice	4
Ukraine					Président de la Cour suprême ; Procureur général ; Ministre de la Justice	N/A

Tableau 7 : Responsabilités des Conseils de la magistrature en Amérique du nord et latine

Pays	Sélection	Promotion	Discipline	Evaluation	Formation	Gestion du budget	Administration des tribunaux	Collecte de données et/ou information	Conseil de politique judiciaire
Argentine									
Bolivie									
Canada									
Colombie									
Equateur									
El Salvador									
Mexique									
Panama	Purement consultatif (recommandations en matière de sélection, évaluation, propositions de loi, administration des tribunaux)								
Paraguay									
Pérou									
Rép. Dom.									
USA									

Tableau 8 : Responsabilités des Conseils de la magistrature en Europe de l'ouest et de l'est

Pays	Sélection et/ou nomination	Promotion	Discipline	Evaluation	Formation	Gestion du budget	Administration des tribunaux	Collecte de données et/ou information	Conseil de politique judiciaire
Belgique									
Bulgarie									
Danemark									
Espagne									
Estonie									
France									
Georgie									
Grèce									
Hongrie									
Irlande									
Islande									
Italie									
Lituanie									
Macédoine									
Norvège									
Pays Bas									
Pologne	Purement consultatif (nomination). Initiative des recours en constitutionnalité contre les normes menaçant l'indépendance judiciaire.								
Portugal									
Roumanie									
Slovaquie									
Suède									
Turquie									
Ukraine									

