MAKING DEMOCRACY WORK

PRESENTATION AT THE SOUTHERN AFRICA REGIONAL CONFERENCE ON SEPARATION OF POWERS IN A CONSTITUTIONAL DEMOCRACY
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*JUDICIAL INDEPENDENCE FROM A GLOBAL PERSPECTIVE WITH A CONSTITUTIONAL DEMOCRATIC AFRICAN TWIST**

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Base-line Judicial Independence Norms Relevant to South African Countries and The Blantyre Separation of Powers Declaration

Thank you very much Ambassador Meece. It is indeed an honor to be here with you and the many distinguished guests and speakers who have gathered to discuss what may be the most important issue confronting emerging democracies in the new millennium: how to strengthen the institution of the judiciary within different development contexts?

Before we move further into our discussion, IFES wants to pay a special acknowledgement to our Malawi hosts for their vision and determination to host such an event and to the United States Agency for International Development for its on-going leadership on this cutting-edge issue. While there are many honorable guests here today, let us single out several esteemed Malawi individuals and officials who are participating in this event, including the past and present Chief Justices of the Malawi Supreme Court, Justices Banda and Unyolo, the Vice President of Malawi, Justin Malewezi, the Speaker of the Parliament, Sam Mpasu and a leader of the opposition party, Gwanda Chakwandba.

Let me say that while protocol alone requires that these honored guests be formally acknowledged, they deserve special recognition for both their joint physical presence and their cooperative spirit. Indeed, it is quite unusual for members of all branches of any government, as well as a leader of an opposition party, to jointly convene to openly and seriously discuss topics such as the rule of law, separation of powers and judicial independence. In this regard, Malawi is establishing an important precedent for herself and other countries that are also grappling with these same questions. Their vision and leadership in organizing this gathering with an eye towards consensus building will hopefully set the tone and the pace for globalizing the rule of law within an African democratic constitutional context for generations to come.

In the words of Jack Mapanje, one of Malawi's acclaimed poets and freedom fighters, it is important for the new Malawi and new Africa to look bury the dark pages of history and move on. His basic message, if I may paraphrase him, is that there is always hope that the goal of consolidating democracy and freedom will be achieved and that another dictator will steal this constitutional dream from the people. Mapanje said the best path to consolidation was to move from a society based oral justice to a codified justice system based upon a democratic constitution and the rule of law. [1]

One of the key lessons learned from other countries, is that these kinds of constitutional discussions need to be open. All three branches of government and society at large need to be engaged and supportive of an independent judiciary, for all three branches, as well as what some call the fourth branch of government, the media, are mutually supporting institutions in a democracy. Perhaps what is most important about this precedent-setting, multi-faceted discussion, is that it will also promote more public and international dialogue and scrutiny on a topic of up-most importance to all democracies.

Another related lesson learned is that the rule of law is the cornerstone of a democracy and that you can not develop this kind a rule of law system or culture without a fair and effective independent judiciary that is accountable to and supported by the public. In the past, most judicial reforms, not unlike many economic and political reforms, have been too technical and exclusively focused on a few high-level government officials. Most of these reforms have not taken root because little or no effort was made to engage society or mesh current socio-economic conditions, traditions or norms with ambitious reform initiatives. Thus, many reforms have been of a formalistic, policy-oriented nature that have never been accepted by society or successfully implemented in practice.

Other key factors that have not been properly factored into reform strategies and programs include systemic corruption, judicial and law enforcement corruption and judicial enforcement. Examples of donor-scripted, elitist-oriented macro-economic and judicial reforms that have failed to achieve their stated objectives range span the globe, from countries like Malawi to Russia to Russia. In this age of globalization and democratization, the West has much to learn from its developing and transition colleagues.

How the institution of the judiciary emerges from its relatively recent constitutional birth and sails amongst recent historical global democratic and economic winds, will probably have more impact on sustainable democratic and economic reform and justice during the 21st century than any other single factor. My sense is that many of those gathered here today realize this truism and that reality gives us guarded hope for Africa's future as well as the global community.

Experience from around the world tells us that without a strong, independent, accountable judiciary, the fair and effective enforcement of Constitutional human rights, such as property rights and civil liberties, are not achievable objectives over the long-term. People everywhere want constitutional justice and the right to speak and own property. One of the regional and global messages we are sending today is that without an independent judiciary, these well-recognized democratic rights, which are grounded in international law, country constitutions and case law, can not fairly or effectively enforced or implemented.

Today, we have a unique opportunity to send another, little acknowledged regional and global message – that there is a constitutional and democratic consensus the judiciary should be independent and that there are clear minimal judicial independence jurisprudence principles to which all countries should adhere. If we can begin to more clearly define what those minimal principles mean in an African context then we will have taken a significant step forward in the long journey towards achieving justice and the rule of law.

Developing practical guidance on how to define and implement this constitutional-sounding term will serve many useful purposes, including providing the legal profession, policy reformers, businesses, the media and the public with the information it needs to implement, promote and monitor concrete this reform. If this esteemed group succeeds in this fundamental task, it will serve as an important regional and global base-line milestone and impetus for advancing democracy, economic growth and reducing corruption everywhere. The stage will then be set to move forward on other important inextricably linked reform fronts, such as those related to law enforcement, corruption within the private and public sectors and fundamental human rights.

Let me close my introductory remarks with a quote from South Africa's first black Chief Justice, Ismail Mahomed, who was delivering a speech in memory of a white, Africaans-speaking advocate and politician, Bram Fischer. Fischer was one of many brave souls who died while a prisoner for crimes committed against the apartheid state. These words of wisdom should serve as a guidepost for us during this conference and in our collective professional and personal future endeavors to promote the rule of law:[2]

> But the excitement of this pursuit into the future is immeasurably enhanced by the truths absorbed form the past and present. For lawyers these include the insistence, at all times, that the attainment of justice must be the rationale for all law; that law cannot be distanced from justice and morality without losing its claim to legitimacy; that the ethical objectives of the law contain the life blood of a nation; that justice must be seen to be fair and its impact on the life of the humblest citizen in search of protection against injustice; that the law is accessible, intelligible, visible and affordable; and that any retreat from these truths imperils the very existence and status of a defensible civilization, first by corrosively destroying within it the source of the energy which sustains it and second by provoking disdain, disorder and rebellion from those it seeks to discipline.

Now let us take turn to the Guide and some key comparative findings and lessons learned from it and the independent research that IFES has undertaken.

The Guide: <u>Guidance for Promoting Judicial Independence and Impartiality</u>

First, this Guide was long overdue and it along with IFES' own analysis presents the latest cutting-edge on a global topic of vital importance. No global research project or ambitious comparative analysis of this nature had ever been undertaken before issuance of this report. Thus, most of what we knew before the Guide was purely anecdotal in nature. Likewise, it was not clear to many that support for an independent judiciary was critical to deepening both democratic and economic reforms.

Second, the Guide was done to promote deeper understanding of the full range of inter-related issues surrounding judicial independence, including but not limited to those relating to case management, court administration and judicial training -- which are less political and less controversial in nature. It is a sad commentary only a few brave jurists like Judge Ssndra Oxner and Professor John Blackton had ever attempted to identify and organize the range of issues related to judicial independence before, particularly within a comparative context.

Third, while the Guide's primary focus, as envisioned by USAID, was to assist donors and reformers in designing and implementing strategically focused programs, the unique research in this Guide, especially when coupled with IFES' Tool Kit and research, can be used for myriad purposes by multiple audiences.

One of the most useful outcomes of the two years worth of work that went into the production of the Guide was that it has resulted in a well-organized and thoughtful approach to examining and strategically thinking about judicial independence. IFES also believes an on-going analysis of the information and research in the Guide will serve to further our knowledge-base in ways that we can not clearly see at the moment -- including how to develop, implement and monitor minimal judicial independence standards within different developmental contexts. Indeed, IFES has analyzed all of the research submitted by each country expert and then developed comparative country, regional and global data that could lead to the development of a global judicial independence baseline upon which to measure future progress. We have now coupled that qualitative analysis with an analysis of how judicial independence is now being defined within the context of current governmental and non-governmental instruments and cases.

IFES' main conclusion from this two-part analysis is that despite claims that no minimal regional or global judicial independence standards exist, a closer look at the principles found in virtually all of these legal and political instruments and cases that relate to this subject illustrates there is an emerging consensus on a number of key definitional issues. While the concept of judicial independence is admittedly still in an embryonic stage, economic globalization, regionalization and democratization trends, coupled with new regional and international obligations and case law, are beginning to give it real meaning. However, most reformers and donors, including those in the business, human rights and academic communities do not fully realize or appreciate either this fact or the actual state of international and regional legal and judicial independence norms.

ORGANIZATION OF THE GLOBAL GUIDE

The Guide is divided into three distinct but inter-related sections. It is built around country expert survey results from 26 developing and transition countries representing every region in the world, and a series of commissioned research papers related to three developed countries and a number of thematic issues.[3] The country papers as well as those from the developed world were written by in-country experts while the thematic papers were written by experienced international practitioners and academics from the United States. As the different elements involved in strengthening judicial independence surfaced and were debated during the Guide's development, six different categories of approaches emerged in what is now Part I of the Guide. This section is an attempt to analyze and discuss the research and survey results in an organized thematic fashion and to articulate where there is and is not a consensus on various issues.

Part I's themes are issue oriented: (i) Building Support for Reforms; (ii) Confronting Interference with Judicial Independence; (iii) Developing Judicial Capacity and Attitudes; (iv) Increasing Transparency; (v) Promoting Societal Respect for the Role of an Impartial Judiciary and (vi) The Tension between Independence and Accountability.

Part II's themes are regional and country focused: (i) Latin America (ii) Central and Eastern Europe (iii); (iv) Anglophone Africa (v) the United States; (vi) France and (vii) Italy.

Part III's themes are policy oriented and focused on case studies, such as (i) judicial independence and accountability; (ii) the role of civil society and (iii) building constituencies for reform.

The Appendix that follows these sections contains research references and international documents that should be useful to all working on these important reforms.

WHAT IS JUDICIAL INDEPENDENCE?

It is essential to begin any serious discussion with a clear understanding of what is meant by the term "judicial independence" and how that issue affects virtually all people and institutions around the world. Too often, many well-intentioned but misinformed reformers and entrenched anti-reform interest groups unwittingly collaborate in circuitous, rhetorical dialogue on this subject. This leads many to conclude that there is no consensus on the importance of judicial reform, what is meant by judicial independence or whether it is key to sustainable democratic and economic reform.

In its most simple terms, judicial independence is generally used to mean that the judiciary and individual judges are relatively free from undue interference in the decision-making process.[4] Impartiality is the end goal for most countries striving to support this institution. One of our hopes is that the global research, comparative information, best practices and lessons learned in this Guide will initiate a new, concrete country, regional and global debate that promotes broader and more enlightened support for judicial independence and a new public recognition that every democratic country in the world has legally and politically obligated itself to support this institution.

To accomplish this Herculean task, it is essential to enhance public participation, scholarly and applied research and transparency in the reform process. While it is true that many countries are struggling with how to create or nurture an independent judiciary within different socio-economic contexts, the reality is that most have not succeeded because of a lack of both political leadership and broad-based public support - - and not because judicial independence is conceptually too abstract to define or structurally implement.

Indeed, research and analysis in the Guide from 26 countries around the world leads us to conclude that the legal and political superstructure for a 21st Century independent judiciary is built upon a number of mutually supporting strategic pillars and values, namely**:**

FIVE PILLARS OF JUDICIAL INDEPENDENCE:

Impartiality
Integrity
Transparency
Accountability

Public Support and Trust

The basic enabling and structural environment for an independent judiciary must also be in place or these pillars will not have the political, legal or economic roots needed to nourish complex, inter-related reforms. Without this enabling environment, economic growth, the protection of civil liberties and property rights, the ability to resolve inter-branch disputes and overall political stability is severely limited. Economic growth opportunities, particularly for small businesses and those on the outside, are severely limited. Without judicial independence the key institution charged with protecting individuals and enterprises constitutional civil liberties and property rights can not live up to its critical role in a functioning democracy.

Issues such as separation of powers, support from an independent media, a transparent appointments, promotion and disciplinary process, financial and administrative independence, personal security of judges, security of tenure, the fair and effective enforcement of court orders, access to judicial information and cases and judicial corruption, are high priority, inter-related reform issues in virtually all of the countries examined. They should be factored into any comprehensive assessment and strategic plan of action.

IFES' ANALYSIS OF THE RESEARCH RESULTS FROM 23 DEVELOPING AND TRANSITION COUNTRIES

Obstacles: A comparative analysis of some of the Guide's main research findings from twenty-three countries around the world reveals that the top four obstacles to judicial independence include (Anglophone African countries surveyed during the summer of 2000 include: Malawi, Kenya, Zimbabwe, Uganda, Nigeria and Zambia): [5]

1. Corruption [**Globally**: 18 out of 23; **Anglophone Africa**: 5 out of 6].[6]
2. Executive Interference [**Globally**: 16 out of 23; **Anglophone Africa**: 6 out of 6].
3. Judicial Hierarchy Interference [**Globally**: 11 out of 23; **Anglophone Africa**: 1 out of 6].
4. Political Party Networks [**Globally**: 9 out of 23; **Anglophone Africa**: 1 out of 6].

While IFES' own analysis of these findings is certainly subject to honest debate, the data and analysis is deemed to be significant and reliable enough to share with others, for their own interpretation, and is presented to mainly provoke more research and concrete debate on a set of common problems confronting many countries.

It is interesting to note that the main barriers to judicial independence in Anglophone Africa mirror those of most transition countries around the world. Corruption and an overly dominant executive branch are perceived as the biggest barriers to judicial independence in most countries. However, there are some interesting differences across regions as well. For example, in Latin America judicial hierarchy and political party network barriers appear to be more of a problem than Executive interference, and, Africa is the only region where a country reported parliamentary interference as a barrier. Thus, there are more similarities than differences across regions although many barriers no doubt differ in origin and degree.

With regard to some of the differences, it could be observed that while some Latin American countries appear to have been somewhat successful in escaping undue executive control;

however, they may have traded or avoided that problem for another just as debilitating -- judicial hierarchical control. This phenomenon could also be explained, in least in part, by the fact that extra-judicial forces, such as the executive, the military or security establishment, business oligarchs or criminal networks, ultimately control the judicial hierarchy in practice and that this reality lies beneath the surface of what otherwise appears to be the case. Of course, these issues and others are compounded and more complicated in countries where the judiciary and other key democratic institutions are effectively captured by the state or other political or economic networks and systemic corruption.

In any case, it is clear that many of these barrier to reform issues are inter-related and that more qualitative research and a comprehensive functional assessment work needs to be undertaken before we know the exact nature of the underlying problems. Until that is done we can not hope to find possible policy or programmatic solutions to this complex, politically sensitive global phenomenon. In short, the net result of much of what we have attempted so far on non-independent judiciaries so far has not taken into account the institutional, political, economic and cultural contextual environment and has placed too most of the reform emphasis on superficial symptoms rather than fundamental root causes.

Other key questions raised in the Guide, many of which are directly related to transparency principles, are:

Selected Answers from IFES' Comparative Analysis of the Country Surveys

1. Whether the process for selecting and appointing judges was rather objective or rather subjective?
   Globally: 10 of 22 answered rather objective; 12 rather subjective;
   Anglophone Africa: 2 out of 6 answered rather objective (Uganda and Zimbabwe) and 4 out of six answered rather subjective.
2. Whether the process for promoting judges was rather objective or rather subjective?
   Globally: 12 out of 22 answered rather objective; 10 answered rather subjective;
   Anglophone Africa: 1 answered objective (Uganda); 1 rather objective (Zimbabwe); 2 rather subjective (Malawi and Kenya) and 1 subjective (Zambia)].
3. Whether the process for disciplining judges was rather well defined or rather poorly defined?
   Globally: 10 out of 22 answered rather well defined; 12 answered rather poorly defined;
   Anglophone Africa: 4 answered rather poorly defined and 1 rather well defined (Uganda); 1 did not know (Nigeria)].
4. Whether the process for evaluating the performance of a judge was effective or ineffective?
   Globally: 14 out of 21 answered ineffective and 6 effective;
   Anglophone Africa: 3 answered there was no evaluation at all (Kenya, Malawi and Zambia) and 1 answered effective (Uganda)].
5. Whether there is an effective judicial code of ethics (or any code)?

Globally: 18 out of 21 answered ineffective (or that none existed) and 3 answered effective;
Anglophone Africa: 2 out of 6 answered no code (Nigeria and Zimbabwe); 2 answered no effective code (Malawi and Zambia) and 1 effective (Uganda].

6. Whether other civil society constituencies contributed to the promotion of judicial independence?
   Globally: 11 out of 19 answered involved very little and 8 somewhat involved; **Anglophone Africa**: 3 out 6 answered they made no contribution (Malawi, Kenya and Zambia) (2 answered some contribution (Uganda and Nigeria) and 1 little contribution (Zimbabwe].
7. Whether judges associations played some role or almost no role in promoting judicial independence?
8. **Globally:** 7 out of 22 answered some role and 15 almost no role;
   Anglophone Africa: 4 out of 6 answered little or no role; 1 some role (Uganda) and 1 no judges association (Zimbabwe)]
9. Whether measures to reduce judicial corruption were effective (or rather effective) or ineffective (or rather ineffective)?
   Globally: 15 out of 21 answered rather ineffective and 6 answered rather effective;
   Anglophone Africa: 5 answered ineffective or no measures and 1 rather effective (Uganda.]

TRANSPARENCY IS KEY TO VIRTUALLY ALL REFORMS

While all of these issues are important, a recurring theme in virtually all of the research in the Guide, and one that we believe will have a significant impact on reforms, is transparency. Over the years, we have learned that transparency promotes accountability and good corporate and public governance. The Guide's research supports these principles within context of judicial independence reforms as well, including transparency in the selection, appointments, promotion, disciplinary and case assignment processes, as well as issues related to tenure, codes of ethics, income and asset disclosure, budgetary independence, evaluation and the publication of decisions and public access to basic information from the court. The composition and role of the decision-making process of judicial councils and their operational transparency has become particularly important in some countries.

Even though some of the experts and advisors to the Guide could not agree on one approach to resolving problems concerning each of these areas, there was a clear consensus that promoting transparency within each programmatic area was one of the most important principles to promote. The Guide outlines many of the kinds of programs that can be designed to promote transparency, and others will provide examples of concrete programs that have been undertaken. A few examples include the need to publicize judicial vacancies and the qualifications of judicial candidates widely, to invite public comment on their qualifications and to publish and make readily available court decisions and court operations. Transparency principles are equally important to other areas such as the promotion and disciplinary processes, the judicial budget, court management structures such as judicial councils and the disclosure of a judge's assets, income, benefits and potential conflicts of interest.

Unless transparency principles permeate the entire judicial process, reformers inside and outside the judiciary and the general populace will not have the information necessary to evaluate or monitor reforms, court policies or judicial decisions. Unless transparency and open government principles also permeate the entire governmental process, the culture of secrecy that exists will continue to stop reform initiatives dead in their tracks. That is why transparent open government processes and policies related to the courts and to government in general should be inextricably linked. Unless transparency principles are part and parcel of the legal profession, it will be unable to enforce any code of professional ethics and the law enforcement community will not be able to obtain the information and evidence it needs to convict those guilty of violating various laws and judicial corruption. Most important, without adequate information, the public will not develop trust in the judiciary and will refuse to support its institutional legitimacy.

A demand driven, good governance approach to justice reform should result in a clearer, more strategic reform agenda that places more emphasis, in both the short and long-term, on a defined set of strategic issues directly related to judicial independence. This is not to say that all judicial reform issues are not important or unrelated, but we believe the research in the Guide and global experience points to several inter-related issues that that are critical to "get it right" up-front. As will be discussed later, foremost among these issues is the quality and integrity of those appointed and selected to serve on the bench, since it is these judges who will ultimately have to convince the public that it can rely on the judiciary as an institution to protect their civil liberties and property rights and render justice.

At the same time, this research and experience points to the fact that there are a number of strategic roads that can be taken to arrive at the crossroads of judicial independence. Perhaps the most important roads are those that support and intersect all others and provide the public bridges for a long, difficult political journey. Many countries and donors have chosen detours that are more politically convenient or easily navigable than others, and many reformers have been sideswiped by those determined to maintain or accumulate more power and money.

UNDERLYING JUDICIAL INDEPENDENCE TRUISMS

Before we allow ourselves to take the proverbial socio-economic and political detour that many would often intentionally or unintentionally undertake, we should examine some of the lessons that cutting-edge research and historical experience have taught us. A summary survey of the global legal, political, economic and sociological research and literature reveals that there is an ever-growing global consensus on a number of key cross-cutting issues that enables us to begin this discussion on common global ground.

In order to advance the judicial independence reform agenda, we need to move beyond what we already know about judicial independence, namely that:

Moving beyond the rhetoric and into implementation

(i) Creating a fair independent judiciary is the cornerstone of a democratic society based upon the rule of law;

(ii) Protecting civil liberties, such as free speech, freedom of association and freedom of religion is extremely difficult and unpredictable without this institution;

(iii) Sustaining most economic and political reforms is difficult, if not impossible, without this institution;

(iv) Preventing and fairly addressing human rights abuses in a systemic way, particularly those related to the poor, minorities and the disenfranchised, is best guaranteed in a democratic society by an independent judiciary;

(v) Balancing civil liberties interests such as privacy, against important national security and law enforcement objectives, such as fighting terrorism, is most fairly accomplished in a democratic society by an independent judiciary;

(vi) Protecting and resolving property and contract rights and resolving governmental disputes is most effectively and fairly achieved in a democratic society by an independent judiciary;

(vii) Strengthening both an independent media and independent judiciary are critical since they are mutually supporting institutions that can not survive over the long-term without the other;

(viii) Addressing transnational law enforcement issues effectively and fairly requires observance to a common set of rule of law principles, independent judicial oversight and greatly enhanced international cooperation and

(ix) Addressing and reducing systemic corruption, including the fair and effective implementation of laws and enforcement of court decisions, is virtually impossible in a democratic society without an independent judiciary.

INTERNATIONAL PRINCIPLES AND OBLIGATIONS -- A CONSENSUS?

Let us examine what common legal and political judicial independence obligations and principles have been codified in these international instruments.

1. International Law. Article 10 of the **Universal Declaration of Human Rights**, which declares the right of an individual to a hearing by an "independent and impartial tribunal."[7] Since the birth of this historic document in 1948, 170 countries have explicitly endorsed this principle.

This essential guarantee is repeated or elaborated on in various other international instruments, including the **UN Covenant on Civil and Political Rights** [article 14][8], the **European Convention on Human Rights** [article 6][9], the **American Convention on Human Rights** [article 8 and 27][10], and the **African Charter on Human and Peoples Rights** [article 7 and 26][11].[12]

2. International Practice/Case Law. Additional meaning and importance has been placed on this principle in a number of decisions by the **Inter-American Human Rights Court**[13], the **Inter-American Human Rights Commission** and the **European Court of Human Rights**[14].

The decisions of the **European Court of Human Rights,** pertains to a wide-range of issues, including how "judicial independence" relates to**: (i) the effective enforcement of court orders;**

(ii) special and military courts; (iii) institutional judicial independence and (iv) access to justice issues.

The decisions of the **Inter-American Court of Human Rights (IACHR**), generally have focused on a narrower range of issues, generally in connection with article 8(1) and judicial independence. The key issue analyzed by the IACHR concerns efforts to usurp the constitutional jurisdiction of the ordinary courts and the use of military courts and/or "faceless" judges to try civilians for crimes of terrorism and treason.

The **Inter-American Human Rights Commission (IAHRC),** apart from referring to the IACHR cases that allege violations of the independence of the judiciary, has repeatedly emphasized and discussed the issue of judicial independence in its reports.

3. **Academic Research**. Likewise, a survey of recent scholarly global research also notes that many countries are now approaching judicial independence issues with more rigor and common purpose.[15] The question then arises as to what are the fundamental elements of an "independent and impartial tribunal?"

EMERGING CONSENSUS ON TEN MINIMAL ELEMENTS OF AN INDEPENDENT JUDICIARY

The most important consensus elements of an independent judiciary are identified through a comparative analysis of each of these official documents, as well as in other important governmental and non-governmental instruments and legal practice:[16]

IFES Judicial Independence Index
Global and Regional Consensus on 10 Minimal Judicial Independence Principles

(i) There shall not be any inappropriate interference with the judicial process, nor shall judicial decisions be subject to revision, except upon appellate review, mitigation or commutation by competent authorities.[17]

(ii) Judges shall perform their professional duties free from improper influences and without undue delay. They shall ensure that judicial proceedings are conducted fairly and that the rights of parties are respected.[18]

(iii) Not only must judges be impartial, they must be seen by all to be impartial. Accordingly, in the exercise of their rights to freedom of expression, belief, association and assembly, judges shall conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary.[19]

(iv) Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction of the ordinary courts.[20]

(v) Governments are obliged to provide adequate resources to enable the judiciary to perform its functions properly.[21]

(vi) Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection or promotion shall be based on objective factors, in particular, ability, integrity and experience, and shall include safeguards against improper influences.[22]

(vii) Judges shall have guaranteed tenure until retirement or the expiration of their term of office, where such exists.[23]

(viii) Judges should enjoy personal immunity from civil suits for acts or omissions in the exercise of their judicial functions.[24]

(ix) Judges shall be subject to suspension or removal only for reasons of incapacity or behavior that render them unfit to discharge their duties. Judges have the right to a fair and expeditious hearing concerning complaints or charges against them. All disciplinary, suspension and removal proceedings shall be determined in accordance with established standards of judicial conduct.[25]

(x) Legislation, judicial information and court decisions shall be made available to the public.

HIGHLIGHTS FROM IFES JUDICIAL INDEPENDENCE INITIATIVES

IFES offers a practical "how-to" **Judicial Independence Tool Kit** (Tool Kit) and a participatory methodology that promotes international norms, consensus, lessons learned, and strategic thinking. The Tool Kit is based on IFES' own analysis of the research developed in the *Guide* and other research and is linked to programs strategically geared towards promoting transparency, accountability, access to information, open government, public engagement, and advocacy. This **Tool Kit** is designed for many different audiences including judicial and legal authorities, donors, business associations, advocacy groups, academics, policy makers, the media, and the public.

The methodological tools are designed to empower citizens with the necessary information to protect and exercise their legal rights, develop coalitions, and broaden the base of support for reforms. Additionally, it assists reformers and donors in the assessment, prioritization, design and monitoring processes. Programmatic tools incorporate lessons learned, best practices and global and regional norms highlighted in the *Guide* as well as other cutting-edge global research, including programs to promote an enabling environment conducive to a Rule of Law culture and an independent judiciary, programs to promote transparency and programs to promote accountability.

A central piece of the **Tool Kit** is a survey instrument and methodology designed to conduct functional assessments, identify priorities and highlight consensus and disagreements. Survey instruments are developed to encompass a large number of key issues related to judicial independence, including the existing key processes and institutions, the sources and forms of interference, the transparency and objectivity of the existing mechanisms and the role and involvement of civil society. Questions may vary depending on the country and on the groups targeted. The results are then tabulated and analyzed in graphic and/or narrative form.

IFES Tool Kit Case Studies and Models for Consideration - - Haiti and Honduras.

Two examples of the use of the survey methodology can be found in IFES' "Constituency-Building for Judicial Reform in Haiti" rule of law program and in the "Promoting Judicial Independence and Impartiality" regional conference in Honduras.

Haiti Constitutional Justice and Judicial Independence Through Broad-Based, Publicly Supported, Informed Advocacy. IFES' innovative civil society and rule of law initiative in Haiti seeks to build broad coalitions across society to generate popular demand for justice reform. This approach is based on the premise that achieving rule of law requires an independent judiciary, independent media and an engaged civil society. The survey methodology was used in the assessment phase of the program. A survey instrument focusing on judicial processes, the judicial career, obstacles to independence and sources and forms of interference, judicial ethics and corruption and civil society participation was administered to 66 respondents from the judiciary, academia, the private sector, civil society and the international community. The results were then tabulated for each group of respondents and overall in order to show agreement and disagreement between the surveyed groups as to priority issues, key problems and obstacles to judicial independence.

For the first time, Haitians from diverse walks of life, including the human rights, legal, business, academic and labor communities, as well as journalists, artists and students, are able to clearly see that they were are not alone in their desire for constitutional justice and an independent judiciary and that they needed to work together to achieve these two-century old, inter-related goals. They are now working together in a broad-based on a strategic action plan, individually and collectively, on a set of prioritized judicial independence reforms.

Honduras Regional Conference and the Executive/Judicial/Legislative Judicial Independence Declaration and Key Consensus Findings. IFES held a regional conference on judicial independence in Honduras in April 2002. The program was designed to address issues of judicial independence affecting Central American countries and to present the Spanish version of the new USAID/IFES Judicial Independence Guide. In particular, the conference aimed at introducing Honduran participants to judicial independence reforms undertaken by neighboring countries at a time when a significant constitutional reform had just entered into force in Honduras and was still in the process of being implemented.

Prior to the conference, a survey instrument focusing on the processes of the judicial career, obstacles to independence and sources and forms of interference, judicial ethics and corruption, judicial councils, judicial enforcement and civil society participation was sent to the participants.

Answers were received from El Salvador, Guatemala, Honduras, Nicaragua, and Panama, analyzed and presented at the conference. The presentation included emphasis on key consensus findings throughout the region, sources and forms of interference, obstacles to judicial independence, civil society participation, judicial councils, judicial ethics and judicial enforcement. This methodological process proved to be an effective tool to engage participants and to help them think through a number of inter-related issues for future action, including the development of a holistic reform program, an overarching political and media strategy and a framework for monitoring and reporting on progress and problems.

In the opening and closing ceremonies, the heads of the three branches of the Honduran State – President Ricardo Maduro, Supreme Court President, Justice Vilma Cecilia Morales, and President of Congress, Porfirio Lobo Sosa – signed a historic commitment for promoting judicial independence reforms in Honduras. They also agreed to monitor and report on progress in achieving this goal on an annual basis. This kind of multi-branch commitment at a judicial reform conference stands as a model for reformers and policy-makers.

Key consensus findings include themes related to the inextricably linked issues of transparency and accountability. In that regard, there was a clear regional consensus that problems related to transparency were among the most important, including: (i) the lack of transparency and objectivity of the judicial career processes (selection, promotion and discipline of lower court judges and selection and discipline of supreme court judges) and (ii) the lack of civil society participation in reform efforts to monitor programs and inform the public and the positive impact on judicial independence that the creation of a judicial council could have.

In view of the findings that the judicial hierarchy itself was seen as the biggest barrier to judicial independence, there was also a consensus that accountability issues were of particular interest in the Central American context. Specifically, areas of agreement here included: (i) the lack of objectivity of disciplinary processes for judges of all levels; (ii) the lack of a periodic evaluation of the performance of judges and (iii) the need to create and implement a code of judicial conduct.

DISPARATE CONSTITUENCIES IN SEARCH OF EACH OTHER

While most countries of the world have expressed support for an "independent and impartial tribunal" in various international instruments and have codified this principle in new constitutions or laws over the last few decades, the reality is that most countries have not fully implemented this principle in practice. From Paris to Tblisi to Lima, periodic efforts to strengthen judicial independence have been undertaken by reformers with mixed success over the last few decades. Indeed, when looking around the globe today it is hard not to find policymakers at least talking about their judicial reform needs and objectives. Countries like Russia and Mexico, under new political leadership and with a strong guiding hand from civil society, now finally seem poised to achieve what others before them either did not seek or failed to accomplish. Civil society role in this process merits special attention.

A relatively new voice to this global discussion, civil society includes a more vibrant, free press, indigenous and international business associations, multi-disciplinary and comparative scholarly and applied research, various advocacy and human rights groups, as well as international organizations such as the World Bank and the Inter-American Bank. However, this voice remains weak and it needs to be listened to closely if reform efforts are to succeed and be accepted by society. We now know that even the most courageous judges need broad based support from their colleagues as well as civil society in their efforts to promote judicial independence and the rule of law. At the same time we also now know that civil society is the key to promoting judicial and governmental accountability. Unfortunately, all too often these disparate constituencies have not collaborated effectively and most policymakers and donors have not exhibited the either the will or technical expertise to support a complex, long-term reform agenda that includes civil society.

Forces related to democratization, economic and political integration, transnational security concerns and information technology, require new, harmonized rules by which to relate to each other both internally and externally. Now that new constitutions, structures and laws have been created in most emerging democracies, there is now a need to ensure that these new laws are effectively and effectively enforced through a predictable, independent judiciary.

Today our legal systems, values and forms of government look more alike than at any time in world history. Regional and global integration and technology are advancing a new legal order that will eventually globalize the rule of law along with the economy. However, this common global objective will be achieved only when an independent judiciary is well established in every country. We are also entering into another phase of legal and political democratic reforms that require renewed commitment and international cooperation. Theses forces and facts place more demands on the legal system and the courts everywhere, including making them more predictable, transparent and accountable.

The third arm of government, the judiciary, has traditionally always been the weakest, even in common law countries. Recently, however, a number of emerging democracies have strengthened the judiciary by combining elements of judicial independence found in different legal and political systems with their own traditions and cultures. The reality is that the underlying principles and structures within many legal systems around the world have more similarities than differences today. This is all a very positive development if we can just seize the moment and begin working towards a common purpose.

John Adams was one of the most famous of our former Presidents and a Founding Father of the United States Constitution. His vision and words would seem to be as relevant today in many countries as they were in the 1700's in the United States. He stressed that essential to the stability of government and to an able and impartial administration of justice was an independent judiciary and that judges should be:

"Men of experience on the laws, of exemplary morals, invincible patience, unruffled calmness and indefatigable application who should be subservient to none."

If we follow that general guidance, within the contours of the societies in which these issues are undertaken, the goal of establishing the rule of law and an independent judiciary will become a reality in countries as different as Malawi and Peru. Let me restate a challenge made at the beginning of these remarks, namely, to move beyond the stale political rule of law rhetoric of the past and to implement into practice the constitutional and international judicial independence obligations to which all genuine democracies have committed themselves. This is the most important step that needs to be taken to achieve the rule of law. The security and prosperity of every country and simple human justice demands no less.

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[1] *The Orality of Dictatorship: In Defence of My Country*, by Jack Mapanje: Afterward from: A Democracy of Chameleons: Politics and Culture in the New Malawi (Elanders Gotab, Stockholm 2002), pgs. 178 -187.

[2] Ismail Mahomed, The Bram Fischer Memorial Lecture, South African Journal on Human Rights 14 (1998): 227.

* Gail Lecce, Senior Rule of Law Advisor in the Global Democracy and Governance Office of USAID and Sandra Coliver, former Senior Rule of Law Advisor to IFES, and all of the experts who contributed significant portions of their time to this unique research, are due the lion's share of credit for this publication.

[3] Part I of the Guide is based on studies submitted by experts from 26 countries in reply to a questionnaire on judicial independence. The questionnaire focused on the programmatic approaches used by USAID and addressed issues of, inter alia, the judicial selection, promotion and disciplinary process, the judicial budget and salaries, court administration, training and evaluation, judicial corruption and ethics and civil society participation. The 26 countries surveyed include [the author is named in brackets]: Argentina [Victor Abramovic Cosarín], Bolivia [Eduardo E. Rodríguez Veltzé], Bulgaria [Yonko Grozev and Boyko Boev], Chile [Juan Enrique Vargas Viancos], Costa Rica [Fernando Cruz Castro], Dominican Republic [Francisco Alvarez Valdez, Félix Olivares and Eduardo Jorge Prats], Egypt [John Blackton], El Salvador [Francisco Díaz Rodríguez and Carlos Rafael Urquilla], Georgia [Gia Kavtardze], Guatemala [Eleazar López and Yolanda Pérez Ruiz], Honduras [Jesús Martínez Suazo], Hungary [Karoly Bard], Kenya [Kathurima M'Inoti], Malawi [Mocedai Msisha], Nigeria [Ayo Obe], Panama [Jorge Molina Mendoza], Paraguay [Jorge Enrique Bogarín], Philippines [Hector B. Soliman], Poland [Ewa Letowska], Romania [Monica Macovei], Russia [information based on Courts in Transition in Russia: The Challenge of Judicial Reform by Peter H. Solomon, Jr. and Todd S. Foglesong], Slovakia [Jan Hrubala], Uganda [Hon. Justice Ben Odoki], Ukraine [Maureen Fitzmahan], Zambia [John Swanga] and Zimbabwe [John Hatchard]. The country experts responded on the historical and cultural specificity in their countries which have affected judicial independence and elaborated on the key judicial processes and arrangements. Conclusions, which for the core of Part I], were drawn from these answers at a series of roundtables in Guatemala City [Guatemala] and Washington DC [USA].
Part II of the Guide contains 6 regional and developed country papers written by experts, including [the author is named in brackets]: Anglophone Africa [Jennifer Widner], Central and Eastern Europe [Edwin Rekosh], France [Louis Aucoin], Italy [Guiseppe DiFederico], Latin America [Margaret Popkin] and the USA [Russell Wheeler and Mira Gur-Arie]. Part 3 of the Guide is made of 4 thematic papers, focusing on the following issues [the author is named in brackets]: judicial independence and accountability [Linn Hammergren], court administration [Bill Davis], the role of civil society [Stephen Golub] and the context for judicial reform [Eric Jensen].

[4] For the recognition of this principle internationally or regionally, see, inter alia, the UN Basic Principles on the Independence of the Judiciary (1985), Principles 2 and 4 [hereinafter the UNBP]; Recommendation no.R(94)12 of Council of Europe on the Independence, Efficiency and Role of Judges (1994), Principle I.2.d. [hereinafter the Council of Europe Recommendation]; the Beijing Statement of Principles of the Independence of the Judiciary for the LAWASIA region (1995), Principles 3 and 6 [hereinafter the Beijing Principles] and the Universal Charter of the Judge of the International Association of Judges (1999), Article 2 [hereinafter the UCJ].

[5] Due to the unavailability or insufficiency of the data for three of the countries originally surveyed, IFES' comparative analysis relies only on 23 country studies. The three countries excluded from IFES' analysis are Bolivia, Hungary and Russia. Because of the highly subjective nature of this research by individual country experts, this comparative data is being presented for the sole purpose of provoking discussion and debate on a set of complex issues. We readily acknowledge that it would not be appropriate to read too much into the data, particularly in terms of trying to rank countries on some kind of global judicial independence scale. Nonetheless, we believe that presenting the results will help highlight the profound important role of research and debate on what is perhaps the most important crosscutting global issue confronting reformers and donors. Presenting this data in comparative form also helps establish a global judicial independence baseline, for the first time, and it a useful tool for imparting

complex information and engaging debate among all judicial independence stakeholders. While narrative information from USAID commissioned research was the underlying source for this data, IFES transposed the data into objective format, which necessarily requires some subjective interpretation and analysis. However, the objective data compiled by IFES was verified by the majority of the experts who participated in the country surveys. It was then analyzed by IFES' Senior Rule of Law Advisor and Research Fellow, Keith Henderson, with the very able and dedicated assistance of Violaine Autheman. The analysis was then compared to the regional and thematic research papers in the Guide and to external global research from a variety of resources referenced in this paper. **USAID did not support, take part or commission the production of this comparative data or analysis.**

[6] Interviews and questionnaires were obtained from six South African country experts during the summer of 2000. These counties are: Malawi, Kenya, Nigeria, Uganda, Zambia and Zimbabwe. Additional insights into these issues were obtained through private research by Professor Jennifer Widner of the University of Michigan. Her paper, Judicial Independence in Common Law Africa, is included in the Guide. It also covers the countries of Botswana, Tanzania and Uganda.

[7] Universal Declaration of Human Rights, 12/10/1948, United Nations, G.A. res. 217A (III). The Universal Declaration is widely considered to be binding on all states, as customary international law, or at least on all UN Member States, as an authoritative interpretation of the human rights provisions of the UN Charter. [hereinafter the UDHR]

[8] 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 [hereinafter the ICCPR]

[9] European Convention for the Protection of Human Rights and Fundamental Freedoms, 11/04/1950, Council of Europe, European Treaty Series no.5 [hereinafter the ECHR]

[10] American Convention on Human Rights, 11/22/1969, OAS Treaty Series No.36, 1144 U.N.T.S. 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 [hereinafter the ACHR]

[11] 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 [hereinafter the ACHPR]

[12] As of January 1, 2000, 176 countries were parties to one or more of these treaties or international instruments.

[13] *Genie Lacayo Case*, Judgment of January 29, 1997, Inter-Am. Ct. H. R. (Ser. C) No.30 (1997); *Loayza Tamayo Case*, Judgment of September 17, 1997, Inter-Am. Ct. H. R. (Ser. C) No.33 (1997); *Paniagua Morales et al. Case*, Judgment of March 08, 1998, Inter-Am. Ct. H. R. (Ser. C) No.37 (1998); *Castillo Petruzzi Case*, Judgment of May 30, 1999, Inter-Am. Ct. H. R. (Ser. C) No.52 (1999); *Ivcher Bronstein Case*, Competence, Judgment of September 24, 1999, Inter-Am. Ct. H. R. (Ser. C) No.54 (1999); *Constitutional Court Case*, Competence, Judgment of September 24, 1999, Inter-Am. Ct. H. R. (Ser. C) No.55 (1999); *Cesti Hurtado Case*, Judgment of September 29, 1999, Inter-Am. Ct. H. R. (Ser. C) No.56 (1999); *Durand and Ugarte Case*, Judgment of August 16, 2000, Inter-Am. Ct. H. R. (Ser. C) No.68 (2000); *Cantoral Benavides Case*, Judgment of August 18, 2000, Inter-Am. Ct. H. R. (Ser. C) No.69 (2000); *Bámaca Velásquez Case*, Judgment of November 25, 2000, Inter-Am. Ct. H. R. (Ser. C) No.70 (2000)

[14] *The Sunday Times v. the United Kingdom*, Judgment of April 26, 1979, ECHR (Ser. A) Vol.30 (1979); *Campbell and Fell v. the United Kingdom*, Judgment of June 28, 1984, ECHR (Ser. A) Vol.80 (1984); *H v. Belgium*, Judgment of November 30, 1987, ECHR (Ser. A) Vol.127-B (1987); *Van de Hurk v. the Netherlands*, Judgment of April 19, 1994, ECHR (Ser. A) Vol.228 (1994); *Fayed v. the United Kingdom*, Judgment of September 21, 1994, ECHR (Ser. A) Vol.294-B (1994); *Beaumartin v. France*, Judgment of November 24, 1994, ECHR (Ser. A) Vol.296-B (1994); *Stan Greek Refineries and Stratis Andreadis v. Greece*, Judgment of December 9, 1994, ECHR (Ser. A) Vol.301-B (1994); *Bryan v. the United Kingdom*, Judgment of November 22, 1995, ECHR (Ser. A) Vol.335-A (1995); *Findlay v. the United Kingdom*, Judgment of February 25, 1997, ECHR 1997-I; *Hornsby v. Greece*, Judgment of March 18, 1997, ECHR 1997-II; *Worm v. Austria*, Judgment of August 29, 1997, ECHR 1997-V; *Incal v. Turkey*, Judgment of June 9, 1998, ECHR 1998-IV; *Iatridis v. Greece*, Judgment of March 25, 1999, Grand Chamber, ECHR 1999-II *Immobiliare Saffi v. Italy*, Judgment of July 28, 1999, Grand Chamber, ECHR 1999-V; *Zielinsky and Pradal and Gonzales and Others v. France*, Judgment of October 28, 1999, ECHR 1999-VII; *Brumarescu v. Romania*, Judgment of October 28, 1999, Grand Chamber, ECHR 1999-VII; *T. and V. v. the United Kingdom*, Judgment of December 16, 1999, ECHR 1999-IX; *McGonnell v. the United Kingdom*, Judgment of February 8, 2001, ECHR 2001-II; *Pialopoulos and Others v. Greece*, Judgment of February 15, 2001, unpublished; *Agoudimos and Cefallonian Sky Shipping Co. v. Greece*, Judgment of June 28, 2001, unpublished

Independence of the judicial system in connection with articles 2 (right to life), 3 (prohibition against ill treatment) and 5 (right to personal liberty) of the ECHR: *Schiesser v. Switzerland*, Judgment of December 4, 1979, ECHR (Ser. A) Vol.34 (1979); *Van der Sluijs, Zuiderveld and Klappe v. the Netherlands*, Judgment of May 22, 1984, ECHR (Ser. A) Vol.78 (1984); *Duinhof and Duijf v. the Netherlands*, Judgment of May 22, 1984, ECHR (Ser. A) Vol.79 (1984); *Skoogström v. Sweden*, Judgment of October 2, 1984, ECHR (Ser. A) Vol.83 (1984); *McGoff v. Sweden*, Judgment of October 26, 1984, ECHR (Ser. A) Vol.83 (1984); *Güleç v. Turkey*, Judgment of July 27, 1998, ECHR 1998-IV; *Ögur v. Turkey*, Judgment of May 20, 1999, ECHR 1999-III; *Selmouni v. France*, Judgment of July 28, 1999, Grand Chamber, ECHR 1999-V; *Avsar v. Turkey*, Judgment of July 10, 2001, unpublished

[15] Comprehensive Legal and Judicial Development – Toward an Agenda for a Just and Equitable Society in the 21st Century (Proceedings of a Global Conference), The World Bank, June 5-7, 2000. Washington, D.C.; Judicial Independence in the Age of Democracy – Critical Perspectives from around the World, by Peter Russell and David M. O'Brien, University of Virginia Press (2001) and Monitoring the EU Accession Process - - Judicial Independence (2001 Country Reports), Open Society Institute (2001).

[16] See: (i) The UN Basic Principles on the Independence of the Judiciary, endorsed by the General Assembly in 1985, and re-affirmed in several declarations; (ii) "The Beijing Statement of Principles of the Independence of the Judiciary in the Lawasia Region," adopted by 20 Chief Justices in 1997 at a meeting hosted by Lawasia, subsequently refined, and endorsed by 32 Chief Justices throughout the Asia-Pacific region; (iii) The Council of Europe's "Recommendation no.R (94)12 on the Independence, Efficiency, and Role of Judges," and "Charter on the Statute for Judges"; (iv) "The Latimer House Guidelines for the Commonwealth on Parliamentary Supremacy and Judicial Independence," adopted 19 June 1998 by over 60 participants representing 20 Commonwealth countries and 3 overseas territories; (v) The "Policy Framework for Preventing and Eliminating Corruption and Ensuring the Impartiality of the Judicial System," adopted February 25, 2000 by experts from 16 countries, including the UN Special Rapporteur on the Independence of Judges and Lawyers, convened by the non-governmental Center for the Independence of Judges and Lawyers, a branch of the International Commission of Jurists, headquartered in Geneva. In addition, there are also a number of model Judicial Charters and Codes of Ethics, including: The Universal Charter of the Judge, adopted by the International Association of Judges; The Judges Charter in Europe, adopted by the European Association of Judges and the Code of Ethics for Judges, adopted by the UN Transitional Administration in East Timor.

[17] See, inter alia, the UNBP, Principle 4; the Council of Europe Recommendation, Principles I.2.a. and d.; the Beijing Principles, Principle 3; the UCJ, Article 2.

[18] See; inter alia, the UNBP, Principles 2 and 6; the Council of Europe Recommendation, Principle I.2.d.; the UCJ, Articles 2, 5 and 6.

[19] See; inter alia, the UNBP, Principles 8 and 9; the Council of Europe Recommendation, Principle IV.; the Beijing Principles, Principles 8 and 9; the Universal Charter of the Judge of the International Association of Judges (1999), Article 12.

[20] See; inter alia, the ICCPR, Article 14; the ACHR, Article 8; the UNBP, Principles 3 and 5.

[21] See, inter alia, the UNBP, Principle 7; the Beijing Principles, Principle 37; the Ibero-American Summit of Supreme Court Presidents Caracas Declaration (1998), Autonomy and Independence Principle 2 [hereinafter the Caracas Declaration]; the UCJ, Article 14.

[22] See, inter alia, the UNBP, Principles 10, 11and 13; the Council of Europe Recommendation, Principle I.2.c.; the Beijing Principles, Principles 11 through 16; the Caracas Declaration, Formation and Training Principle 1 and Fight Against Corruption Principle 3; the UCJ, Article 9.

[23] See; inter alia, the UNBP, Principle 12; the Council of Europe Recommendation, Principle I.3.; the Beijing Principles, Principle 18; the UCJ, Article 8.

[24] See, inter alia, the UNBP, Principle 16; the UCJ, Article 10.

[25] See, inter alia, the UNBP, Principles 17 through 20; the Council of Europe Recommendation, Principle VI.; the Beijing Principles, Principles 17 and 22 through 30; the Caracas Declaration, Autonomy and Independence Principle 4; the UCJ, Article 11.